

TERM AND SUPPLY AGREEMENT
Between
THE CITY OF COLUMBIA, MISSOURI
And
WOODRUFF COMMUNICATIONS, INC.
For
PROFESSIONAL MARKETING AND ADVERTISING SERVICES

THIS AGREEMENT (hereinafter "Agreement") by and between the City of Columbia, Missouri, a municipal corporation (hereinafter called "City"), and **WOODRUFF COMMUNICATIONS, INC.**, a corporation organized in the State of Missouri, and with authority to transact business within the State of Missouri, (hereinafter called "Consultant"), is entered into on the date of the last signatory noted below ("Effective Date"). City and Consultant are each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, City, on occasion, may need certain technical and professional marketing and advertising services to promote Columbia as a travel destination on designated projects (hereinafter "Services"); and

WHEREAS, Consultant has made certain representations and statements to City with respect to the provision of such Services, and City desires to enter into this Agreement with Consultant, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows.

1. Services And Performance Standards.
 - a. Scope of Services. The scope of services involves the professional and technical marketing and advertising services on designated projects for **the City of Columbia's Convention and Visitors Bureau.**
 - b. Prior to beginning any work, City and Consultant shall agree in writing to the scope of the designated project, the schedule for the work, and the pricing for the work on the designated project. Consultant shall resolve with City any perceived ambiguity in the services on the designated project. City shall issue a written notice to proceed or purchase order which shall reflect the scope of the designated project and the pricing for the designated project. Consultant shall only provide services on designated projects when authorized by the City in writing. Consultant shall not prepare a written report unless the City directs Consultant to do so.

- c. Consultant shall exercise reasonable skill, care and diligence in performance of its services and will carry out its responsibilities in accordance with the generally accepted standards of good professional practices in effect at time of performance. If Consultant fails to meet the foregoing standards, Consultant shall perform at its own cost, and without reimbursement from City, the professional services necessary to correct errors and omissions which are caused by Consultant's failure to comply with the above standard.
2. **Addition Or Deletions To Services.** City may add to Consultant's services or delete therefrom, provided that the total cost of such work does not exceed the total cost allowance as specified herein. Consultant shall undertake such changed activities only upon the written direction of City. All such directives and changes shall be in written form and prepared and approved by the Parties.
 3. **Exchange Of Data.** All information, data, and reports in City's possession and necessary for the carrying out of the work, shall be furnished to Consultant without charge, and the Parties shall cooperate with each other in every way possible in carrying out the scope of services.
 4. **Personnel.** Consultant represents that Consultant will secure at Consultant's own expense, all personnel required to perform the services called for under this Agreement by Consultant. Such personnel shall not be employees of or have any contractual relationship with City, except as employees of Consultant. All of the services required hereunder will be performed by Consultant or under Consultant's direct supervision. All Consultant's personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of City.
 5. **Term.** This Agreement shall commence on the Effective Date and shall terminate on 11:59 p.m. on September 30, 2022.
 6. **Costs not to Exceed.** Total payment for all Work on Designated Projects and all other expenses and costs to the City for all Designated Projects authorized under this Agreement and described herein shall not exceed two hundred sixty thousand dollars (\$260,000.00).
 7. **Payment.**
 - a. **Conditioned upon acceptable performance.** Provided Consultant performs the services in the manner set forth in paragraph 1 hereof on a designated project, City agrees to pay Consultant in accordance with the terms outlined herein, which shall constitute complete compensation for all services to be rendered under this

Agreement on the designated project; provided, that where payments are to be made periodically to Consultant for services rendered under this Agreement, City expressly reserves the right to disapprove in whole or in part a request for payment where the services rendered during the period for which payment is claimed are not performed in a timely and satisfactory manner.

- b. City shall have ten (10) days from the date of receipt of the invoice to register City's disapproval of the work billed on that invoice. Following Consultant's receipt of said disapproval, Consultant shall have ten (10) days to cure the issues presented. If cure cannot be obtained within ten (10) days, Consultant shall notify City of the proposed amount of time for cure, and reach an agreement as to an acceptable alternative deadline.
- c. City shall pay Consultant within thirty (30) days of receipt of an invoice.

8. Termination of Agreement.

a. Termination For Breach. Failure of Consultant to fulfill Consultant's obligations under this Agreement in a timely and satisfactory manner in accordance with the schedule and description of services agreed to by both Parties shall constitute a breach of this Agreement, and City shall thereupon have the right to immediately terminate this Agreement. City shall give seven (7) days written notice of termination to Consultant by one of three different means: Facsimile Transmission ("FAX") if Consultant has a FAX number; U.S. Postal Service Mails; or by hand delivering a copy of the same to Consultant; or may give notice by any combination of the above methods. The date of termination shall be the date upon which notice of termination is hand delivered to Consultant or given by FAX, or the third day following mailing of the notice of termination, whichever first occurs. In the event of termination for breach, City, at its sole option, may utilize any and all finished or unfinished documents, data, studies, and reports or other materials prepared by Consultant under this Agreement prior to the date of termination. Consultant shall not be relieved of liability to City for damages sustained by City by virtue of any such breach of this Agreement by Consultant.

b. Termination for Convenience. City shall have the right at any time by written notice to Consultant to terminate and cancel this Agreement, without cause, for the convenience of City, and Consultant shall immediately stop work. In such event City shall not be liable to Consultant except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Consultant for the performance of the cancelled portions of the Agreement, including a reasonable allowance of profit applicable to the actual work performed and such preparations. In the event of termination for convenience, City, at its sole option, may purchase, for just and equitable compensation any and all finished or unfinished documents, data, studies, and reports or other materials prepared by Consultant under this

Agreement. Any reuse of any satisfactory work completed prior to the termination for convenience shall be at City's own risk and without any liability to Consultant. Anticipatory profits and consequential damages shall not be recoverable by Consultant.

9. **Conflicts.** No salaried officer or employee of City and no member of City Council shall have a financial interest, direct or indirect, in this Agreement. A violation of this provision renders this Agreement void. Any federal regulations and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this Agreement. Consultant further covenants that in the performance of this Agreement no person having such interest shall be employed.
10. **Assignment.** Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of City thereto. Notice of such assignment or transfer shall be furnished in writing promptly to City. Any such assignment is expressly subject to all rights and remedies of City under this Agreement, including the right to change or delete activities from this Agreement or to terminate the same as provided herein, and no such assignment shall require City to give any notice to any such assignee of any actions which City may take under this Agreement, though City will attempt to so notify any such assignee.
11. **Compliance with Laws.** Consultant agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services hereunder.
12. **Employment Of Unauthorized Aliens Prohibited.** Consultant agrees to comply with Missouri State Statute section 285.530 in that Consultant shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this Agreement, 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 contracted services. Consultant shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Consultant shall require each subcontractor to affirmatively state in its contract with Consultant that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the state of Missouri. Consultant shall also require each subcontractor to provide Consultant with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.

13. General Independent Contractor Clause. This Agreement does not create an employee/employer relationship between the Parties. It is the Parties' intention that the Consultant will be an independent contractor and not City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code,

Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. Consultant will retain sole and absolute discretion in the judgment of the manner and means of carrying out Consultant's activities and responsibilities hereunder. Consultant agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between Consultant and City, and City will not be liable for any obligation incurred by Consultant, including but not limited to unpaid minimum wages and/or overtime premiums.

14. Insurance. Consultant shall maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by Consultant is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under this Agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A- VIII.

a. Workers' Compensation & Employers Liability. Consultant shall maintain Workers' Compensation in accordance with Missouri State Statutes or provide evidence of monopolistic state coverage. Employers Liability with the following limits: \$500,000 for each accident, \$500,000 for each disease for each employee, and \$500,000 disease policy limit.

b. Commercial General Liability. Consultant shall maintain Commercial General Liability at a limit of **\$2,000,000** per occurrence and **\$3,000,000** aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

c. Business Auto Liability. Consultant shall maintain Business Automobile Liability at a limit of **\$2,000,000** per occurrence and **\$3,000,000** aggregate. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Consultant does not own automobiles, Consultant agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

d. Consultant may satisfy the liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. Consultant agrees to endorse City as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance state the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

e. The City of Columbia, its elected officials and employees are to be Additional Insured with respect to the Services to which these insurance requirements pertain. A certificate of insurance evidencing all coverage required is to be provided at least ten (10) days prior to the Effective Date of the Agreement between the Consultant and City. Consultant is required to maintain coverages as stated and required to notify City of a Carrier Change or cancellation within two (2) business days. City reserves the right to request a copy of the policy

f. The Parties hereto understand and agree that City is relying on, and does not waive or intend to waive by any provision of this Agreement, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to City, or its elected officials or employees.

g. Failure to maintain the required insurance in force may be cause for termination of this Agreement. In the event Consultant fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, City shall have the right to cancel and terminate this Agreement without notice.

h. The insurance required by the provisions of this article is required in the public interest and City does not assume any liability for acts of Consultant and/or Consultant's employees and/or Consultant's subcontractors in the performance of this Agreement.

15. **HOLD HARMLESS AGREEMENT:** To the fullest extent not prohibited by law, Consultant shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of Consultant, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Consultant or a subcontractor for part of the services), of anyone directly or indirectly employed by Consultant or by any subcontractor, or of anyone for whose acts Consultant or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Consultant to indemnify, hold harmless, or defend the City of Columbia from its own actions, inactions, (willful or otherwise), or its own negligence.

16. **No Waiver Of Sovereign Immunity.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.
17. **Professional Oversight Indemnification.** Consultant understands and agrees that City has contracted with Consultant based upon Consultant's representations that Consultant is a skilled professional and fully able to provide the services set out in this Agreement. In addition to any other indemnification set out in this Agreement, Consultant agrees to defend, indemnify and hold and save harmless City from any and all claims, settlements, and judgments whatsoever arising out of City's alleged negligence in hiring or failing to properly supervise Consultant.
18. **Professional Responsibility.** Consultant shall exercise reasonable skill, care, and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted good professional practices. If Consultant fails to meet the foregoing standard, Consultant shall perform at its own cost, and without reimbursement from City, the professional services necessary to correct the errors and omissions which are caused by Consultant's failure to comply with above standard, and which are reported to Consultant within one (1) year from the completion of Consultant's services.
19. **Governing Law And Venue.** This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
20. **No Third-Party Beneficiary.** No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under this Agreement.
21. **Missouri Anti-Discrimination Against Israel Act:** To the extent required by Missouri Revised Statute Section 34.600 and not in violation of the state or federal constitution, Consultant certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing

business in the State of Israel. If any provision of this paragraph, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. This paragraph shall not apply to contracts with a total potential value of less than one hundred thousand dollars (\$100,000.00) or to contractors with fewer than ten (10) employees.

22. Notices. Any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to CITY:

City of Columbia Convention and Visitor's
Bureau
P.O. Box 6015
Columbia, MO 65205-6015
ATTN: Director

If to CONSULTANT:

WOODRUFF COMMUNICATIONS, INC.
501 Fay Street, Suite 110
Columbia, MO 65201
ATTN: Shelley Thompson, CEO

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.


23. Public Records Act. City is subject to the Missouri Sunshine Law. The Parties agree that this Agreement shall be interpreted in accordance with the provisions of the Missouri Sunshine Law as amended and Consultant agrees to maintain the confidentiality of information which is not subject to public disclosure under the Sunshine Law.
24. Amendment. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
25. Counterparts and Electronic Signatures. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

26. Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties relative to the Services herein. All previous or contemporaneous contracts, representations, promises and conditions relating to Consultant's services described herein are superseded.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year written below.

CITY OF COLUMBIA, MISSOURI

By:  _____
John Glascock, City Manager
Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor/rw

CERTIFICATION: I, hereby certify that this Agreement is within the purpose of the appropriation to which it is to be charged, Account Number 22904810504310, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: _____
Matthew Lue, Director of Finance

(Seal)

WOODRUFF COMMUNICATIONS, INC.

By: 

Date: 6-3-21 _____

ATTEST:

By: _____

Name: _____