

SERVICES AGREEMENT

GENERAL CONDITIONS

Independent Contractor. The Consultant shall be and operate as an independent Contractor in the performance of this Agreement. The Consultant shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Consultant shall be employees of said Consultant and not employees of the City in any respect.

Compliance with Laws. The Consultant shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of this Agreement. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over the Services, the Consultant shall notify the City of the nature and impact of such conflict.

Subcontracts. The Consultant shall not subcontract any of the Services to be performed by it hereunder without the express written consent of the City, except as provided herein. In the event Consultant utilizes a subconsultant, Consultant shall ensure that any agreement between Consultant and such subconsultant complies with all requirement imposed for such agreement by federal, state, and local law. In addition, this Agreement shall not be assigned by the Consultant.

If Consultant submits invoices to the City which include payments to be made on account of work performed by a subconsultant, such payments shall be conditioned upon submission by the Consultant of waiver of liens, or such other documents satisfactory to the City to protect the City's title to land, buildings, or improvements or to otherwise protect the City's interest. By submitting an invoice to the City, the Consultant warrants and guarantees that title to all land, buildings or improvements which may be subject to a lien under 429.015 RSMo., upon the receipt of such payment by the Consultant, will not be subject to a lien under 429.015 RSMo.

Indemnification. To the fullest extent permitted by law, the Firm agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from breach of this Agreement or out of services negligently performed hereunder by the Firm, or claims relating thereto, and including but not limited to the City's reliance on or use of the services or products provided by the Firm under the terms of this agreement. The Firm shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required by law to enforce this provision, the Firm agrees that this indemnification requires the Firm to obtain insurance in amounts specified herein and that the Firm has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

Insurance. Consultant shall furnish the City the certificates of insurance for workers' compensation, public liability, and property damage, including automobile coverage in the amounts required by the City, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo., as amended, applicable to political subdivisions. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the City. In addition to the foregoing, the Consultant shall maintain Professional Liability "errors and omissions" insurance in the form for the coverages satisfactory to City as indicated in the request for proposals, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions unless otherwise approved by the City. The City, and such additional persons and entities as may be deemed to have an exposure to liability as a result of the performance of the Consultant's Services, as determined by the City, shall be named as additional insured on a primary and non-contributory basis, with duty of defense on all insurance policies required hereunder. The City and Consultant waive all rights against each other for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance; provided that nothing herein shall be deemed a waiver of the City's sovereign immunity relative to any claim against the City.

Nondisclosure/Confidentiality. The Consultant agrees that it will preserve the confidentiality of all City data and account information and will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

Changes. No change in this Agreement shall be made except in writing prior to the change in Services or terms being performed. The Consultant shall make any and all changes in the Services without invalidating this Agreement when specifically ordered to do so in writing by the City. Consultant, prior to the commencement of such changed or revised Services, shall submit promptly to the City, a written cost or credit proposal for such revised Services. If the City and Consultant shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of Consultant, upon written notice from the City, to immediately proceed with such alteration or change, and Consultant shall be compensated the reasonable value of such Services. **No work or change shall be undertaken or compensated for without prior written authorization from the City and shall be subject to any required approval from county, state or federal departments or agencies.**

Termination. The City shall have the right to terminate this Agreement at any time for any reason by giving the Consultant written notice to such effect. The City shall pay to the Consultant in full satisfaction and discharge of all amounts owing to the Consultant under this Agreement an amount equal to the cost of all Services performed by the Consultant up to such termination date, less all amounts previously paid to the Consultant on account of this Agreement Price. The Consultant shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Consultant for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.

Multi-year contracts; Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "**Event of Nonappropriation**"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

Accounting. During the period of this Agreement, the Consultant shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Consultant.

Other Consultants. The City reserves the right to employ other Consultants in connection with the Services.

Request for Proposals. If the City issued a request for proposals in connection with the Services, such request for proposals and the proposal of the Consultant in response thereto are incorporated herein by reference and made a part of this Agreement. In case of any conflicts between the request for proposals and the executed Consultant/Services Agreement or proposal of the Consultant, the requirements of the City's Request for Proposal and this executed Consultant/Professional Services Agreement shall control and supersede unless a change thereto is specifically stated in this Agreement.

Work Records and Work Product. Consultant shall provide the City with copies of all documents pertinent to the Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Consultant created in performance of or relating to this Agreement. Consultant agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. Upon termination of this Agreement, Consultant shall promptly deliver to City any documents, whether printed or

electronic, of the inspections

Personnel. The Services shall be performed exclusively by the personnel of the Consultant identified in the Consultant's proposal and no other personnel of the Consultant shall perform any of the Services without the express written approval of the City.

Compliance with State Immigration Statutes. As a condition for the award of this Agreement, the Consultant shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Consultant shall also sign an (Affidavit of Participation in Federal Work Authorization Program) affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Consultant shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 R.S.Mo.

Representations. Consultant agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.

Governing/Choice of Law; Jurisdiction. This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri.

Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.