

PROCUREMENT AGREEMENT

THIS AGREEMENT dated this ____ day of _____, 2020, by and between the City of Warrensburg, (herein "City") and Trojan Technologies (herein "Supplier").

IN CONSIDERATION OF the performance of the services rendered under this Agreement and payment for such services, the parties agree to the following:

1. **Services** - Supplier shall provide the City with UV disinfection equipment for the City's wastewater treatment facilities as more fully outlined in Supplier's proposal dated _____, which is fully incorporated _____ herein by this reference as if fully recited herein. Supplier agrees to provide all such products in a timely manner as established by the City, or in the absence of the designation, within a reasonable time after receipt of City directives. Supplier agrees to provide products by and through qualified personnel under standards and conditions generally accepted by professionals in the field or occupations for which products are provided. In the event of any conflict between the particulars of Supplier's proposal and this Agreement, this Agreement shall control.

No work shall be performed nor shall compensation be paid for Supplier work performed or products not specifically identified in Supplier's specific proposal without written authorization from the City. All work performed by the Supplier, based upon City written authorization, shall be subject to the terms and conditions of this agreement unless otherwise specifically agreed upon by the City and Supplier in writing.

Supplier shall comply with all applicable federal and state laws, City and County ordinances, and applicable codes, shall obtain and maintain all necessary licenses, approvals, and certifications in connection therewith. Supplier shall indemnify and hold the City and all its personnel harmless from and against any and all claims, damages, losses and expenses, including reasonable attorney's fees and litigation costs, to the extent caused by violation of any applicable law, or code by the Supplier, or from the failure of the Supplier to obtain the necessary licenses, approvals or releases required for performance of its work.

2. **Compensation** - In consideration for the Supplier's performance under this agreement, the City agrees to compensate the Supplier as set forth in the Supplier's proposal. No increases in the rates and charges set forth in the proposal shall be permitted without the written authorization of the City. Payments shall be made within thirty (30) days of receipt of invoice by the City. The invoice shall be submitted at delivery and identify the task or project by name, identify and quantify units charged for items supplied during the invoice period. The City reserves the right to withhold payment for

inadequately documented invoices until documented as required herein . The City further reserves the right to withhold payments for nonconforming goods or goods not timely provided in accordance with the Supplier's proposal when delays in performance of services are not attributable to the City, or as a result of a billing dispute between the City and Supplier. No penalty shall be assessed to City for such amounts withheld until after any dispute is resolved in Supplier's favor.

3. City Responsibilities - City agrees to furnish Supplier with all current and available information for this project, along with any information necessitated by changes in work or services initiated by the City which may affect City requirements.

4. Coordination of Work and Work Product - Supplier shall coordinate, as necessary, with the City's designated representative. All reports, to the City shall be considered the property of the City. When available and requested by the City, work product shall be provided in electronic form at actual cost in media compatible for use with City software and equipment.

5. Warranty - Supplier expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the City, (2) as specified in the Request for Bids, (3) (4) be of free from defects in materials and workmanship, and (5) be performed in a professional and workmanship manner.. The warranties contained herein shall survive delivery and shall not be deemed waived either by reason of the City's acceptance of or payment for said equipment, supplies and/or services. Further, the warranties contained herein shall last for twelve (12) months commencing from acceptance of the equipment, supplies and/or services by the City or eighteen (18) months commencing upon delivery and

In addition, the lifetime performance guarantee provided by Supplier shall apply to the equipment provided to City.

6. Indemnification

6.1 Supplier agrees to indemnify, hold harmless and defend the City from and against any and all claims, actions, fees, expenses, costs, damages, losses and liabilities (including reasonable attorneys' fees) (collectively, "Liabilities") for bodily injury or death of any person or damage to real or tangible personal property which the City may sustain or incur, to the extent such Liabilities directly result from the negligence or willful misconduct of the Supplier, its employees, agents or representatives.

6.2 Supplier agrees to indemnify, hold harmless and defend City from and against any and all

Liabilities to the extent such Liabilities result from the infringement of any third party's intellectual property by any deliverables provided under this Agreement. The foregoing indemnification will not apply to the extent any infringement results from:

- a) the use of the deliverables other than in accordance with the terms of this Agreement and any applicable documentation or instructions supplied by Contract;
- b) any modification to the deliverables not expressly agreed to in writing by Supplier; or
- c) the combination of the deliverables with any materials not provided or expressly approved by Supplier.

7. Additional Services - No compensation shall be paid for any service or item supplied by the Supplier considered an additional service beyond the scope of services approved by the City unless rendition of that service or product and expense thereof has been authorized in writing by the City in advance of performance of such service or provision of such product. Any additional services performed by the Supplier or products supplied prior to such authorization by the City shall be deemed a part of basic proposal under this agreement, whether enumerated in this agreement or not, for which the Supplier shall be entitled to no additional compensation.

8. City Authorization - When the term City is used in this agreement, it shall mean the government of the City of Warrensburg, Missouri or the City of Warrensburg City Council, as the context requires. Authorization by the City shall mean written instruction from the City Council or the City Manager. It is further understood and agreed that no person or party is authorized to bind the City to any proposed agreement for services under the auspices of this agreement without having obtained the prior approval of the City of Warrensburg City Council or City Manager. In this regard, it is understood and agreed that the Supplier shall not be entitled to rely upon verbal representations by any agent or employee of the City in deviation to the terms and conditions of this agreement or as authorization for compensation for services except as may be approved by the City Council or City Manager in writing. When the term City's representative is used, it shall mean the City Manager or his designee as specified in writing.

9. Period of Services and Termination - Supplier shall fully perform the terms of its proposal within thirty (30) days of execution of this Agreement.

10. Governing Law - This agreement shall be governed by the laws of the state of Missouri.

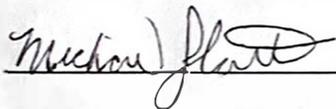
11. **Nature of Relationship** - Supplier herein is an independent Supplier and shall not act as an agent for the City, nor shall Supplier be deemed to be an employee of the City for any purposes whatsoever. The Supplier shall not enter into any agreement or incur any obligations on the City's behalf or commit the City in any manner.

12. **Miscellaneous** - This agreement constitutes the entire agreement of the parties superseding all prior negotiations, written or verbal, and may only be amended by signed writing executed by the parties through their authorized representatives hereunder. Supplier's terms and conditions of sale as negotiated, are hereby incorporated and attached hereto.

IN WITNESS WHEREOF, the parties have executed this agreement by their duly authorized signatories effective the date and year first-above written.

SUPPLIER

CITY OF WARRENSBURG, MISSOURI



BY: MICHAEL SHORT
REGIONAL MANAGER

Harold Stewart, II, City Manager

DATE: MAY 8, 2020

DATE:

ATTEST:

Cindy Gabel, City Clerk