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January 26, 2022

City of Warrensburg  
102 S. Holden Street  
Warrensburg, MO 64093  
Attn: William Graves, Public Works Senior Project Manager

Re: Proposal for Professional Services:  
Architectural, Mechanical, Plumbing, and Electrical Design for the  
**Warrensburg Convention & Visitors Bureau Remodel Project located at  
205 N. Holden Street** in Warrensburg, MO (Johnson County)

I am pleased to provide this proposal to you for Professional Services on the project referenced above. The project includes the interior remodel of the main floor (approximately 2,150 sf). The new space will include a front lobby, one office, meeting space, storage/workspace, two ADA unisex restrooms, and a break area. A rear exit will need to be reconfigured, and the storefront glass units may need to be replaced.

The following is my understanding of the scope of work:

**Scope of Work:**

- Documentation of Existing Conditions
- Schematic Floor Plan layout(s)
- Design Development drawings based on client feedback
- Code Research (document on drawings for city's plan review)
- Construction Documents (stamped plan review drawings)
- Coordination with the city's Permits Division for design review comments
- Mechanical, Electrical, Plumbing Design
- Coordination with the City's Building Department for Plan Review Comments
- Attend a maximum of (2) site meetings during construction

**Specific Exclusions:**

- Structural Design
- Civil / Site Utility Design
- Landscape Design
- Signage Design
- Color Elevations / Renderings
- Security System, IT System, and Tel/Data System Design/Specifications
- Final Interior Finishes Selection
- Construction Cost Estimates
- Front End Specifications
- Specification Booklet
- Contract Administration



## **CONTRACT TERMS AND CONDITIONS**

### **ARTICLE I - SERVICES TO BE PROVIDED**

M Design, LLC, through and by its members, officers, employees and subconsultants, (hereinafter called M Design) is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in the proposal. No third party beneficiaries are intended by this Agreement.

### **ARTICLE II - PAYMENT TERMS**

M Design's payment terms are as follows:

- A. Client agrees to pay M Design's invoice upon receipt. Client receipt of invoice will be presumed three days after mailing by M Design first class, with adequate postage attached or, if sent by email, the following day. Time is of the essence for this provision.
- B. Late Fee Charges - If payment is not received within 30 days from the Client's receipt of M Design's invoice, Client agrees to pay a service charge on the past due amount at the greater of 1% per month or the allowable legal rate, including reasonable attorney's fees and expenses if collected through an attorney. No deduction shall be made from M Design's invoice on account of liquidated damages unless expressly included in the Agreement. After five days prior notice to Client, M Design may suspend services until paid on any project where payment of invoiced amounts not reasonably in dispute is not received by M Design within 60 days of Client's receipt of M Design's invoice.

### **ARTICLE III - TERMINATION**

Either party may terminate this Agreement without cause upon 30 days prior written notice. This Agreement will terminate automatically upon the insolvency of Client. In the event Client requests termination prior to completion of the proposed services, Client agrees to pay M Design for all reasonable charges incurred to date and associated with termination of the work.

### **ARTICLE IV - STANDARD OF CARE**

M Design will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of M Design's profession practicing in the same or similar locality at the time of service. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE OR INTENDED BY THE PROPOSAL OR BY ANY ORAL OR WRITTEN REPORTS.

### **ARTICLE V - INSURANCE**

M Design maintains insurance coverage as follows: PROFESSIONAL LIABILITY: \$1,000,000 occurrence

### **ARTICLE VI - PROFESSIONAL LIABILITY**

CLIENT AGREES THAT M DESIGN'S LIABILITY, AND THAT OF ITS OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AGENTS AND SUBCONSULTANTS, TO CLIENT OR ANY THIRD PARTY DUE TO ANY NEGLIGENT PROFESSIONAL ACTS, ERRORS OR OMISSIONS OR BREACH OF CONTRACT BY M DESIGN WILL BE LIMITED TO M DESIGN'S TOTAL CHARGES. IF CLIENT PREFERS TO HAVE HIGHER LIMITS OF PROFESSIONAL LIABILITY, M DESIGN AGREES TO INCREASE THE AGGREGATE LIMIT, UP TO A MAXIMUM OF \$1,000,000, UPON CLIENT'S WRITTEN REQUEST AT THE TIME OF ACCEPTING THE PROPOSAL, PROVIDED CLIENT AGREES TO PAY AN ADDITIONAL CONSIDERATION OF TEN PERCENT OF M DESIGN'S TOTAL CHARGES, OR \$500, WHICHEVER IS GREATER. THE ADDITIONAL CHARGE FOR THE HIGHER LIABILITY LIMIT IS BECAUSE OF THE GREATER RISK ASSUMED BY M DESIGN AND IS NOT A CHARGE FOR ADDITIONAL PROFESSIONAL LIABILITY INSURANCE. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT PROHIBITED BY LAW:

### **ARTICLE VII - SITE OPERATIONS**

Client will arrange for right-of-entry to the property for the purpose of performing project management, documentation of existing conditions and evaluations pursuant to the agreed services. Client represents that it possesses necessary permits and licenses required for its activities at the site. M Design will take reasonable precautions to minimize damage to the property caused by M Design's operations. Unless otherwise stated in M Design's proposal, M Design charges do not include cost of restoration due to any related damage that may result. If Client requests M Design to repair such damage, M Design will do so at an appropriate additional cost. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in our proposal or report.

### **ARTICLE VIII - FIELD REPRESENTATIVE**

The presence of M Design's or its subconsultant's field personnel, either full-time or part-time, may be for the purpose of providing project administration, assessment, observation and/or field testing of specific aspects of the project as authorized by Client. Should a subconsultant(s) not retained by M Design be involved in the project, Client will advise such subconsultant(s) that M Design's services do not include supervision or direction of the means, methods or actual work of the subconsultant(s), his employees or agents. Client will also inform subconsultant(s) that the presence of M Design's field representative for project administration, assessment, observation or testing will not relieve the subconsultant(s) of its responsibilities for performing the work in accordance with the plans and specifications. If a contractor (not a subconsultant of M Design) is involved in the project, Client agrees, in accordance with generally accepted construction practices, that the contractor will be solely and completely responsible for working conditions on the job site, including security and safety of all persons and property during performance of the work, and compliance with all Client safety requirements and OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. It is agreed that M Design will not be responsible for job or site safety or security on the project, other than for M Design's employees and subconsultants, and that M Design does not have the duty or right to stop the work of the contractor.

### **ARTICLE IX - UNFORESEEN CONDITIONS OR OCCURRENCES**

It is possible that unforeseen conditions or occurrences may be encountered at the site that could substantially alter the necessary services or the risks involved in completing M Design's services. If this occurs, M Design will promptly notify and consult with Client, but will act based on M Design's sole judgment where risk to M Design personnel is involved. Possible actions could include:

- A. Complete the original Scope of Services in accordance with the procedures originally intended in the Proposal, if practicable in M Design's judgment;
- B. Agree with Client to modify the Scope of Services and the estimate of charges to include study of the unforeseen conditions or occurrences, with such revision agreed to in writing;
- C. Terminate the services effective on the date specified by M Design in writing.

### **ARTICLE X CONTRACTOR RESPONSIBILITIES**

Neither the professional activities of M Design, nor the presence of M Design or M Design's employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequences, techniques, or procedures necessary for performing, superintending, or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. M Design and M Design's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CLIENT agrees that the General Contractor is solely responsible for jobsite safety and warrants that this intent shall be made evident in the CLIENT's agreement with the General Contractor. M Design and M Design's consultants shall be indemnified and shall be made additional insured under the General Contractor's general liability insurance policy.

### **ARTICLE XI - DOCUMENTS**

M Design will furnish Client design documents. These instruments of services are furnished for Client's exclusive internal use and reliance, use of Client's counsel, use of Client's qualified bidders (design services only) and for regulatory submittal in connection with the project or services provided for in this Agreement, but not for advertising or other type of distribution, and are subject to the following:

- A. All documents generated by M Design under this Agreement shall remain the sole property of M Design. Any unauthorized use or distribution of M Design's work shall be at Client's and recipient's sole risk and without liability of M Design. M Design may retain a confidential file copy of its work product and related documents.

- B. If Client desires to release, or for M Design to provide, our document(s) to a third party not described above for that party's reliance, M Design will agree to such release provided that such third party shall be bound by acceptable terms and conditions similar to this Agreement. Documents provided for disclosure of information only will not require separate agreement. Client acknowledges and agrees to inform such third party that M Design's documents reflects conditions only at the time the documents were produced and may not reflect conditions at a later time. Client further acknowledges that such request for release creates a potential conflict of interest for M Design and by this request Client waives any such claim if M Design complies with the request.
- C. Client agrees that all documents furnished to Client or Client's agents or designees, if not paid for, will be returned upon demand and will not be used by Client or any other entity for any purpose whatsoever. Client further agrees that documents produced by M Design pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without M Design's prior written approval.
- D. Client shall furnish documents or information reasonably within Client's control and deemed necessary by M Design for proper performance of M Design's services. M Design may rely upon Client-provided documents in performing the services required under this Agreement; however, M Design assumes no responsibility or liability for their accuracy. Client-provided documents will remain the property of Client, but M Design may retain one confidential file copy as needed.
- E. Upon Client's request, M Design's work product may be provided on magnetic media. By such request, Client agrees that the written copy retained by M Design in its files, with at least one conformed written copy provided to Client, shall be the official base document. M Design makes no warranty or representation to Client that the magnetic copy is accurate or complete, but will correct in good faith any omissions or errors brought to M Design's attention by Client. Any modifications of such magnetic copy by Client shall be at Client's risk and without liability to M Design. Such magnetic copy is subject to all other conditions of this Agreement.

#### **ARTICLE XII - CLAIMS**

The parties agree to attempt to resolve any dispute without resorting to litigation, including use of mediation, prior to filing of any suit. However, in the event a claim results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred in pursuing and defending the claim, including reasonable attorney's fees.

#### **ARTICLE XIII - OPINIONS OF COST**

If requested, M Design will use its best efforts and experience on similar projects to provide realistic opinions or estimates of costs for construction as appropriate based on reasonably available data. However, such opinions are intended primarily to provide information on the order of magnitude or scale of such costs, and are not intended for use in firm budgeting or negotiation unless specifically agreed otherwise in writing with M Design. Client understands actual costs of such work depend heavily on regional economics, local construction practices, material availability, site conditions, weather conditions, contractor skills, and many other factors beyond M Design's control.

#### **ARTICLE XIV - TESTIMONY**

Should M Design or any M Design employee be compelled by law to provide testimony or other evidence by any party, whether at deposition, hearing or trial, in relation to services provided under this Agreement, and M Design is not a party in the dispute, then M Design shall be compensated by Client for the associated reasonable expenses and labor for M Design's preparations and testimony at appropriate unit rates. To the extent the party compelling the testimony ultimately provides M Design such compensation, Client will receive a credit or refund on any related double payments to M Design.

#### **ARTICLE XV - CONFIDENTIALITY**

M Design will maintain as confidential any documents or information provided by Client and will not release, distribute or publish same to any third party without prior permission from Client, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to Client.

#### **ARTICLE XVI - GOVERNING LAW**

This Agreement shall be governed in all respects by the laws of the state of the project site.

#### **ARTICLE XVII - PRIORITY OVER FORM AGREEMENTS/PURCHASE ORDERS**

The Parties agree that the provisions of these Terms and Conditions shall control over and govern as to any form writings signed by the Parties, such as Client Purchase Orders, Work Orders, etc., and that such forms may be issued by Client to M Design as a matter of convenience to the Parties without altering any of the terms or provisions hereof.

#### **ARTICLE XVIII - SURVIVAL**

All provisions of this Agreement for indemnity or allocation of responsibility or liability between Client and M Design shall survive the completion of the services and the termination of this Agreement.

#### **ARTICLE XIX - SEVERABILITY**

In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue to full force and effect.

#### **ARTICLE XX - ASSIGNMENT**

This Agreement may not be assigned by either party without the prior permission of the other.

#### **ARTICLE XXI - INTEGRATION**

This Agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

**END OF DOCUMENT**