

1st Reading:  
2nd Reading:

**SPONSOR: HUELS**

**ORDINANCE NO. \_\_\_\_**

**BILL NO. 23-41**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH GAMETIME TOURNAMENTS TO OPERATE CONCESSION STANDS AT FENTON SPORTS COMPLEX**

**WHEREAS**, as part of the City’s operation of Fenton Sports Complex, the City also operates concession stands located at Fenton Sports Complex (the “Facility”) during tournaments for the convenience of the players, spectators, and guests; and

**WHEREAS**, GameTime Tournaments (“GameTime”) will provide weekend tournaments (Saturday and Sunday) at Fenton Sports Complex starting on June 3, 2023; and

**WHEREAS**, during the Board of Aldermen Committee Meeting on May 11, 2023, the Board discussed GameTime’s proposal to operate the concession stand during GameTime tournaments for the City; and

**WHEREAS**, after discussion by the Board including difficulty staffing the concession stands, a motion was made to forward a contract with GameTime for operation of the City’s concession stands at Fenton Sports Complex; and

**WHEREAS**, the Board of Aldermen desires to and finds it in the best interest of the City to enter into an agreement with GameTime under the terms and conditions stated in said agreement.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FENTON, MISSOURI, AS FOLLOWS:**

**Section 1.** The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City a contract with GameTime to operate the City’s concession stands located at Fenton Sports Complex during GameTime tournaments in substantially in the form of Exhibit 1, attached hereto and incorporated herein by reference (the “Contract”).

**Section 2.** This ordinance shall be in full force and effect after the date of its passage and approval.

**ORD. NO. \_\_\_\_**

**ORD. NO. \_\_\_\_**

PASSED this 25<sup>th</sup> day of May, 2023.

---

JOE MAURATH, MAYOR

APPROVED 25<sup>th</sup> day of May, 2023.

---

JOE MAURATH, MAYOR

ATTEST:

---

Jane Hungler, City Clerk

Motion to approve. Roll Call vote:

Ayes:

Abstain:

Nays:

Absent:

**ORD. NO. \_\_\_\_**

**EXHIBIT 1**

THIS FACILITY OPERATING AND COOPERATIVE AGREEMENT (the “Agreement”), dated as of [\_\_\_\_\_], 2023 (the “Effective Date”), is made by and between the City of Fenton, Missouri (the “City”), a fourth class City of the State of Missouri, and GameTime Tournaments (“GameTime”), a Missouri corporation with address at 16 Hampton Woods Lane, O’Fallon, MO 63368. Said “Parties” or a “Party”, intending to be legally bound, and for the mutual benefits and good and sufficient considerations set out below, hereby agree as follows:

## **RECITALS**

A. The City is the owner of the property at Fenton Sports Complex located at 945 Larkin Williams Road.

B. As part of the operation of Fenton Sports Complex, the City also operates concession stands located at Fenton Sports Complex (the “Facility”) during tournaments for the convenience of the players, spectators, and guests.

C. GameTime will provide weekend tournaments (Saturday and Sunday) at Fenton Sports Complex starting on June 3, 2023.

D. The City and GameTime believe it to be in their best respective interests to enter into a limited purpose agreement for GameTime to staff, manage, and operate the Facility during the tournaments (the “Project”).

## **ARTICLE 1** **EXHIBITS**

Attached to this Agreement and hereby made a part hereof are the following Exhibits:

Exhibit A – City of Fenton General Terms and Conditions

Exhibit B – Affidavit of Participation

Exhibit C – Form Performance Bond

## **ARTICLE 2** **EQUIPMENT**

**A. Ownership.** All equipment which is located in the Facility on the Effective Date is referred to herein as the “Initial Equipment”. GameTime shall operate the Initial Equipment in accordance with its specification and GameTime must maintain the Initial Equipment in good condition (not including normal wear and tear). Any Initial Equipment that needs replacement due to any reason beyond normal wear and tear shall be replaced by GameTime and shall become the Property of the City. Equipment purchased or leased in addition to such Initial Equipment (the “Additional Equipment”), whether leased or purchased, shall be paid for by GameTime. All such Additional Equipment shall be the property of GameTime. GameTime and the City Administrator shall take reasonable actions to distinguish the Additional Equipment from the Initial Equipment (including the replacement of Initial Equipment).

**B. Termination Responsibility.** Upon termination of this Agreement for any reason other than the default by GameTime, GameTime shall have the right to remove all Additional Equipment from the Facility. All Initial Equipment (and its replacement) shall remain the property of the City and remain at the Facility at all times. Upon termination of this Agreement by reason of default by Gametime, all Additional Equipment may become City property at the City's option.

**C. Inventory.** Upon the Effective Date of this Agreement but prior to GameTime operating the Facility, the City Administrator and GameTime shall create an inventory of all existing food, drinks, and supplies at the Facility ("Existing Inventory") and the City Administrator shall determine the actual cost to the City for all such Inventory. The City shall then issue GameTime an invoice documenting the Existing Inventory and actual cost for the same, and GameTime shall purchase all Existing Inventory from the City and provide payment to the City for same within ten (10) calendar days of receiving said invoice. GameTime shall then be the owner of all Existing Inventory and fully responsible to purchase any additional supplies for sale at the Facility.

### **ARTICLE 3** **OPERATION OF FACILITY BY GAMETIME**

**A. License.** The City hereby grants to GameTime, and GameTime hereby takes from the City, for the valuable consideration agreed to be given by the Parties hereunder, a license and right to use and operate the Initial Equipment and Facility upon the terms and conditions herein set forth, for the purpose of the management and operation of the Facility. This Agreement and the license granted hereby are intended by the Parties to constitute a cooperation agreement and shall not constitute a lease or a service contract within the meaning of any federal or state laws.

**B. Operation of Facility.** GameTime shall oversee and be responsible for all operations inside of the Facility and for all sales from the Facility. GameTime shall be responsible for any damage to the Facility caused in any way from GameTime's use or operation of the Facility. Except as provided herein, GameTime shall provide all employees necessary for operation of the Facility. GameTime shall have responsibility for hiring, training, and supervising all staff and ensuring an adequate number of employees are present for optimal operation of the Facility. All GameTime employees working at the Facility over the age of eighteen (18) shall undergo and must provide proof of Smart Training for alcohol sales. All GameTime employees must undergo a background check prior to working at the Facility. The City shall conduct the background check through its system and GameTime shall reimburse the City for the costs of the same within thirty (30) calendar days of receipt of an invoice for same. While GameTime has complete control of its employees, the City shall have the right to request that an employee not work at the Facility.

Until GameTime obtains its own liquor license to sell alcohol from the Facility, the City shall remain responsible for the liquor license and provide at least one (1) City employee who shall be manager and oversee all liquor sales. GameTime and its employees shall at all times be responsible for abiding by the direction of said manager regarding all liquor sales. Upon the Effective Date, GameTime shall immediately work towards obtaining its own liquor license for

the Facility. Failure to obtain its own liquor license for the 2024 tournament season shall be a material breach of this Agreement and shall void any requirement of the City to provide GameTime Tournaments a right of first refusal for rentals and the right to operate the Facility.

GameTime shall operate the Facility during the entirety of all GameTime tournament play. Failure to operate the Facility during GameTime tournaments shall be considered a material breach of this Agreement. If GameTime does not operate the Facility during the entirety of Gametime tournaments, on more than one occasion, then on the second occurrence of the Facility being closed during GameTime tournaments and any one thereafter, GameTime shall provide to the City four percent (4%) of the gross receipts of the sales from the last time the Facility was open as liquidated damages and not as a penalty.

GameTime shall provide 1-2 golf carts as needed to run concessions and tournament activity and shall be responsible for cleaning up the Facility at the end of each day of operation of the Facility. This responsibility shall include cleaning the inside of the Facility as well as the bathrooms and area around the pavilion.

The City shall provide all existing utilities to the Facility.

GameTime shall execute a performance bond in the form of Exhibit C in an amount equal to two (2) weekends of estimated gross receipts, which the City shall be entitled to if GameTime terminates or fails to perform its obligations under this Agreement.

**C. Non-Discrimination.** GameTime shall not discriminate in any manner in operating the Facility and providing services hereunder or in any of its operations, against persons with disabilities or against any person on the basis of race, color, age, sex, religion, national origin, or sexual orientation.

#### **ARTICLE 4** **TERM; RENEWAL**

**A. Term.** This Agreement is effective upon execution by both Parties (the “Effective Date”). GameTime shall operate the Facility from June 3, 2023 through the tournament season, which is mid-July (the “Initial Term”). As part of the Initial Term, GameTime may request and the Public Works Director may authorize GameTime to operate the Facility under the terms and conditions of this Agreement after mid-July if GameTime has tournament play before March 15, 2024 but after mid-July 2023.

**B. Extension Term.** At the City option, GameTime shall operate the Facility during all such tournament play under the terms and conditions herein from March 15, 2024 through November 10, 2024 (the “Extension Term”). The City may exercise its option for the Extension Term by a motion duly made at any Board of Aldermen meeting and provide GameTime at least ninety (90) calendar days’ notice of such option election.

**C. Optional Terms.** The City and GameTime may mutually agree to amend this agreement for future tournament seasons.

**ARTICLE 5**  
**COMPENSATION**

**A. Sales.** During use of the Facility, the City shall provide GameTime limited access to CivicRec and GameTime shall use the POS system to allow the City to track the sales made by GameTime at the Facility. GameTime shall utilize the City's software, Forte, to process credit card sales and shall reimburse the City for each credit card fee incurred by the City for same. The City shall provide GameTime an invoice for the credit card fees due on a monthly basis. GameTime shall pay such invoice within ten (10) calendar days from receipt of same. GameTime shall not accept cash payments at the Facility or make any sale not utilizing the City's systems.

**B. Field Rentals.** As part of compensation for this Agreement, GameTime agrees to provide weekend tournaments from March 15, 2024 through November 10, 2024 (35 weekends) and shall pay the City for such rentals on or before December 1, 2023. GameTime shall only receive refunds for such weekend rentals if there is a rainout as determined by the City in accordance with its policies for same. In addition, the City agrees that if GameTime is not in breach of this Agreement and the City rents the fields used by GameTime for the 2025, 2026, and 2027 tournament season, GameTime shall have the right of first refusal to rent such fields for such weekend tournaments from mid-March to mid-November provided further that GameTime agrees to rent the fields for the entire season (35 weekends) with refunds as provided for herein.

**C. Initial Term.** For the Initial Term, GameTime shall also provide the City eight percent (8%) of its gross receipts from all sales made at the Facility. The eight percent (8%) of gross receipts due to the City shall be payable on a monthly basis within ten (10) calendar days after the end of the then current month.

Until GameTime obtains a liquor license for sales of liquor at the Facility, GameTime shall also reimburse the City for the manager that the City shall provide to manage all liquor sales in accordance with the City's license. Said reimbursement shall be due at the same time the eight (8%) gross receipts fee is due.

The City shall provide Field 7 as a viable 60/90 high school field and GameTime shall provide a school size mound for Field 7.

**D. Extension Term.** For the Extension Term, GameTime shall also provide the City eight percent (8%) of its gross receipts from all sales made at the Facility. The eight percent (8%) of gross receipts due to the City shall be payable on a monthly basis within ten (10) calendar days after the end of the then current month.

**E. Additional Terms.** Any additional term compensation shall be mutually agreed to by the parties as part of the extension of this Agreement.

**F. Late Fees.** Any payments due under this Agreement to the City shall accrue and include interest at the rate of one and one-half percent (1.5%) per month if not received by City within five (5) business days after the applicable due date and all such late payment amounts and interest remaining due shall be added to the monthly principal due.

**ARTICLE 6**  
**BREACHES**

**A. Default.** Any of the following occurrences, conditions, or acts shall be deemed a “Default” under this Agreement:

- (a) if GameTime fails to pay amounts due under this Agreement;
- (b) if either party fails to observe or perform its obligations under this Agreement and does not cure such failure within thirty (30) calendar days from its receipt of written notice of breach; or such longer period as may be required to diligently complete a cure commenced within the 30-day period;
- (c) if GameTime’s use of the Facility is not in compliance with all applicable laws beyond any applicable cure period.

**B. Termination.** Except as otherwise provided herein, this Agreement may be terminated upon ten (10) days’ written notice in the event of a Default.

**C. Obligations upon Termination or Expiration.** Except as provided for herein, upon termination of this Agreement, including termination upon expiration of this Agreement, GameTime shall remove its Additional Equipment from the Facility, repair any damage caused thereby, and shall surrender the Facility in as good order and condition as when first occupied by GameTime, ordinary wear and tear excepted. Any property which is not removed by GameTime within fifteen (15) calendar days after the expiration or earlier termination of this Agreement shall, upon the expiration of the fifteen (15) day period, become the property of City, and GameTime shall thereafter have no rights whatsoever with respect thereto. GameTime shall be liable to the City for costs incurred by the City in removing and disposing of such property.

**ARTICLE 7**  
**MISCELLANEOUS**

**A.** GameTime warrants that it is duly authorized to do business in the State of Missouri.

**B.** The Parties both have lawful power and authority to enter into this Agreement and to carry out its obligations hereunder, and by all required corporate action its officers have been duly authorized to execute, deliver, and perform this Agreement.

**C.** It is believed that this Agreement will have no effect on the City’s tax-exempt status. Notwithstanding anything herein to the contrary, during this Agreement, the City is not responsible for any property taxes that may hereinafter be levied against the City on account of GameTime’s use of the Facility, and GameTime shall be responsible for any such tax levied against the City for the Facility.

**D.** GameTime shall not have the right to make any structural changes to the Facility and GameTime accepts the Facility in its as-is condition. The City shall maintain the right to make or not make any structural changes to the Facility in its sole discretion.



**E.** Any signs of any kind that are displayed in or upon any part of the exterior or interior of the Facility shall be reasonably determined by the City as to placement, content, and design.

**F.** The City and its representatives shall continue to have full access to enter the Facility.

**G.** Any notice required or permitted to be given pursuant to this Agreement shall be effective and valid if in writing, and delivered personally by reputable express courier or delivery service, or sent by verifiable facsimile machine (with a copy by first class mail postage prepaid) or by certified or registered U.S. Mail postage prepaid, return receipt requested, as follows:

If to the City:                   City of Fenton  
625 New Smizer Mill Road  
Fenton, MO 63026  
Attn: City Administrator

If to GameTime:               GameTime Tournaments  
16 Hampton Woods Ln  
O'Fallon MO 63368

**H.** GameTime represents and warrants that GameTime 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 GameTime owns sufficient equipment and engages sufficient personnel to perform GameTime's obligations under this Agreement. GameTime further represents and warrants that GameTime is an equal opportunity employer.

**I.** One or more waivers of any covenant, term, or condition of this Agreement by either Party shall not be construed as a waiver of a subsequent breach of the same or any other covenant, term, or condition, nor shall any delay or omission by either Party to seek a remedy for any breach of this Agreement or to exercise a right accruing to such Party by reason of such breach be deemed a waiver by such Party of its remedies or rights with respect to such breach. The consent or approval by either Party to or of any act by the other Party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any similar act.

**J.** This Agreement shall not create a partnership or a lease between the Parties and is limited to the specific purposes set out herein. Neither Party shall be the agent of or have any rights to create any obligations or liabilities binding on, the other Party. The Parties do not intend to confer any benefit hereunder on any other person or entity other than the Parties hereto.

**K.** Each person executing this Agreement in a representative capacity warrants and represents that he or she has authority to do so and upon request by the other Party proof of such authority in customary form will be furnished to the other Party. This Agreement may be executed at different times and in two or more counterparts and all counterparts so executed shall

for all purposes constitute one agreement, binding on the Parties hereto, notwithstanding that both Parties may not have executed the same counterpart. And, in proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement is sought.

L. All provisions of this Agreement which by their terms provide for or contemplate obligations or duties of a Party which are to extend beyond the expiration or termination of this Agreement (and the corresponding rights of the other Party to enforce or receive the benefit of such obligations or duties), shall survive such expiration or termination.

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

**GAMETIME TOURNAMENTS**

**CITY OF FENTON, MISSOURI**

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

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

JOE MAURATH, MAYOR

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

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

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

ATTEST:

\_\_\_\_\_

## Exhibit A

### GENERAL CONDITIONS

**Independent Consultant.** GameTime Tournaments (hereinafter, the "Consultant") shall be and operate as an independent Consultant in the performance of this Agreement ("Contract" or "Agreement"). The Consultant shall have complete charge of the personnel engaged in the performance of the Work, 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, Title VI, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Contract. If applicable to any Work undertaken as part of this Contract, 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. Consultant further agrees, to the extent applicable to any Work undertaken as part of this Contract, to pay not less than the prevailing hourly wage of wages to all workers performing any such applicable work under this Contract. The consultant will forfeit a penalty to the City of \$100 per day for each worker that is paid less than the prevailing rate for any work done under the Contract by the Consultant or subcontractor that required payment of prevailing wage under state law. 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.

**Subcontracts.** The 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.

**Taxes.** The City is exempt from federal excise tax and Missouri sales tax and the Consultant shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.

**Indemnification.** To the fullest extent permitted by law, 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 the Work and 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 negligence of the City. To the extent required by law to enforce this provision, Consultant agrees that this indemnification requires Consultant to obtain insurance in amounts specified herein and that Consultant has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement.

**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.

**Insurance.** Consultant shall maintain for its own benefit and shall furnish the City the certificates of insurance for workers' compensation, general public liability protecting Consultant from personal injury, death, and property damage claims, including automobile coverage in the amounts no less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. 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, otherwise as stated on attached **Exhibit A**, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured for all claims not protected by sovereign immunity, and shall bear an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City provided nothing herein shall be deemed a purchase of insurance for the City for which it has sovereign immunity. Any self-insurance or deductible above \$50,000.00 is not permitted. 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 to permit a cause of action against the City for damages or be deemed a waiver of the City's sovereign immunity relative to any claim against the City.

**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 shall preclude disclosure of information by the City.

**Changes.** No change in this Contract shall be made except in writing 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 the 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 the 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 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 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.

**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.

**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. 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 the Bid Proposal. 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.

*For all contracts with a total potential value of \$100,000 or more and Consultants with ten (10) or more employees: Consultant shall comply with Section 34.600 RSMo. (the Anti-Discrimination against Israel Act).*

**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.

**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. As a prerequisite to the Consultant filing any claim against the City in any court of law or equity pursuant to this Contract, the Consultant agrees that its shall be bound to first file such claim with the City's Board of Administrative Review, pursuant to and in accordance with Chapter 160 of the City Code.

**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.

**Other Special Provisions.** NA.



**Exhibit C**

**FORM OF PERFORMANCE AND MAINTENANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_, as Principal, and \_\_\_\_\_ a corporation organized and existing under and by virtue of the laws of the State of Missouri, and regularly authorized to do business in the State of Missouri, as Surety, are held and firmly bound unto the CITY OF FENTON, MISSOURI, hereinafter called the "City", for the use and benefit of the City and any and all persons who may suffer damages by breach of the conditions hereof or of the Contract (as defined below) in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States, well and truly to be paid unto the said City for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement dated \_\_\_\_\_, entered into a Contract with the City for the construction of the work designated as \_\_\_\_\_ located at approximately \_\_\_\_\_ in the City of Fenton, in the State of Missouri, in accordance with the Contract, which Contract is by this reference made a part hereof, and is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE AS FOLLOWS:

1. The Surety shall become liable on this obligation if the Principal fails to fulfill the following conditions: The Principal shall faithfully perform the Contract on its part, and satisfy all claims and demands incurred by the Principal in the performance of the Contract (including any maintenance or guarantee period provided in the Contract and any warranty as may be applicable by law), and shall fully indemnify and save harmless the City from all cost and damages which the City may suffer by reason of the failure of the Principal to do so, and shall fully reimburse and repay to the City all costs, damages, and expenses, which shall include reasonable attorney's fees, which the City may incur in making good any default by the Principal, including but not limited to, any default based upon the failure of the Principal to complete the work required by and in accordance with the Contract or failure to fulfill its obligation to furnish maintenance, repairs or replacements for any period of time after the work is completed as provided for in the Contract, and shall provide for prosecution of the work required by the Contract whether by Subcontract or otherwise, and shall pay all valid claims and demands whatsoever, and shall defend, indemnify and hold harmless the City and its agents against loss or expense from bodily injury, including death, or damage or destruction of property, including loss of use resulting therefrom, arising out of or resulting from the performance of the work. If the Principal fulfills these conditions, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.
2. As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered;
3. The Surety's obligation under this Bond shall arise after the City has declared the Principal defaulted, formally terminated the Contract *or* terminated the Principal's right to complete the Contract, and notified the Surety in writing of the City's claim under this Bond. Notice shall be deemed provided to Surety the day the City places such Notice in the mail addressed to:  
  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

4. The means, method, or procedure by which the Surety undertakes to perform its obligations under this Bond shall be subject to the advance written approval of the City. The Surety shall commence performance of its obligations and undertakings under this Bond no later than thirty (30) days after written notice from the City to the Surety as provided in Paragraph 3, except that the Surety shall proceed within forty-eight (48) hours after notice, where the notice states that immediate action by the Surety is necessary to safeguard life or property.
5. When the conditions in Paragraph 3 above have been met, the Surety shall, at the Surety's sole cost and expense, undertake one or more of the following actions, at the City's sole option:
  - a. With the prior written consent of the City, cause Principal to promptly remedy the default; or
  - b. Promptly complete the Contract in accordance with its terms and conditions by, at the sole option of the City, either: (a) obtaining bids through qualified contractors who are acceptable to the City for completing the Contract in accordance with its terms and conditions, and upon determination by the City of the lowest and best bidder, arrange for a Contract between the City and such bidder, and make available as the work progresses sufficient funds to pay the costs of completion, not exceeding the amount of this Bond or (b) obtaining bids through qualified contractors who are acceptable to the City, for completing the Contract in accordance with its terms and conditions, and upon determination by the City of the lowest and best bidder, the Surety shall arrange for a contract between the Surety and such bidder, which performance and completion shall be undertaken in strict accordance with the terms and conditions (including all specifications) of the Contract; or
  - c. Tender payment to the City in the amount of all loses incurred by the City as a result of the Principal default and as determined by the City for which the Surety is liable to the City, including all costs of completion of the Contract and all consequential loses, costs, and expenses incurred by the City as a result of the Principal's default, except that Surety's payment under this option shall in no event exceed the limit of the Bond amount. The Surety may not proceed with this option, in lieu of the options set forth in subparagraphs (a) or (b) above, except upon the express written consent of the City, which consent may be withheld by the City for any reason.
6. If the Surety fails to proceed in accordance with Paragraph 4 and 5 above, then the Surety shall be deemed in default on this Bond.
7. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal (SEAL)

\_\_\_\_\_  
Surety (SEAL)

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

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

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

Title: \_\_\_\_\_  
(ATTACH SURETY'S POWER OF ATTORNEY)