

## CONTRACTOR SERVICES AGREEMENT

**THIS AGREEMENT** dated this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Warrensburg, Missouri, Parks and Recreation Department (herein "City") and \_\_\_\_\_ (herein "Contractor").

**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** - Contractor shall provide the City with upgrade and repair of the Community Center electronic sign as called for in the City's request and Contractor's approved proposal, and any other specific scopes of work approved by the City from time to time hereunder. The terms of the Contractor's bid are incorporated herein. In the event of conflict, the terms of this Contract shall control. Contractor agrees to provide services by and through qualified personnel under standards and conditions generally accepted by professionals in the field or occupations for which services are provided.

No work shall be performed nor shall compensation be paid for Contractor work performed not specifically identified within Contractor's proposal and an approved scope of work and pursuant to written authorization from the City accepting such scope of work. All work performed by the Contractor, based upon a written authorization, shall be subject to the terms and conditions of this agreement unless otherwise specifically agreed upon by the City and Contractor in writing.

Contractor shall comply with all applicable federal and state laws, City and County ordinances, and applicable codes, shall obtain and maintain all necessary permits, approvals, and certifications in connection therewith, obtain all required surveys or assessments of the property, make any required reports, and obtain any permits, approvals or releases necessary to resolve any claims resulting from the work. Contractor 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, which arise from the violation or suspected violation of any law, ordinance or code by the Contractor, or from the failure of the Contractor to obtain the necessary permits, approvals or releases associated with the work.

Contractor shall comply with all applicable federal and state laws and regulations, in particular with the disposal of any solid waste materials generated by Contractor under this Agreement. Contractor 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, which arise from the violation or suspected violation of any federal or state

law/regulation dealing with the disposal of solid waste or hazardous substances. In no event, shall the City be responsible for any acts of the Contractor which are a violation of federal or state solid waste disposal laws/regulations.

2. **Compensation** - In consideration for the Contractor's provision of services under this agreement, the City agrees to compensate the Contractor for services rendered as set forth in the proposal for work authorized by the City and the specific scope requested by the City and approved by the City from time to time hereunder. No increases in the rates and charges set forth in any 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. Invoices shall be submitted periodically as mutually agreed upon by the City and Contractor, or in the absence of such agreement, upon completion of the services constituting the task or project for which services are provided. Invoices for services on an hourly fee plus expense basis shall individually describe the task or project by name, show hours expended by classes of personnel in increments of not less than one-half hour and rates applied, as well as describe services performed during the invoice period; reimbursable expenses shall be itemized. Invoices for services performed on a unit price basis shall identify the task or project by name, identify and quantify units charged for services during the invoice period. Invoices for services on a lump sum basis shall identify the task or project by name and the invoiced amount. Periodic invoices shall not exceed the amounts permitted in the Contractor's proposal approved by the City. When periodic requests for payment are made, they shall only reflect charges for services already complete. City may retain five percent (5%) of any partial payment pending final completion of the contract services to correct any deficiencies in performance. 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 unperformed services or services not performed on a timely basis in accordance with the Contractor'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 Contractor. No penalty shall be assessed to City for such amounts withheld until after any dispute is resolved in Contractor's favor.

3. **City Responsibilities** - City agrees to furnish Contractor with all current and available information for any work requested, along with any information necessitated by changes in work or services initiated by the City which may affect services rendered hereunder.

4. **Coordination of Work and Work Product** - Contractor shall coordinate, as necessary, with the City's designated representative. In the absence of a designation, the Park Director shall be the City's designated representative. All reports, surveys, test data, memoranda, samples, plans, specifications, and other documents or materials submitted by or 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. **Protection of Work, Property and Persons** - The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the services provided under this Agreement. The Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees providing work under this Agreement and other persons who may be affected thereby, all the provided services and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall comply with all pertinent provisions of the Occupational Safety and Health Administration (OSHA) and any State Safety and Health agency requirements.

5.1. The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Contractor will erect and maintain, as required by the conditions and progress of the services, all necessary safeguards for safety and protection. The Contractor will notify City of adjacent utilities when prosecution of the request for proposal may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by the Contractor, any Subcontractor or any person directly or indirectly employed by any of them or anyone of whose acts any of them may be liable.

5.2 In emergencies affecting the safety of persons or the scope of work or property at the site or adjacent thereto, the Contractor, without special instructions or authorization from the City, shall act to prevent threatened damage, injury or loss. The Contractor will give the City prompt written notice of any significant changes in the scope of work caused thereby, and a change order shall thereupon be issued covering the changes and deviations involved.

5.3 Contractor shall indemnify and hold harmless the City and its officials, agents and employees from all costs and liabilities incurred as a result of Contractor's failure, or failure of its employees, agents or Subcontractors, to comply with Section 285.530 RSMo regarding unauthorized aliens, Section 208.009 RSMo regarding contracts with public entities, Section 292.675 RSMo regarding OSHA training for Public Works, to the extent the same are applicable during the term of this Agreement. Attached hereto are certifications of compliance required.

5.4 All Contractors entering into contracts for public works shall require all employees providing services under this Agreement to complete ten hours of training pursuant to Section 292.675 RSMo within sixty days of beginning work on the project.

Any Contractor violating the training requirements of Section 292.675 RSMo shall forfeit as a penalty to the public body on whose behalf the contract is made the sum of \$2,500.00 plus \$100.00 for each violating employee, per day. These penalties shall accrue on expiration of the time limits set forth in Sections 292.675.2 and 292.675.3 RSMo.

All sums due for such forfeiture and penalty shall be withheld from payments owed under the Contract. No payment otherwise due shall be made during any term of uncorrected violations of Section 292.675 RSMo and no interest or penalties shall accrue on any such unmade payment.

6. **Insurance Requirements** - Contractor shall purchase and maintain such insurance as will protect if from claims set forth below which may arise out of, or result from the Contractor's work, whether such execution be by the Contractor, any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone whose acts any of them may be liable:

6.1 **Workers Compensation** - Claims under workmen's compensation, disability benefit and other similar employee benefit acts in amounts required by law. In case any class of employees engaged in hazardous work under this Agreement at the site of the project is not protected under the workmen's compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of its employees not otherwise protected.

6.2 **Bodily Injury** - Claims for damages because of bodily injury, occupational sickness or disease, or death of employees in the amounts required by law.

6.3 **Personal Injury** - Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person.

6.4 **Third Person Bodily Injury** - Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees in the amount of at least \$459,893.00 per person and \$3,065,952.00 per occurrence, or such amounts as are annually

listed as the governmental immunity waiver in Section 537.610, RSMo., as annually listed throughout the term of this Contract.

**6.5 Automobile Coverage** - Claims for damages because of injuries to persons and property arising out of the operation of the following in the execution of projects:

- a) Contractor's own automobiles and trucks,
- b) Hired automobiles and trucks, and
- c) Automobiles and trucks now owned by the Contract.

The insurance shall cover the use of the above mentioned automobiles and trucks both on and off the site of the project. The minimum amounts of such insurance shall be the same as required for Public Liability and Property Damage Insurance.

**6.6 Public Liability and Property Damage** - Claims for damages because of damage to any property, building, or structure on or adjacent to the City's premises, or the injury to or destruction of property resulting from the project in the amount of at least \$459,893.00 per person and \$3,065,952.00 per occurrence, or such amounts as are annually listed as the governmental immunity waiver in Section 537.610, RSMo., as annually listed.

**6.7 Excavation or Underground Construction** - When any project to be performed under this agreement involves excavation or other underground construction, the Property Damage Insurance provided shall cover all injury to or destruction of property below the surface of the ground, such as wires, conduits, pipes, mains, sewers, etc., caused by the Contractor's operations, Property Damage Insurance shall also cover the collapse of, or structural injury to, any buildings or structure on or adjacent to the City's premises, or the injury to or destruction of property resulting therefrom, caused by the removal of other buildings, structures, or supports, or by excavations below the ground where the construction of a new structure or the demolition of an existing structure involves any of the foregoing designated hazards and in all cases where this agreement provides for alternations in, additions to, or the underpinning of an existing structure or structures. Before any blasting will be permitted, the Contractor shall be required to obtain a Blasting Endorsement on his Public Liability and Property Damage Insurance Policy.

**6.8 Subcontractor** - The Contractor shall secure Contractor's Contingent or Protective Liability and Property Damage to protect the Contractor from any and all claims arising from the operations of subcontractor employed by the Contractor. The minimum amounts of such insurance shall be as required for Public Liability and

Property Damage Insurance.

Certificates of Insurance acceptable to the City shall be filed with the City prior to the commencement of any work assigned under this Agreement. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the City.

7. **Indemnification** - Failure of Contractor or subcontractor to obtain or maintain such insurance during this Agreement, or to provide proper proofs thereof upon request of the City, shall not diminish, waive or otherwise reduce the Contractor's obligations to maintain such insurance coverage and Contractor 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, arising out of or resulting from the performance of services, provided that any such claim, damage, loss or expenses, is caused in whole or in part by the negligent act, omission and or liability of the Contractor, its agents, employees, or its subcontractors. In addition, any and all claims against the City or employees, by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits act. Further, Contractor shall hold City harmless from any failure by Contractor to complete their work in compliance with all applicable local, state and federal regulations.

8. **Delegation and Subcontracting** - The Contractor shall not delegate or subcontract any work to be performed by the Contractor under this Agreement without the express prior written approval of the City.

9. **Records and Samples** - To the extent not otherwise transferred to the City's possession, Contractor agrees to retain and provide the City with reasonable access to all work product, records, papers and other documents involving transactions and work related to or performed under this agreement for a period of three (3) years after this agreement expires. When services involve testing or sampling, Contractor agrees to either retain all test products or samples collected by or submitted to Contractor, or return same to the City as mutually agreed upon. In absence of agreement, Contractor shall not dispose of test samples or products without notice to or consent by the City or the City's representative.

10. **Additional Services** - No compensation shall be paid for any service rendered by the Contractor considered an additional service beyond the scope of services approved by the

City unless rendition of that service and expense thereof has been authorized in writing by the City in advance of performance of such service. Any additional services performed by the Contractor prior to such authorization by the City shall be deemed a part of basic services for work performed under the Request for Proposal governed by this agreement, whether enumerated in this agreement or not, for which the Contractor shall be entitled to no additional compensation.

11. **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 Park Board, as the context requires. Authorization by the City shall mean written instruction from the Park Board or Park Director. 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 Park Board or Park Director. In this regard, it is understood and agreed that the Contractor 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 of Warrensburg Park Board or Park Director in writing. When the term City's representative is used, it shall mean the Park Director or their designee as specified in writing.

12. **Period of Services and Termination** – Contractor shall complete the work on or before \_\_\_\_\_, 2022. The City may and reserves the right to terminate this agreement at any time with or without cause by giving the Contractor written notice of termination. Upon receipt of such notice, Contractor shall discontinue all services in connection with the performance of services authorized under this agreement and City shall upon invoice remit payment for all authorized services completed up to the date of termination notice. Upon payment of this invoice, the Contractor shall deliver any and all work product including drawings, plans, and specifications, or other documents, prepared as instruments of service, whether complete or in progress. It is further agreed that if services are terminated the Contractor shall be compensated for all services rendered through the date of termination not to exceed the amount authorized for services through the date of termination. If the City questions the extent of work on a final invoice, the Contractor shall give the City the opportunity to review and evaluate all work upon which the invoice is based in the offices of the Contractor prior to payment. This agreement or work performed under the provisions of this agreement may also be terminated by the Contractor upon not less than seven days written notice in the event the City shall substantially fail to perform in accordance with the terms and conditions of this agreement, through no fault of the Contractor. In the event of termination by the Contractor, the other provisions concerning termination contained in this paragraph shall be applicable. This Contract shall remain in place for a period of twelve months, or until the work called for is completed, whichever period is shorter, or until sooner terminated by City.

13. **Period of Services and Termination** – The period of performance under this agreement shall be as set forth in the proposal for work dated \_\_\_\_\_. Any other proposals approved by the City shall be completed in the time period set forth in writing in such proposal. In no event shall Contractor perform services for City beyond twelve (12) months from execution of this Contract without execution of a new written contract.

Each scope of work shall be completed within the time provided for in the proposal for that scope of work. The City may and reserves the right to terminate this agreement at any time with or without cause by giving the Consultant written notice of termination. Upon receipt of such notice, Consultant shall discontinue all services in connection with the performance of services authorized under this agreement or City approved proposal for services and City shall upon invoice remit payment for all authorized services completed up to the date of termination notice. Upon payment of this invoice, the Consultant shall deliver any and all work product including drawings, plans, and specifications, or other documents, prepared as instruments of service, whether complete or in progress. It is further agreed that if services are terminated the Consultant shall be compensated for all services rendered through the date of termination not to exceed the amount authorized for services through the date of termination. If the City questions the extent of work on a final invoice, the Consultant shall give the City the opportunity to review and evaluate all work upon which the invoice is based in the offices of the Consultant prior to payment. This agreement or work performed under the provisions of this agreement may also be terminated by the Consultant upon not less than seven days written notice in the event the City shall substantially fail to perform in accordance with the terms and conditions of this agreement, through no fault of the Consultant. In the event of termination by the Consultant, the other provisions concerning termination contained in this paragraph shall be applicable.

14. **Prevailing Wage** - The Contractor shall comply with all requirements of the prevailing wage law of Missouri, Revised Statutes of Missouri, Sections 290.210 to 290.340, including the latest amendments thereto, for any work that falls within that law, to the extent work performed under this Agreement exceeds \$75,000.00.

14.1. The Contractor and any authorized Subcontractor shall keep an accurate record showing names, occupations, and crafts of all workers employed, together with the number of hours worked by each worker and the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by representatives of the Labor & Industrial Relations Commission and the City. The payroll records shall not be destroyed or removed from the State for at least one (1) year after completion of this Agreement.

14.2. Throughout the life of this agreement, a copy of the wage determination and the



rules promulgated by the Labor & Industrial Relations Commission of Missouri shall be displayed at the site of the project in at least four (4) conspicuous places on the project under a heading of NOTICE with the heading in letters at least one inch (1") high.

14.3 Pursuant to Section 290.250 RSMo, the Contractor shall forfeit to the City as a penalty, one hundred dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the stipulated rates for any work done under the Contract, by them or by any Subcontractor under them.

14.4 After completion of the project and before final payment can be made under this Agreement, the Contractor and any authorized Subcontractor must file with the City an affidavit stating that they have fully complied with the provisions and requirements of the prevailing wage law of Missouri, Section 290.210 to 290.340 RSMo.

14.5 During the life of this Agreement, the prevailing hourly rate of wages is subject to change by the Labor and Industrial Relations Commission or by court decision, as provided by law. Any such change shall not be the basis of any claim by the Contractor against the City, nor will deductions be made by the City against sums due the Contractor by reason of such changes. The following prevailing wage rate determination made by the Division of Labor Standards, Labor & Industrial Relations Commission, is reproduced verbatim and is applicable to this Agreement.

14.6 During the term of any order from the Department of Labor concerning excessive unemployment, the provisions of Sections 290.550 through 290.580 RSMo shall be observed by Contractor.

15. **Governing Law** - This agreement shall be governed by the laws of the State of Missouri and it is agreed that this agreement is made in Johnson County, Missouri and that Johnson County, Missouri is the exclusive venue for any action pertaining to the interpretation or enforcement of any provision within or services performed under this agreement.

16. **Certification of Lawful Presence / Work Authorization** - Contractor will complete the required certifications of lawful presence and, if the contract is to exceed \$5,000.00, shall complete and return the Work Authorization Certification attached hereto.

17. **Conflict of Interest** - Contractor hereby covenants that at the time of the submission of the proposal and the execution of this Agreement it has no other contractual or employment relationships which would create any actual or perceived conflict of interest. The Contractor further agrees that during the term of this Agreement neither the Contractor nor any

of its employees shall acquire any other contractual relationships which create such a conflict. Contractor shall complete the required Conflict of Interest Form attached hereto and shall have an affirmative duty to update said form if there are any changes to the answers provided therein during the term of this Agreement.

18. **Performance and Payment Bonds** - Performance and Payment Bonds are required in amounts equal to the total compensation called for under this Agreement, for any individual work that exceeds \$50,000.00 and involves construction or repair of physical facilities. Such bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the state of Missouri and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these bonds shall be borne by the Contractor. If at any time a surety on any such bond is declared bankrupt or loses its right to do business in the state of Missouri or is removed from the list of Surety Companies accepted on Federal Bonds, Contractor shall within ten (10) days after notice from the City to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the City. The premiums on such bonds shall be paid by the Contractor. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the City.

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

20. **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.

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

CONTRACTOR

BY: 

CITY OF WARRENSBURG, MISSOURI

BY: \_\_\_\_\_  
Park Director

DATE:

DATE:

ATTEST:

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City Clerk