

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH INFINITECH CONSULTING LLC. FOR IT SUPPORT SERVICES

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI, AS FOLLOWS, WIT.

Section 1. The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City a contract with Infinitech Consulting LLC for IT Support Services.

Section 2. Total expenditures or liability authorized under this Ordinance shall not exceed thirty thousand dollars (\$30,000) per year.

Section 3. The City Administrator is hereby authorized to take such further actions as are necessary to carry out the intent of this Ordinance and Contract.

Section 4. This Ordinance shall be in full force and effect on and after December 20, 2018.

READ FIRST TIME: December 6, 2018

READ SECOND TIME: December 20, 2018

I hereby certify that the above Ordinance No. 18.64 was duly passed on December 20, 2018 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:	6	Nays:	0
Abstain:	0	Absent:	0

This Ordinance is hereby transmitted to the Mayor for his signature.

12/21/2018
Date

Dorothy Urlicks
Dorothy Urlicks, Deputy City Clerk

Approved as to form:

Edward B. Rucker
Edward B. Rucker, City Attorney

I hereby approve Ordinance No. 18.64.

12/21/2018
Date

John Olivarri
John Olivarri, Mayor

ATTEST:

Dorothy Urlicks
Dorothy Urlicks, Deputy City Clerk

**CITY OF OSAGE BEACH CONSULTANT MASTER
SERVICES AGREEMENT**

THIS AGREEMENT dated this 20th day of December, 2018, by and between the City of Osage Beach, (herein "City") and Infinititech LLC (herein "Consultant").

IN CONSIDERATION OF the performance of the services rendered under this Agreement and payment for such services, the parties agree to the following:

1. **Services** - As authorized by the City the Consultant shall provide the City professional services for the benefit of the City as set forth in approved scopes of work from time to time submitted by Consultant and accepted by City or via phone inquiries for support, and the Consultant shall provide the City, as applicable, with the services, reports, studies, surveys, plans, specifications, and other work outlined. Consultant agrees to provide all such services in a timely manner as established by the timelines set forth in the approved scope of work, or in the absence of the designation, within a reasonable time after receipt of City directives. Consultant agrees to provide services by and through qualified personnel under standards and conditions generally accepted by professionals in the field or occupations for which services are provided. Services shall be provided based upon the Scope of Services described or by any additional proposals provided to the Consultant by the City or the City's Information Technology Department (IT) contacting the Consultant to assist the City over the phone or via a virtual private network (VPN) connection to the City's network. No work shall be performed nor shall compensation be paid for Consultant work performed without a City approved written proposal for professional services or phone support authorized by the City Administrator, the Assistant City Administrator or the IT Manager. Proposals for additional services shall be in written form and shall be specifically responsive to the criteria provided by the City. All work performed by the Consultant, based upon City approval shall be subject to the terms and conditions of this agreement unless otherwise specifically agreed upon by the City and Consultant in writing. All proposals or phone inquiries for work submitted to the Consultant by the City for work shall at a minimum contain the following:

- a. **Phone Support** - The consultant is authorized to provide phone support or to remotely log into the City's network via an authorized VPN connection at the discretion of the City's IT Manager or City Administration to assist the City in emergency situations or from time to time when the IT Department needs expertise in installing, maintaining, updating, and troubleshooting network switches, virtual and physical Microsoft servers, storage devices, desktop PC's, thin or zero clients used in a virtual environment, or if the City needs assistance with other IT related duties such as software licensing including licensing within a VDI environment.
- b. **Scope of Project Services** - Each proposal for services that require a project initiation shall contain a detailed project description, including any applicable drawings, of work to be performed by the Consultant. When the City provides the Consultant with a written and/or graphic request for proposal, the Consultant's

proposal shall be responsive to the request with the same or greater level of specificity required by the request for proposal. The Consultant shall specifically identify services which are included as basic services and those services which are excluded from basic services in the proposal. Services which the Consultant does not identify as excluded from basic services under the proposal and which are necessary for successful completion of the work in the judgment of the City shall be presumed to be a part of basic services under the proposal. If a request for proposal requires the Consultant to provide optional services, the Consultant's proposal shall respond to the options requested, or provide reasons why the Consultant cannot provide respond to the request for optional services

- c. **Creation of Contract Documents-** Consultant shall not without the express written permission of the City draft and/or create any contract documents, except for technical specifications and plans, for any project that Consultant is assigned. Consultant shall not be compensated for any contract documents drafted or created which are in violation of this provision. In the event that the Consultant is asked to draft and/or create contract documents by the City, then said contract documents must be in compliance with the City's then existing contract standards for public projects and no compensation shall be provided to Consultant for contract documents which fail to meet the City's standards.
- d. **Time for Completion** - Each proposal for services shall contain a description of the estimated time to complete each task or item of work to be performed by the Consultant under the proposal. When the City provides the Consultant with a written and/or graphic request for proposal, the Consultant's proposal shall be responsive to any request for estimated or maximum completion times for work with the same or greater level of specificity required by the request for proposal unless otherwise specified in a specific proposal.
- e. **Compensation** - Each proposal for services shall state the basis of compensation on either: (1) an hourly fee plus expense basis with a statement of a maximum compensation to be charged, or, (2) a lump sum payment of compensation for all work to be performed, or, (3) a payment based upon unit prices. Proposals for compensation for an hourly fee plus expense basis shall provide detailed time and expense estimates to support a maximum contract amount to be charged and shall be consistent with the hourly rates, unit prices and reimbursement rates made a part of this agreement by reference in paragraph two (2) below. When the City or City's representative requests the Consultant to provide work on an hourly fee plus expense basis, the Consultant's proposal shall be responsive to the request and shall not propose payment on another basis unless otherwise authorized. Unit price proposals shall identify and estimate the quantity of units as a part of the proposal when they can be identified and estimated, or as necessary in response to a particular request for proposal requesting such information. Each proposal for services shall also state a proposed payment schedule at a frequency no greater than monthly in such amounts as are consistent with amount of work to be performed and billed. Reimbursable expenses proposed shall be specifically identified and estimated as a part of the proposal with a statement of the maximum amount to be

charged unless the City's request for proposal specifies otherwise.

f. **Signatures** - Consultant proposals for services under this agreement shall be signed and dated by the Consultant or an authorized representative of the Consultant (as applicable) and shall be considered binding offers to contract open for acceptance by the City for an indefinite duration unless limited in the proposal or withdrawn prior to acceptance by the City. All proposals for services under this agreement shall be on forms approved by the City; use of the signature block shown in this agreement on a proposal for services shall be considered an adequate signature block. In the absence of a City provided form, the signature block shall contain a signature line for the City of Osage Beach by the its City Manager and a signature line for attestation by the City Clerk. In addition, the signature block shall contain a line for insertion of the date the proposal is approved by the City.

2. **Compensation** - In consideration for the Consultant's provision of services under this agreement, the City agrees to compensate the Consultant for services rendered in accordance with the compensation set forth in the proposal for the project for which compensation is sought. No increases in the rates and charges set forth in the proposal shall be permitted without the written authorization of the City. Payments shall be made within thirty (30) days of receipt of invoice by the City. Invoices shall be submitted periodically as mutually agreed upon by the City and Consultant, or in the absence of such agreement, upon completion of the work constituting the task or project for which services are provided. Invoices for services on an hourly fee plus expense basis shall individually describe the task or project by name, show hours expended by classes of personnel in increments of not less than one-half hour and rates applied, as well as describe work performed during the invoice period; reimbursable expenses shall be itemized. Invoices for services performed on a unit price basis shall identify the task or project by name, identify and quantify units charged for services during the invoice period. Invoices for services on a lump sum basis shall identify the task or project by name and the invoiced amount. Periodic invoices shall not exceed the amounts permitted in the Consultant's proposal approved by the City. When periodic requests for payment are made, they shall only reflect charges for services already complete. City may retain five percent (5%) of any partial payment pending final completion of the contract services to correct any deficiencies in performance. The City reserves the right to withhold payment for inadequately documented invoices until documented as required herein. The City further reserves the right to withhold payments for unperformed services or services not performed on a timely basis in accordance with the Consultant's proposal when delays in performance of services are not attributable to the City, or as a result of a billing dispute between the City and Consultant. No penalty shall be assessed to City for such amounts withheld until after any dispute is resolved in Consultant's favor.

At the conclusion of each phase of work, if applicable, Consultant and City will review the scope of work and deliverables set out in the Consultant's Proposal to confirm Consultant has met the defined expectations. If the deliverables do not confirm, City will notify Consultant in writing within thirty (30) days of receiving the deliverables or services that they do not conform. Consultant shall have a reasonable period of time, based upon the severity, and complexity, to correct the non-conformity.

Consultant shall cooperate with City to procure any materials or equipment on a sales tax-free basis to the extent permitted by law. City shall provide to Consultant any documents necessary to ensure exemption from sales tax.

- a. The Consultant fees listed in exhibit A and B of this agreement shall be used for the life of this agreement

3. **City Responsibilities** - City agrees to furnish Consultant with all current and available information for each project assigned to Consultant, along with any information necessitated by changes in work or services initiated by the City which may affect services rendered hereunder. Consultant shall notify City of all information it may require from City or other Consultants and Consultants of City sufficiently in advance so as to avoid delay of the work to be completed by Consultant.

To the extent services or deliverables include the design or implementation of hardware or software systems, City agrees to be responsible for making all management decisions. These decisions include but are not limited to the systems to be evaluated and selected, the design of those systems, the controls to be tested, the security and system procedures to be implemented, the scope and timetable of the implementation, testing, training and conversion plan.

City agrees to maintain the appropriate licenses in compliance with all manufacturers' license requirements during the term of this agreement.

4. **Coordination of Work and Work Product** - Consultant shall coordinate all work with the City's designated representative for each project assigned to Consultant and submit to the City's representative all work product in written or graphic form (and in electronic form if requested) as applicable or required. All reports, surveys, test data, memoranda, samples, plans, specifications, and other documents or materials submitted by or to the City shall be considered the property of the City. When available and requested by the City, work product shall be provided in electronic form at actual cost in media compatible for use with City software and equipment, and Adobe .pdf format shall be acceptable.
5. **Protection of Work, Property and Persons** - To the extent Consultant's work will require any field work, testing, sampling, or otherwise involve physical installation, alteration or repair of a permanent nature, the requirements of this section shall apply. The Consultant will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with their services provided under this Agreement. The Consultant will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all of its employees providing work under this Agreement and other persons who may be affected thereby, all the provided services and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Consultant shall comply with all pertinent provisions of the Occupational Safety and Health Administration (OSHA), and any State Safety and Health agency requirements.

- a. The Consultant will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Consultant will erect and maintain, as required by the conditions and progress of the services, all necessary safeguards for safety and protection. The Consultant will notify City of adjacent utilities when prosecution of the request for proposal may affect them. The Consultant will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by the Consultant, any subconsultant or any person directly or indirectly employed by any of them or anyone for whose acts they may be liable.
 - b. In emergencies affecting the safety of persons or the scope of work or property at the site or adjacent thereto, the Consultant, without special instructions or authorization from the City, shall act to prevent threatened damage, injury or loss. The Consultant will give the City prompt written notice of any significant changes in the scope of work caused thereby, and a change order shall thereupon be issued covering the changes and deviations involved.
6. **Insurance Requirements** - Consultant shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of, or result from the Consultant's work, whether such execution be by the Consultant, any subconsultant, or by anyone directly or indirectly employed by any of them, or by anyone whose acts any of them may be liable:
- a. **Workers Compensation** - Claims under workmen's compensation, disability benefit and other similar employee benefit acts in amounts required by law. In case any class of employees engaged in hazardous work under this Agreement at the site of the project is not protected under the workmen's compensation statute, the Consultant shall provide, and shall cause each subconsultant to provide, adequate and suitable insurance for the protection of its employees not otherwise protected.
 - b. **Bodily Injury** - Claims for damages because of bodily injury, occupational sickness or disease, or death of employees in the amounts required by law.
 - c. **Personal Injury** - Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Consultant, or (2) by any other person.
 - d. **Third Person Bodily Injury** - Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees in the amount of at least \$420,606.00 per person and \$2,804,046.00 per occurrence, or such amounts as are annually listed as the governmental immunity waiver in Section 537.610, RSMo., as annually listed.

- e. **Automobile Coverage** - Claims for damages because of injuries to persons and property arising out of the operation of the following in the execution of projects:
 - i. Consultant's own automobiles and trucks,
 - ii. Automobiles and trucks now owned by the Contract.

The insurance shall cover the use of the above-mentioned automobiles and trucks both on and off the site of the project. The minimum amounts of such insurance shall be the same as required for Public Liability and Property Damage Insurance.

- f. **Professional Liability**- Claims for damages resulting from errors or omissions of the Consultant or its employees in the amount of at least \$1,000,000.00 combined single limit.
- g. **Public Liability and Property Damage** - Claims for damages because of damage to any property, building, or structure on or adjacent to the City's premises, or the injury to or destruction of property resulting from the project in the amount of at least \$420,606.00 per person and \$2,804,046.00 per occurrence, or such amounts as are annually listed as the governmental immunity waiver in Section 537.610, RSMo., as annually listed.
- h. **SubConsultant** - The Consultant shall secure Consultant's Contingent or Protective Liability and Property Damage to protect the Consultant from any and all claims arising from the operations of subConsultant employed by the Consultant. The minimum amounts of such insurance shall be as required for Public Liability and Property Damage Insurance.

Certificates of Insurance acceptable to the City shall be filed with the City prior to the commencement of any work assigned under this Agreement. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the City and shall name the City as an additional insured by endorsement.

- 7. **Indemnification** - Failure of Consultant or subConsultant to obtain or maintain such insurance during this Agreement, or to provide proper proofs thereof upon request of the City, shall not diminish, waive or otherwise reduce the Consultant's obligations to maintain such insurance coverage and Consultant shall indemnify and hold the City and all its personnel harmless from and against any and all claims, damages, losses and expenses, including reasonable attorney's fees and litigation costs, arising out of or resulting from the performance of services, provided that any such claim, damage, loss or expenses, is caused in whole or in part by the negligent act, omission and or liability of the Consultant, its agents, employees, or its subConsultants. In addition, any and all claims against the City or employees, by any employee of the Consultant, any SubConsultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or

any SubConsultant under workmen's compensation acts, disability benefit acts or other employee benefits act. Further, Consultant shall hold City harmless from any failure by Consultant to complete their work in compliance with all applicable local, state and federal regulations.

8. Delegation and Subcontracting - Unless otherwise proposed and approved in the Consultant's proposal for services, the Consultant shall not delegate or subcontract any work to be performed by the Consultant under this agreement to any other person, business or entity without the express advance written approval of the City for such delegation or subcontract work.

a. The Consultant shall be fully responsible to the City for the acts and omissions of its subConsultants, and of persons either directly or indirectly employed by them, as the Consultant is for the acts and omissions of persons directly employed by it.

b. The Consultant shall cause appropriate provisions to be inserted in all subcontracts related to this Agreement to bind subConsultants to the Consultant by the terms of this Agreement insofar as applicable to the work of the subConsultants and give the Consultant the same power in regard to terminating any subcontract that the City may exercise over the Consultant under any provision of this Agreement.

c. All subConsultants shall be required to comply with the General Insurance Provisions of Section 6 of this Agreement, and Consultant shall cause appropriate provisions to be inserted in all subcontracts related to this Agreement to bind subConsultants to said requirements.

9. Warranty- Consultant warrants that the services will be performed with reasonable care in a diligent and competent manner. Consultant warrants that any deliverables and equipment reasonably conform to the City's expectations and are fit for the particular purpose.

Consultant does not warrant and is not responsible for any third-party products or services, unless City is unable to remedy any problems or issues with said third parties due to the actions of Consultant or its employees.

10. Records and Samples - To the extent not otherwise transferred to the City's possession, Consultant agrees to retain and provide the City with reasonable access to all work product, records, papers and other documents involving transactions and work related to or performed under this agreement for a period of three (3) years after this agreement expires. When services involve testing or sampling, Consultant agrees to either retain all test products or samples collected by or submitted to Consultant or return same to the City as mutually agreed upon. In absence of agreement, Consultant shall not dispose of test samples or products without notice to or consent by the City or the City's representative.

11. Additional Services - No compensation shall be paid for any service rendered by the Consultant considered an additional service beyond the scope of services approved by the City unless rendition of that service and expense thereof has been authorized in writing by

the City in advance of performance of such service. Any additional services performed by the Consultant prior to such authorization by the City shall be deemed a part of basic services for work performed under a City approved proposal for services governed by this agreement, whether enumerated in this agreement or not, for which the Consultant shall be entitled to no additional compensation.

12. **City Authorization** -When the term City is used in this agreement, it shall mean the government of the City of Osage Beach, Missouri or the City of Osage Beach Board of Alderman, as the context requires. It is further understood and agreed that the City Administrator and/or the Assistant City Administrator and/or the IT Manager is authorized to request further service under this agreement. In this regard, it is understood and agreed that the Consultant shall be entitled to rely upon verbal authorization when given by these agents as well as written authorization given by the City.
13. **Period of Services and Termination** This Master Agreement shall be in force for a period of three years and shall cover all work approved by the City during that period. In no event shall the Consultant perform services for the City beyond thirty-six (36) months from execution of this Contract without execution of a new written contract. All work shall be completed within the time provided for in the proposal for that scope of work or as quickly and efficiently as possible in the case of phone or remote support. The City reserves the right to terminate this agreement at any time with or without cause by giving the Consultant sixty (60) days written notice of termination. Upon receipt of such notice, Consultant shall discontinue all services in connection with the performance of services authorized under this agreement or City approved proposal for services not completable within a 60-day timeframe and City shall upon invoice remit payment for all authorized services completed up to the date of termination. Upon payment of this invoice, the Consultant shall deliver any and all work product including drawings, plans, and specifications, or other documents, prepared as instruments of service, whether complete or in progress. It is further agreed that if services are terminated the Consultant shall be compensated for all services rendered through the date of termination not to exceed the amount authorized for services through the date of termination. If the City questions the extent of work on a final invoice, the Consultant shall give the City the opportunity to review and evaluate all work upon which the invoice is based prior to payment. This agreement or work performed under the provisions of this agreement may also be terminated by the Consultant with sixty (60) days written notice in the event the City shall substantially fail to perform in accordance with the terms and conditions of this agreement, through no fault of the Consultant. In the event of termination by the Consultant, the other provisions concerning termination contained in this paragraph shall be applicable.
14. **Governing Law** - This agreement shall be governed by the laws of the state of Missouri and it is agreed that this agreement is made in Camden County, Missouri and that Camden County, Missouri is proper venue for any action pertaining to the interpretation or enforcement of any provision within or services performed under this agreement.
15. **Enrollment in the Federal Work Authorization Program (E-Verify)** - The Consultant is informed that pursuant to Section 285.530, RSMo, as a condition of the award of this contract in excess of five thousand dollars (\$5,000.00), the successful bidder 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 to the contracted services. Successful bidders shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection to the contracted services.

16. **Nature of Relationship** - Consultant herein is an independent Consultant and shall not act as an agent for the City, nor shall Consultant be deemed to be an employee of the City for any purposes whatsoever. The Consultant shall not enter into any agreement or incur any obligations on the City's behalf or commit the City in any manner.

Neither Party will use the other party's name, trademarks, service marks, logos, trade names, and/or branding without such party's prior written consent. Notwithstanding the foregoing, Consultant may mention City's name and provide a general description of the services provided under this Agreement in Consultant's client lists and marketing materials.

17. **Conflict of Interest** - Consultant hereby covenants that at the time of execution of this Agreement it has no other contractual or employment relationships which would create any actual or perceived conflict of interest. The Consultant further agrees that during the term of this Agreement neither the Consultant nor any of its employees shall acquire any other contractual relationships which create such a conflict. Consultant shall complete the required Conflict of Interest Form attached hereto and shall have an affirmative duty to update said form if there are any changes to the answers provided therein during the term of this Agreement.

18. **Non-Solicitation** - During the term of this agreement and for a period of one (1) year following its expiration or termination, neither party will actively solicit, employ or otherwise engage any of the other party's employees (including former employees) who were involved in the provision of services under this agreement. This provision is enforceable by injunction without the need for posting bond.

19. **Confidentiality** - With respect to any information supplied in connection with this Agreement and designated by either party as confidential, or which the recipient should reasonably believe is confidential based on its subject matter or the circumstances of its disclosure, recipient agrees to protect the confidential information in a reasonable and appropriate manner, and use and reproduce the confidential information only as necessary to perform its obligations under this Agreement and for no other purpose, except as may be required by law or court order. The obligations in this section will not apply to information which is: (i) publicly known, (ii) already known to the recipient, (iii) lawfully disclosed by a third party, (iv) independently developed; or (v) disclosed pursuant to legal requirement or order. Subject to the foregoing, the recipient may disclose the confidential information on a need-to-know basis to the recipient's Consultants, agents and affiliates who agree to maintain its confidential nature. This provision shall survive the expiration and/or termination of this Agreement.

20. **Deliverables**- Upon payment to Consultant in connection with this Agreement, all right,

title and interest in the deliverables will become City's sole and exclusive property. The Consultant may also retain its work papers, proprietary information, processes, methodologies, techniques, ideas, concepts, trade secrets, know-how and software, including such information as existed prior to the delivery of the services and anything which Consultant may discover, create or develop during the provision of services for the City; however the City shall be furnished, at no additional cost, one copy of items or documents created pursuant to the provision of services for the City.

Except for software owned by and/or proprietary to Consultant, to the extent the deliverables contain Consultant's proprietary information, Consultant grants City a non-exclusive, non-assignable, royalty-free license to use it in connection with the deliverables under any scope of work and proposal submitted by Consultant and for no other purpose. To the extent the deliverables contain the proprietary information of a third party, City agrees to comply with such third party's terms of license as the same are communicated to City.

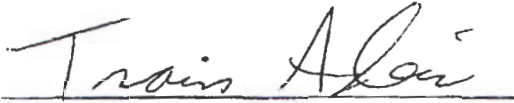
Consultant shall furnish to City, copies of all records, field notes and tests which were developed in the course of work for the City and for which compensation has been received by the Consultant.

21. **Miscellaneous** - This agreement constitutes the entire agreement of the parties superseding all prior negotiations, written or verbal, and may only be amended by signed writing executed by the parties through their authorized representatives hereunder.

IN WITNESS WHEREOF, the parties have executed this agreement by their duly authorized signatories effective the date and year first-above written.

Infinititech Consulting LLC.

CITY OF OSAGE BEACH, MISSOURI





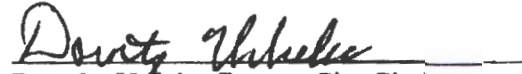
BY: Travis Adair

John Olivari, Mayor

DATE: 12/26/2018

DATE: 12/26/2018

ATTEST:



Dorothy Ulicks, Deputy City Clerk