

**CONTRACT BETWEEN EPEC, INC. AND
THE CITY OF KANSAS CITY, MISSOURI
TO PROVIDE ANIMAL GROOMING EMPLOYMENT TRAINING
AND FACILITIES THEREFOR**

THIS CONTRACT is between the CITY OF KANSAS CITY, MISSOURI, a constitutionally chartered Missouri municipal corporation (“CITY”), and EPEC, Inc., a Missouri nonprofit corporation (“EPEC”).

Sec. 1. The Contract. The Contract between the CITY and EPEC consists of the following documents: (a) this Contract; (b) the **Lease** that is attached hereto and incorporated into this Contract; and (c) any and all **Attachments** and **Exhibits** attached to either this Contract or the Lease. All documents listed in this Section 1 may be collectively referred to hereinafter in this Contract or in the Lease or in one or more of the Attachments and Exhibits to either as the “**Contract Documents**”. The Lease and all Attachments and Exhibits are incorporated into this Contract. CITY and EPEC agree that the terms “Contract” and “Contract Documents” are used interchangeably in this Contract and the terms “Contract” and “Contract Documents” each include all “Contract Documents.”

Sec. 2. Term of Agreement.

The term of this Contract shall be for a maximum period of ten (10) years and shall begin on August __, 2015 and shall end on or before August __, 2025 (“**TERM**”). City and EPEC further agree that the Term of this Contract shall automatically cease thirty (30) days after the last six (6) months of course work as described below in Section 3 that can be completed within the ten (10) year term set out above.

Sec. 3. Scope of Services. During the term of this Agreement, EPEC shall provide the following scope of services from the leased premises at 5825 Troost, Kansas City, Missouri:

EPEC shall provide a certified and professional employment training and mentoring program to teach participants animal grooming and life skills. EPEC shall provide each participant who completes the course work a minimum of seven hundred (700) hours of classroom and “hands on” grooming instruction and a minimum of seventy-two (72) hours of life skills training. At a minimum, EPEC shall provide this course work initially to minimum of six (6) participants over a six (6) month period of time beginning no later than August 31, 2015. Thereafter, EPEC shall provide this coursework to an additional minimum of six (6) participants for each successive six (6) months thereafter during the Term.

Sec. 4. Lease of Premises.

(a) The CITY hereby agrees to grant to EPEC a Lease to occupy and use, subject to terms and conditions hereinafter for the Term described in Section 2 herein, the center portion of the one story building commonly referred to as 5825 Troost, along with the surfaced parking lot

immediately in front of the center portion of this one story building, except that portion occupied by a cell tower and the fencing around it, situated upon a parcel of real property located in Kansas City, Jackson County, Missouri bearing the following legal description: TROOST PLATEAU ALL LOTS 10 THRU 12 & S 1/2 LOT 13 BLK 13 & W 1/2 VAC ALLEY LY E OF & ADJ ALSO PRT SW 1/4 SW 1/4 SEC 33 49 33 BEG NE COR 59TH ST & TROOST AVE TH N ALG E LI TROOST AVE 134.8 FT TH E 265.44 FT TO W LI FOREST AVE TH S ALG SD W LI 134.8 FT TO N LI 59TH ST TH W ALG SD N LI 265.44 FT TO BEG, (the "Premises") for the monthly rental amount of \$1.00 (One) Dollar and in consideration of EPEC's promises to pay a minimum of One Hundred Eighty Thousand Dollars (\$180,000.00) toward the renovation of the Premises, to cause all utilities for the Premises to be separately metered and billed directly to, and paid by, EPEC and to occupy and use the Premises exclusively to provide animal grooming employment and life skills training and mentorship and for related administrative office and storage space and no other. EPEC shall not use the Premises for any other purpose unless specifically authorized by CITY through its Director of General Services. In the event EPEC's uses of the Premises do not conform to the above-stated purposes, the CITY shall have the right to terminate the Lease and this Contract with ten calendar days written notice.

(b) CITY authorizes EPEC to make certain "Improvements" to the Premises as specified in the Lease and Lease Documents. CITY shall approve all plans and specifications for the Improvements prior to EPEC performing any work to make the Improvements and all work must be performed in accordance with all applicable Federal, State, and City laws. All Improvements, regardless of whether paid for by EPEC or CITY, shall become property of the CITY.

Sec. 5. Financial Obligation of the Parties.

(a) EPEC shall make Improvements to the Premises in accordance with the Lease and Lease Documents. The total cost of the Improvements to the Premises is estimated to be \$280,000.00("Project Amount"). EPEC shall pay the first \$180,000.00 ("EPEC's contribution") for the Improvements and CITY shall pay next \$100,000.00. ("CITY's contribution"). If the actual total cost of the Improvements exceeds \$280,000.00, EPEC shall pay any excess costs for the Improvements. CITY shall pay CITY's contribution of \$100,000.00 after EPEC has expended all of EPEC's contribution.

(1) After EPEC has expended all of EPEC's contribution for the Improvements, CITY shall pay EPEC for the remaining Improvements from the City's contribution in an amount not to exceed \$100,000.00, upon City's approval of and in the amount of the EPEC's payment application. Thereafter, EPEC shall timely remit the funds to EPEC's Contractor.

(2) EPEC shall not pay EPEC's Contractor for any of the Contractor's payment applications unless the CITY approves the payment application. EPEC shall require EPEC's Contractor to submit the following with each payment application:

(a) an affidavit of EPEC stating that all previous progress payments received for the Work have been applied to discharge EPEC's legitimate obligations associated with prior Applications for Payment; and

(b) 2 copies of Monthly certified payrolls from EPEC's Contractor and each of EPEC's subcontractors (one to the City's Human Relations Department and the other to City's General Services Department).

(3) EPEC's Contractor and each of its Subcontractors shall submit its Daily Labor Force Reports to CITY each day.

(b) This Agreement shall not be effective until the CITY issues a written notice to proceed to EPEC after the CITY receives all of the following: (1) the Performance and Maintenance Bond and Payment Bond in the name of the City and in the Project Amount from EPEC'S Contractor in accordance with the requirements of EPEC Kansas City Tenant Finish Project Manual that is incorporated into the Lease; and (2) a Certificate of Insurance that names the City as an additional insured in accordance with the requirements of this Contract; and (3) a certificate of insurance from EPEC'S Contractor that names the City as an additional insured in accordance with the requirements of EPEC Kansas City Tenant Finish Project Manual that is incorporated into the Lease.

(c) EPEC shall be responsible for all expenses that exceed the Project Amount and the CITY shall have no liability for any expenses that exceed the CITY's contribution. In other words, the CITY shall have no liability in excess of CITY's contribution and EPEC shall be completely liable for all expenses that exceed the Project Amount.

(d) CITY shall provide the use of the CITY's Premises to EPEC and the use of the CITY's Premises by EPEC shall constitute EPEC's sole and full and complete compensation for all services provided by EPEC during the term of the Contract and CITY shall have no other financial or any other obligation to EPEC for EPEC's services during the term of this Contract.

Sec. 6. Representations and Warranties of EPEC. EPEC hereby represents and warrants to the CITY the following:

(a) EPEC is in good standing under the laws of the state of Missouri and each state in which it does business, except any such state where the failure to be in good standing would not have a material adverse effect on EPEC's ability to perform this Contract in accordance with its terms.

(b) The execution, delivery and performance by EPEC of this Contract have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of EPEC's board of directors; (ii) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained prior to the date

hereof; (iii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to EPEC or its articles or by-laws; and (iv) result in a breach of or constitute a default under any material agreement, lease or instrument to which EPEC is a party or by which it or its properties may be bound or affected.

- (c) EPEC shall not enter into any contract for the services to CITY that purports to grant a security interest or right of repossession to any person or entity respecting the services, or any portions thereof or chattels placed thereon.
- (d) There is no litigation, proceeding or other investigation pending or, to the knowledge of EPEC, threatened against EPEC which would prevent consummation of the transaction contemplated by this Contract or would have a materially adverse effect on EPEC.

Sec. 7. Survival of the Representations, Warranties and Covenants. All representations, warranties and covenants expressed herein shall survive the execution of this Contract for the benefit of the parties hereto.

Sec. 8. Governing Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The CITY and EPEC: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum nonconveniens as an objection to the location of any litigation.

Sec. 9. Termination for Convenience. CITY may, at any time upon sixty (60) days written notice to EPEC specifying the effective date of termination, terminate this Contract, in whole or in part.

Sec. 10. Default and Remedies.

- (a) If EPEC shall be in default or breach of any provision of this Contract, CITY may terminate this Contract, suspend CITY's performance, withhold payment or invoke any other legal or equitable remedy after giving EPEC fifteen (15) days written notice and opportunity to cure such default or breach.
- (b) If CITY shall be in default or breach of any provision of this Contract, EPEC may terminate this contract or suspend EPEC's performance after giving CITY fifteen (15) days written notice and opportunity to cure such default or breach.

Sec. 11. Waiver. Waiver by CITY of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of CITY, and forbearance or indulgence by CITY in any regard whatsoever shall not constitute a waiver of same to be performed by EPEC to which the same may apply and, until complete

performance by EPEC of the term, covenant or condition, CITY shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

Sec. 12. Acceptance. No payment made under this Contract shall be proof of satisfactory performance of the Contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory services.

Sec. 13. Records.

- (a) For purposes of this section:
 - 1. "CITY" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.
 - 2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.
- (b) EPEC shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. CITY shall have a right to examine or audit all Records, and EPEC shall provide access to CITY of all Records upon ten (10) days written notice from the CITY.
- (c) The books, documents and records of EPEC in connection with this Contract shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Human Relations and the City department administering this Contract within ten (10) days after the written request is made.

Sec. 14. Affirmative Action. If the CITY's payments to EPEC exceed \$120,000.00 for the period of May 1st through April 30th, and if EPEC otherwise meets the definition of "Contractor" set forth in Chapter 38 of the City's Code, EPEC shall establish and maintain for the term of this Contract an Affirmative Action Program in accordance with the provisions of Chapter 38 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto. EPEC shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry or national origin, sex, disability, age, or sexual orientation, in a manner prohibited by Chapter 38 of City's Code. City has the right to take action as directed by City's Human Relations Department to enforce this provision. If EPEC fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and EPEC may be declared ineligible for any further Contracts funded by CITY for a period of one (1) year. This is a material term of this Contract.

Sec. 15. Tax Compliance. If the CITY's payments to EPEC exceed \$120,000.00 for the period of May 1st through April 30th, EPEC shall provide proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a precondition to the CITY making the first payment under this Contract. EPEC also shall submit to the CITY proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a condition precedent to the CITY making final payment under the Contract.

Sec. 16. Buy American Preference. It is the policy of the CITY that any manufactured goods or commodities used or supplied in the performance of any CITY Contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

Sec. 17. Notices. All notices to be given hereunder either pursuant to this Agreement or the Lease shall be in writing and may be given, served or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested or by delivering the same in person to such person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in such notice or in this Contract from and after the second day next following the date postmarked on the envelope containing such notice. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices shall be sent to the following addresses:

If to the CITY: City of Kansas City, Missouri
 City Real Estate Office
 414 East 12th Street, 17th Floor
 Kansas City, Missouri 64106
 Attention: Vanessa Williams
 Telephone: (816) 513-3428

With copies to: William D, Geary
 City Attorney
 Law Department of Kansas City, Missouri
 414 East 12th Street, 28th Floor
 Kansas City, Missouri 64106
 Telephone: (816) 513-3147

If to the EPEC:

 Natasha Kirsch
 EPEC Inc.
 6401 Wornall Terrace
 Kansas City, MO 64113
 913-905-9081

Sec. 18. General Indemnification.

- (a) For purposes of this Section 18 only, the following terms shall have the meanings listed:
 - 1. Claims means all claims, damages, liability, losses, and costs and expenses.
 - 2. EPEC's Agents means EPEC's officers, employees, subcontractors, successors, assigns, invitees, and other agents.
 - 3. CITY means CITY, its Agencies, its agents, officials, officers and employees.
- (b) EPEC's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of CITY, shall be limited to the coverage and limits of insurance that EPEC is required to procure and maintain under this Contract. EPEC affirms that it has had the opportunity to recover all costs of the insurance requirements imposed by this Contract in its contract price.
- (c) EPEC shall defend, indemnify and hold harmless CITY from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by EPEC or EPEC's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of CITY. EPEC is not obligated under this Section to indemnify CITY for the sole negligence of CITY.

Sec. 19. Indemnification for Professional Negligence. If this contract is for professional services, EPEC shall indemnify, and hold harmless CITY and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, arising out of any negligent acts or omissions in connection with this Contract, caused by EPEC, its employees, agents, subcontractors, or caused by others for whom EPEC is liable, in the performance of professional services under this Contract. EPEC is not obligated under this section to indemnify CITY for the negligent acts of CITY or any of its agencies, officials, officers, or employees.

Sec. 20. Insurance.

- (a) Upon substantial completion of the Improvements, EPEC shall procure and maintain in effect throughout the term of this Contract insurance policies with coverage not less than the types and amounts specified in this Section. EPEC must have:
 - 1. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, written on an "occurrence"

basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
 - b. Contractual Liability
 - c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$1,000,000.
 - d. No Contractual Liability Limitation Endorsement
 - e. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.
2. Workers' Compensation Insurance and Employers Liability Policies as required by Missouri law.
 3. Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an "any auto" basis and on an "occurrence" basis. This insurance policy will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by EPEC.
 4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.
- (b) All insurance policies required in this Section shall provide that the policy will not be canceled until after the Insurer provides the CITY ten (10) days written notice of cancellation in the event that the cancellation is for EPEC's nonpayment of premiums and thirty (30) days written notice of cancellation to CITY for all other reasons of cancellation.
 - (c) The Commercial General and Automobile Liability Insurance Policies specified above shall provide that CITY and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. EPEC shall provide to CITY at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.
 - (d) All insurance policies must be provided by Insurance Companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Missouri to provide insurance in Missouri.
 - (e) Regardless of any approval by CITY, EPEC shall maintain the required insurance coverage in force at all times during the term of this Contract. EPEC's failure to maintain the required insurance coverage will not relieve EPEC of its contractual obligation to indemnify the CITY pursuant to this Section of this Contract. In the

event EPEC fails to maintain the required insurance coverage in effect, CITY may declare EPEC in default.

Sec. 21. Interpretation of the Contract.

- (a) After negotiation and discussion, EPEC and CITY have incorporated multiple documents into this Contract and the meaning of some of the words used in the Contract may be uncertain, incomplete or duplicative and the Contract may promise something at one place and take that promise away at another. In sum, the Contract may contain words and provisions that are susceptible of more than one meaning so that reasonable persons of average intelligence may fairly and honestly differ in their construction of the words and provisions. It is the intent of the CITY and EPEC that the CITY's taxpayers receive the benefit or advantage in the construction and interpretation of this Contract; regardless of the normal judicial rules of contract construction even if the construction and interpretation of the Contract will cost the EPEC more money and time. CITY and EPEC agree that CITY's Manager of Procurement Services shall resolve all disagreements as to the meaning of this Contract or any ambiguity in this Contract in favor of the CITY and its taxpayers even if it will cost EPEC more money and time. The decision of CITY's Manager of Procurement shall be final and conclusive if the Manager of Procurement Services acted in good faith.
- (b) EPEC acknowledges and agrees that the CITY has provided EPEC with an opportunity to have EPEC's attorney review and advise EPEC on the Contract and any potential ambiguities or areas of disagreement and the potential adverse legal consequences of EPEC agreeing to this Section as well as the entire Contract. EPEC certifies that EPEC has provided the CITY written notice of all ambiguities, conflicts, errors or discrepancies that it has discovered in the Contract and the written resolution thereof by the CITY as embodied in this final Contract is acceptable to EPEC.
- (c) EPEC certifies that EPEC has either (1) waived its right to have EPEC's attorney review this section and Contract; or (2) EPEC has consulted with an attorney on this section and Contract.
- (d) EPEC knowingly and voluntarily agrees to this section and the entire Contract. EPEC certifies that this contract was not procured by fraud, duress or undue influence.

Sec. 22. Contract Execution. This Contract may be executed in one or more counterparts, each of which will be deemed an original copy of this Contract and all of which, when taken together, will be deemed to constitute one and the same Contract. This Contract shall be effective upon the execution of counterparts by both parties, notwithstanding that both parties may not sign the same counterpart. The parties' signatures transmitted by facsimile or by other electronic means shall be proof of the execution of this Contract and shall be acceptable in a court of law.

Sec. 23. Assignment and Subcontracting. EPEC shall not subcontract, assign or transfer any part or all of EPEC's obligations or interests without CITY's prior approval. If EPEC shall subcontract, assign, or transfer any part of EPEC's interests or obligations under this Contract without the prior approval of CITY, it shall constitute a material breach of this Contract.

Sec. 24. Professional Services – Conflict of Interest Certification. If this Contract is for professional services other than for medical doctors or appraisers, EPEC certifies that EPEC is not an expert witness for any party in litigation against the CITY at the time of the issuance of this Contract.

EPEC, INC.

I hereby certify that I have the authority to execute
this document on behalf of EPEC.

EPEC, Inc.

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

Galen P. Beaufort
Senior Associate City Attorney
Date: _____

KANSAS CITY, MISSOURI

By: _____

Name: Earnest J. Rouse

Title: Director of General Services

Date: _____

Certification of Availability of Funds

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the

treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Randall J. Landes
Director of Finance

Date: _____