

**City of Ladue, Missouri**  
**PROFESSIONAL SERVICES CONTRACT**

DEPARTMENT: PUBLIC WORKS

DATE: December 16, 2024

**THIS AGREEMENT**, (“Contract” or “Agreement”) effective as of the date of signature by both parties, is by and between the **City of Ladue**, a Missouri municipal corporation, hereinafter referred to as City, and H3 Studio, 4395 Laclede Avenue, St. Louis, MO 63108 hereinafter referred to as “CONSULTANT.”

**WITNESSETH:** That the parties hereto, for the considerations hereinafter set forth, agree as follows:

**I. SCOPE OF SERVICES**

Consultant services are necessary for the following Project: City of Ladue, Zoning & Subdivision Code Update, Phases I and II

Except as expressly specified herein, Consultant hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the consultant services which are particularly described as follows (and as more specifically set forth in the attached **Exhibit A** incorporated herein):

- Zoning & Subdivision Code Update, Phases I & II

The above services (hereinafter referred to as the Work) shall be provided by the Consultant in accordance with all the provisions of the Contract and attached **City of Ladue General Conditions** for the project that are incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any attachment or exhibit. Consultant shall perform the Work to the highest standard of the industry.

**II. COMPENSATION**

**A. Basic Compensation.** The City hereby agrees to pay the Consultant, as full compensation for the complete and satisfactory performance of the contract, and all expenses and costs related thereto:

a sum not to exceed \_\_\_\_\_.

or (if above box is not checked):

such amount as is set forth on an attached Exhibit A which such amount is incorporated herein and subject to any such limits as established therein and in approving authorization.

Scope of Work performed on an Hourly Basis, as set forth on an Hourly Rate Schedule on attached Exhibit A, of which the specific Scope of Work for each individual project is to be determined on a project-by-project basis, generally by Work Order.

**B. Additional Compensation.** Any cost not specifically allowed the Consultant pursuant to this paragraph B dealing with additional compensation is included in Basic Compensation. If City directs in writing additional services not included in this Agreement, Consultant shall be paid as follows:

Only as agreed to in writing and in compliance with City Codes and policies.

**III. TIME AND MANNER OF PAYMENTS**

All invoices complete with necessary support documentation shall be submitted to the City and payment shall be made by City in incremental progress payments made monthly within thirty (30) days of receipt of an invoice received after satisfactory performance of the Work for the fees, prices, rates, or schedule of values set forth above.

**IV. CONTRACT SCHEDULE**

The Work to be performed under the Contract shall be completed in accordance with the Scope of Work and the proposed schedule. The Work shall be performed so as not to delay or hinder City's schedule for the project.

The contract period for this project shall begin on January 2, 2025.

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement as of the effective date of Contract first above written.

**CONSULTANT**

**CITY OF LADUE, MISSOURI**

By: \_\_\_\_\_

By: \_\_\_\_\_

Mayor Nancy Spewak

Title: \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

**CITY OF LADUE  
PROFESSIONAL SERVICES AGREEMENT  
GENERAL CONDITIONS**

**Independent Consultant.** The Consultant shall be and operate as an independent Consultant in the performance of this Contract. The Consultant shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Consultant, if any, 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, Title IV, occupational safety, environmental laws, regulations, and protection, applicable taxes, equal employment and affirmative action and wage and price laws (section 290.210 RSMo.) insofar as applicable to the performance of the Contract. If applicable, the provisions and requirements of section 290.250 RSMo. shall apply and are incorporated herein. If applicable, Consultant and any subcontractor shall require all on-site employees to complete the ten-hour training program required under § 292.675.2 RSMo. such employees must hold documentation of prior completion of the program and shall be subject to such penalties as provided in § 292.675.4 RSMo. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over the Work, the Consultant shall notify the City of the nature and impact of such conflict. The City agrees to cooperate with the Consultant in an effort to resolve any such conflict. Unless expressly provided, Consultant shall be responsible for all costs, taxes, fees, charges, expenses, or other costs attributable to the performance of the Work.

**Subcontracts.** Consultant shall not subcontract any of the Work to be performed by it hereunder without the express written consent of the City. In addition, this Contract shall not be assigned by the Consultant without the prior written consent of the City.

**Indemnification.** To the fullest extent permitted by law, and notwithstanding anything to the contrary, the Consultant agrees to defend with counsel selected 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 the Contract or out of services and operations performed hereunder by the Consultant, 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 Consultant under the terms of this Agreement. The Consultant shall not be liable for any loss or damage attributable to the sole negligence of the City. Consultant shall be responsible for all damages to property caused by Consultant. To the extent required by law to enforce this provision, Consultant agrees that this indemnification requires Consultant to obtain insurance and that Consultant has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement. Nothing in this Agreement shall require or permit the City to indemnify Consultant, permit a cause of action for damages against the City (including attorney or expert fees), nor waive the City's sovereign immunity.

**Insurance.** The Consultant shall obtain and maintain for itself during the term of the Project and the Contract liability insurance coverage of at least \$2,000,000 aggregate and \$505,520 per occurrence. Insurance policies providing required coverages shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the compensation amount and no additional payment will be made therefor by the City. In addition, the Consultant shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed for the Services. Before commencing any Work, the Consultant shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph and bearing an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City. Any self-insurance or deductible above \$50,000.00 is not permitted. The City may waive any insurance coverages or amounts required to be carried by the Consultant under this paragraph when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF THE CITY'S SOVEREIGN IMMUNITY UNDER SECTION 537.610.1 RSMO. OR OTHERWISE. The purpose of the insurance required under this paragraph is to confirm that the Consultant has adequate insurance to cover the Consultant for tort claims that may arise out of the Work. It is not for the purchase of insurance for the City EXCEPT FOR AND ONLY TO THE LIMITED EXTENT OF any claims against the City arising out of the Consultant's Work and based upon one of the two statutory exceptions to sovereign immunity as expressly set forth in Section 537.600.1(1) and (2). To that limited extent, the City shall be named as an additional insured on the policy bearing an endorsement that: "The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against the City of Ladue as an additional Insured that is barred by sovereign immunity, and nothing contained in this Policy shall constitute a waiver of the City's sovereign immunity." Nothing in this requirement shall be deemed a waiver of the City's sovereign immunity.

**Nondisclosure.** The Consultant agrees that it 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 Contract. Nothing herein shall preclude disclosure of information or records by the City when acting in compliance with Chapter 610 RSMo. or other applicable law.

**Changes.** No change in this Contract shall be made except in writing executed by all parties prior to the change in work or terms being performed. The Consultant shall make any and all changes in the Work without invalidating this Contract when specifically ordered to do so in writing by the City. Consultant, prior to the commencement of such changed or revised work, shall submit promptly to the City, a

written cost or credit proposal for such revised Work. 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 Work. **No work or change shall be undertaken or compensated for without prior written authorization from the City.**

**Termination.** The City shall have the right to terminate this Contract 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 Contract an amount equal to the cost of all Work performed by the Consultant up to such termination date, less all amounts previously paid to the Consultant on account of the Contract 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 Work.

**Multi-year contracts; Non-appropriation.** Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in this 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 Contract, the Consultant shall maintain books of accounts of its expenses and charges in connection with this Contract 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 Work.

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

**Project Records and Work Product.** The Consultant shall provide the City with copies of all documents pertinent to the Work 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 Contract. 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.

**Site Operations.** Where appropriate, the City will arrange for right of entry to any property at the request of the Consultant for the purpose of performing studies, tests and evaluations in connection with the Work.

**Personnel.** The Work shall be performed exclusively by the personnel of the Consultant identified in the Consultant's proposal, if any, and no other personnel of the Consultant shall perform any of the Work 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 Work, if any. The Consultant shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Work. Such affidavits shall be in substantially the form provided in Exhibit B. 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.

Pursuant to Section 208.009 R.S.Mo., the Consultant shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the Consultant is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Consultant (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the Consultant and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States (attached as provided for in Exhibit B).

An Applicant who cannot provide the proof required under Section 208.009 R.S.Mo. at the time of submission of any bid may alternatively sign an affidavit under oath, attesting to either United States citizenship or classification by the United States as an alien lawfully admitted for permanent residence. The affidavit shall be on or consistent with forms prepared by the City, which shall be available from the City Clerk if needed. Any Applicant who signed an above-described affidavit must provide proof of lawful presence within the time provided

in Subsection 208.009.5 R.S.Mo. for temporary public benefits and failure to provide such proof within such time may result in the City rescinding and voiding any Contract awarded to the Consultant.

*For all contracts with a total potential value of \$100,000 or more and contractors with ten (10) or more employees: Contractor shall comply with Section 34.600 RSMo. (the Anti-Discrimination against Israel Act) including executing the certification attached as **Exhibit C** hereto.*

**Confidentiality.** It is understood that the City is subject to Chapter 610 RSMo. regarding the disclosure of public records and may be required to disclose records which may be deemed confidential as defined by Consultant but are nonetheless open records subject to disclosure under Chapter 610 RSMo. and Consultant expressly agrees that the City will not be in breach of this Agreement for disclosure of any record, or portion thereof when complying with the requirements of Chapter 610 RSMo. in the reasonable discretion of City's counsel.

**Attorney Fees' and Costs.** The Consultant shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Consultant's breach of the Agreement, the Consultant's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

**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 Contract. The parties agree the Contract represents the entire agreement between the parties. The Consultant represents and warrants that the Consultant has been engaged in such Work as is required for the Project and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Consultant owns sufficient equipment and engages sufficient personnel to perform the Consultant's obligations under this Agreement. The Consultant further represents and warrants that the Consultant is an equal opportunity employer.

**Governing/Choice of Law.** 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, with venue in St. Louis County, Missouri. This Contract is not intended to and shall not create any rights enforceable by any third-party beneficiary.

**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.