

## Service Agreement

*Arkansas*

This Service Agreement, hereinafter referred to as "Agreement," is entered into and made effective as of January 25rd, 2021 (the "Effective Date") by and between the following parties:

Brian Holthouse

3309 W. Keiser Ave.  
Osceola, AR 72370

and

The City of Osceola, Arkansas

Hereinafter, "Client" will refer to and be used to describe the following party: City of Osceola.  
"Service Provider" will refer to and be used to describe the following party:

Brian Holthouse.

Client and Service Provider may be referred to individually as "Party" and collectively as the "Parties."

### **RECITALS:**

*WHEREAS, Client wishes to retain the Services (as defined below) of Service Provider;*

*WHEREAS, Service Provider has the skills, qualifications, and expertise required to provide the Services to the Client;*

*WHEREAS, Service Provider wishes to render such Services to Client to businesses in Osceola that promptly pay and display their city's privilege tax permit – and – the signage required by AR Health Department - and - strictly adhere to Gov. Hutchinson's covid directives for businesses.*

*NOW, therefore, in consideration of the promises and covenants contained herein, as well as other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties do hereby agree as follows:*

**Article 1 - DEFINITIONS:**

As used in this Agreement:

A) "Services" shall be used to refer to the following specific services that the Service Provider will provide to the Client under the terms and conditions set forth herein:

*We will market, advertise and educate the local businesses and community about this free service being offered by the City of Osceola. We will schedule appointments and follow up by disinfecting local businesses with foggers and chemicals, supplied by the City of Osceola, to help stop the spread of the coronavirus in our City.*

B) "**Commencement Date**" shall be used to refer to the date the Service Provider begins work on the Services for the Client. The Commencement Date shall be January 28, 2021.

C) "**Completion Date**" shall be used to refer to the date that the Service Provider will complete or cease the provision of Services to the Client. The Completion Date will be February 12th, 2021.

D) "**Fees**" shall be used to refer to the payment Client will pay to the Service Provider for the rendering of the Services. Specifically, the fees shall be as follows:

BAA  
JW  
Up to

\$4,765 (four thousand seven hundred and sixty-five US dollars), as a fixed fee for all services rendered.

**Article 2 - AGREEMENT:**

Subject to the terms and conditions of this Agreement, Service Provider hereby agrees to render the Services to Client, beginning on the Commencement Date and ending on the Completion date, and Client agrees to pay Service Provider the Fees required for the Services. The Service Provider will produce and submit an itemized bill showing hours worked , location/businesses serviced, and information/literature distributed.

**Article 3 - LOCATION:**

Service Provider will render the Services anywhere the Service Provider considers appropriate (within the city limits of Osceola, AR) to the type and nature of the work required to complete the Services, and as described by the client.

**Article 4 - STAFF OR EMPLOYEES:**

The Service Provider shall only utilize the following staff or employees to assist in the provision of the Services, as these individuals are hereby approved and agreed to by Client:

- Michelle Stilwell - administration and promotion @\$12/hour (est. 40 hours per week)
- Brian Holthouse - application and promotion @\$18/hour (est. 40 hours per week)
- Sally Parks - application and promotion @\$12/hour (est. 40 hours per week)
- Matt Chancery - application and promotion @\$18/hour (est. 20 hours per week)

**Article 5 - FEES:**

The Client agrees to pay the Service Provider the established, but not more than the maximum, Fees, as outlined elsewhere in this Agreement, for the provision of the Services, subject to the following terms and conditions:

A) Invoice Interval: The Service Provider will be entitled to invoice the client at the following time period:

*City's normal payment method*

-or-

*Upon receipt*

B) Invoice Period: The Client shall have the following time period in which to pay the Service Provider's invoice:

Upon receipt

C) Method of Payment: Service Provider will accept the following forms of payment:

*City Check*

D) Expenses: The Service Provider is responsible for the management and payment of any and all expenses incurred in the rendering of the Services and is not permitted to charge any such expenses back to the Client.

E) Tax Statement: Any and all charges payable under this Agreement are exclusive of taxes, surcharges, or other amounts assessed by state or federal governments. Taxes imposed upon or required to be paid by Client or Service Provider shall be the sole and exclusive responsibility of each, respectively.

**Article 6 - CLIENT OBLIGATIONS:**

During the provision of the Services, the Client hereby agrees to:

A) Cooperate with the Service Provider for anything the Service Provider may reasonably require, including chemical disinfectant supply and fogging machines;

B) Provide any information and/or documentation needed by the Service Provider relevant to the provision of Services or payment for the provision of Services;

C) Require any staff or agents of the Client to cooperate with and assist the Service Provider as the Service Provider may need;

**Article 7 - WARRANTIES:**

The Service Provider represents and warrants that it will perform the Services using reasonable care and skill for a Service Provider in their field and that any end products or materials given by the Service Provider to the Client under the terms and conditions of this Agreement will not infringe on or violate any rights of any third party.

## **Article 8 - LIMITATION OF LIABILITY**

Except in cases of death or personal injury caused by either party's negligence, either party's liability in contract, tort or otherwise arising through or in connection with this Agreement or through or in connection with the completion of obligations under this Agreement shall be limited to Fees paid by the Client to the Service Provider.

To the extent it is lawful, neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss, data loss, loss of goodwill, or other loss of turnover, profits, or business.

## **Article 9 - INDEMNITY:**

Client hereby agrees to indemnify Service Provider, and all of Service Provider's agents, employees, and representatives against any and all damage, liability, and loss, as well as legal fees and costs incurred as a result of the Services rendered this Agreement or any transaction or matter connected with the Services or the relationship between Service Provider and client. This clause shall not be read to provide indemnification for any Party in the event that a competent court of law, rendering a final judgment, holds that the bad faith, gross negligence, or willful misconduct of the Party caused the damage, liability, or loss.

## **Article 10 - TIME FOR PERFORMANCE:**

Time shall be of the essence for the performance by the Service Provider of its obligations under the Agreement. Any dates, periods or times for performance specified in the Agreement are to be met, and in default, the Service Provider will be in breach of the Agreement.

## **Article 11 - TERMINATION:**

A) This Agreement may be terminated by either party, upon notice in writing:

I) if the other party commits a material breach of any term of this Agreement that is not capable of being remedied within fourteen (14) days or that should have been remedied within fourteen (14) days after a written request and was not; and

II) if the other party becomes unable to perform its duties hereunder, including a duty to pay or a duty to perform; and

III) if the other party or its employees or agents engage in any conduct prejudicial to the business of the other, or in the event that either party considers that a conflict or potential conflict of interest has arisen between the parties; and

IV) if justifiable complaints about the Service Provider are received by the clients; and

V) if the Service Provider does not adhere to Gov. Hutchinson's strict directives.

B) This Agreement may be terminated by the Service Provider if the Client fails to pay any requisite Fees within seven (7) days after the date they are due. The Service Provider may terminate the Agreement immediately, with no notice period, in writing.

If this Agreement is terminated before the expiration of its natural term, Client hereby agrees to pay for all Services rendered up to the date of termination, and for any and all expenditure due for payment after the date of termination for commitments reasonably made and incurred by Service Provider related to the rendering of Services prior to the date of termination.

Any termination of under this subpart shall not affect the accrued rights or liabilities of either Party under this Agreement or at law and shall be without prejudice to any rights or remedies either Party may be entitled to. Any provision or subpart of this Agreement that is meant to continue after termination or come into force at or after termination shall not be affected by this subpart.

#### **Article 12 - RELATIONSHIP OF THE PARTIES:**

The Parties hereby acknowledge and agree that nothing in this Agreement shall be deemed to constitute a partnership, joint venture, agency relationship or otherwise between the Parties and that this Agreement is for the sole and express purpose of the rendering of the specific Services by the Service Provider to the Client under the terms and conditions herein.

#### **Article 17 - GENERAL PROVISIONS:**

A) GOVERNING LAW: This Agreement shall be governed in all respects by the laws of the state of Arkansas and any applicable federal law. Both Parties consent to jurisdiction under the state and federal courts within the state of Arkansas. The Parties agree that this choice of law, venue, and jurisdiction provision is not permissive, but rather mandatory in nature.

B) LANGUAGE: All communications made or notices given pursuant to this Agreement shall be in the English language.

C) ASSIGNMENT: This Agreement, or the rights granted hereunder, may not be assigned, sold, leased, or otherwise transferred in whole or part by either Party.

D) AMENDMENTS: This Agreement may only be amended in writing signed by both Parties.

E) NO WAIVER: None of the terms of this Agreement shall be deemed to have been waived by any act or acquiescence of either Party. Only an additional written agreement can constitute waiver of any of the terms of this Agreement between the Parties. No waiver of any term or provision of this Agreement shall constitute a waiver of any other term or provision or of the same provision on a future date. Failure of either Party to enforce any term of this Agreement shall not constitute waiver of such term or any other term.

F) SEVERABILITY: If any provision or term of this Agreement is held to be unenforceable, then this Agreement will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the Agreement, valid and enforceable. If a court declines to amend this Agreement as provided herein, the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining terms and provisions, which shall be enforced as if the offending term or provision had not been included in this Agreement.

G) ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous understandings, whether written or oral.

H) COUNTERPARTS: This Agreement may be executed in counterparts, all of which shall constitute a single agreement.

I) FORCE MAJEURE: Service Provider is not liable for any failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, acts of civil authorities, acts of military authorities, riots, embargoes, acts of nature and natural disasters, and other acts which may be due to unforeseen circumstances.

J) NOTICES ELECTRONIC COMMUNICATIONS PERMITTED: i) Any notice to be given under this Agreement shall be in writing and shall be sent by first-class mail, airmail, or email, to the address of the relevant Party set out at the head of this Agreement, or to the relevant email address set out below or other email address as that Party may from time to time notify to the other Party in accordance with this clause. The relevant contact information for the Parties is as follows:

*Service Provider:*

***osceolacovidcleanup@gmail.com***

*Client:*

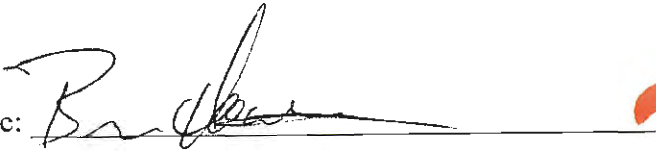

*SallyLungowibus@yahoo.com*

Notices sent as above shall be deemed to have been received 3 working days after the day of posting (in the case of inland first-class mail), or 7 working days after the date of posting (in the case of airmail), or next working day after sending (in the case of email).

In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and dispatched and dispatch of the transmission was confirmed and/or acknowledged as the case may be.

**EXECUTION:**

Name: Brian Holthouse

Signature:  \_\_\_\_\_ 

Name: City of Osceola

Representative Name: Sally Wilson

Representative Signature: 

Representative Title: Mayor