SERVICE AGREEMENT
FOR SERVICE OF LEASED 745C CATERPILLAR ARTICULATED TRUCK
BETWEEN
THE CITY OF COLUMBIA, MISSOURI,
AND
FABICK AND COMPANY

THIS AGREEMENT by and between the City of Columbia, Missouri, a municipal corporation (hereinafter called "CITY") and Fabick and Company, a corporation organized in the state of Missouri, and located at One Fabick Drive, Fenton, Missouri 63026 (hereinafter called "CONTRACTOR"), is entered into on the date of the last signatory noted below. CONTRACTOR and CITY are each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, CITY has a need for an articulated truck for use at its municipal landfill located at 5700 Peabody Road, Columbia, Missouri; and

WHEREAS, CITY issued RFQ #26/2017 for the lease of an articulated truck; and

WHEREAS, CITY accepted CONTRACTOR's quotation for a lease of an articulated truck through Caterpillar Financial Services Corporation's proposal for a financed lease of the articulated truck; and

WHEREAS, CITY has entered into a contract with Caterpillar Financial Services Corporation in reliance upon CONTRACTOR's representations and warranties set forth in this Agreement.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, and the CITY's execution of an Agreement with Caterpillar Financial Services Corporation for the lease of the articulated truck, the receipt and execution of which are hereby acknowledged, intending to be legally bound, do hereby agree as follows:

1. Agreement Documents. The following documents are incorporated into this Agreement:

   a. CITY's Request for Quotation, Articulated Truck, # 26/2017.
   b. CONTRACTOR's Quotation and the Additional Conditions of CONTRACTOR attached.

   In the case of a conflict between any provisions of the documents constituting this Agreement, the provisions of this document shall control. The provisions of the documents incorporated by reference shall control in the order listed above.

2. Services. CONTRACTOR shall perform all services set forth in this Agreement in a diligent, competent and workmanlike manner.

3. Compensation. CONTRACTOR shall provide the services at no additional cost to the CITY. CITY shall pay the monthly rent to Caterpillar Financial Services Corporation pursuant to CITY's agreement with Caterpillar Financial Services Corporation.

4. Term. The term of this Agreement shall be for five (5) years from the execution of the Agreement.

5. Termination by Mutual Agreement. Termination of this Agreement can be made at the mutual agreement of the Parties.

6. Termination for Cause. Either Party may terminate this Agreement for cause if the other Party has breached its obligations under this Agreement or in event of default in payment of the lease. The terminating Party must provide thirty (30) days advance written notice to the other Party of its intent to terminate, which notice shall include the reasons for the termination, and shall provide the other Party with an opportunity to cure the breach within the thirty (30) day period following notice from the terminating Party.

7. Time of Completion and Liquidated Damages. CONTRACTOR hereby agrees to complete the services described in this Agreement as required in the Agreement Documents. If the articulated truck is down due to no fault of CITY, and not repaired or a loan replacement of an articulated truck capable of hauling a minimum of thirty (30) tons supplied by CONTRACTOR within seven (7) working days (Monday through Friday), CONTRACTOR shall pay to CITY, as liquidated damages, the sum of Five Hundred Dollars ($500.00) per working day for each day the articulated truck is down and not repaired or a loan replacement not supplied by CONTRACTOR. Except for parts and fluids associated with manufacturer recommended servicing as set forth herein, the articulated truck has manufacturer warranty for parts, and CONTRACTOR's responsibility to provide free parts is limited to parts under Warranty. In addition, CONTRACTOR shall provide parts and fluids associated with manufacturer recommended servicing. This Agreement is conditional upon CITY following manufacturer recommended servicing of the articulated truck, and failure resulting from failure to properly service the articulated truck is not warranted. This Warranty is the exclusive Warranty provided by CONTRACTOR, and any alleged implied warranty of merchantability or fitness for a particular purpose against CONTRACTOR is disclaimed.

8. No Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

9. Notices. Any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to CITY:
City of Columbia
Purchasing Department
ATTN: Purchasing Agent
P.O. Box 6015
Columbia, MO 65205-6015

If to CONTRACTOR:
Fabick and Company
One Fabick Drive
Fenton, Missouri 63026
ATTN: General Counsel

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending Party if delivered by courier or U.S. mail.

10. No Third-Party Beneficiary. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such person a third-party beneficiary under the Agreement.

11. Amendment. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

12. Governing Law and Venue. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

13. General Laws. CONTRACTOR shall comply with all federal, state, and local laws, rules, regulations, and ordinances.

14. Employment of Unauthorized Aliens Prohibited. CONTRACTOR agrees to comply with Missouri State Statute Section 285.530 in that CONTRACTOR shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this Agreement, CONTRACTOR 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 contracted services. CONTRACTOR shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. CONTRACTOR shall require each subcontractor to affirmatively state in its contract with CONTRACTOR that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the State of Missouri. CONTRACTOR shall also require each subcontractor to provide CONTRACTOR with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.

15. No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

16. Hold Harmless Agreement. To the fullest extent not prohibited by law, CONTRACTOR shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any negligent act or failure to act of CONTRACTOR, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with CONTRACTOR or a subcontractor for part of the services), of anyone directly or indirectly employed by CONTRACTOR or by any subcontractor, or of anyone for whose

acts the CONTRACTOR or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require CONTRACTOR to indemnify, hold harmless, or defend the City of Columbia from CITY's own negligence.

17. Insurance. CONTRACTOR shall maintain, on a primary basis and at its sole expense, at all times during the life of the Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as CITY's review or acceptance of insurance maintained by CONTRACTOR is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by CONTRACTOR under the Agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A- VIII.

Workers' Compensation & Employers Liability. CONTRACTOR shall maintain Workers' Compensation in accordance with Missouri Revised Statutes or provide evidence of monopolistic state coverage. Employers Liability with the following limits: $500,000 for each accident, $500,000 for each disease for each employee, and $500,000 disease policy limit.

Commercial General Liability. CONTRACTOR shall maintain Commercial General Liability at a limit of not less than $2,000,000 Each Occurrence, $3,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Business Auto Liability. CONTRACTOR shall maintain Business Automobile Liability at a limit not less than $2,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Contractor does not own automobiles, CONTRACTOR agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

CONTRACTOR may satisfy the minimum liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. CONTRACTOR agrees to endorse the CITY as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance state the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

The City of Columbia, its elected officials and employees are to be Additional Insured with respect to the project to which these insurance requirements pertain. A certificate of insurance evidencing all coverage required is to be provided at least ten (10) days prior to the Effective Date of the Agreement between the CONTRACTOR and CITY. CONTRACTOR is required to maintain coverages as stated and required to notify CITY of a Carrier Change or cancellation within two (2) business days. CITY reserves the right to request a copy of the policy.

The Parties hereto understand and agree that CITY is relying on, and does not waive or intend to waive by any provision of this Agreement, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to CITY, or its elected officials or employees.

Failure to maintain the required insurance in force may be cause for termination of the Agreement. In the event CONTRACTOR fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, CITY shall have the right to cancel and terminate the Agreement without notice.

The insurance required by the provisions of this article is required in the public interest and CITY does not assume any liability for acts of the CONTRACTOR and/or their employees and/or their subcontractors in the performance of this Agreement.

18. Entire Agreement. This Agreement represents the entire and integrated Agreement between CONTRACTOR and CITY relative to the Scope of Services herein. All previous or contemporaneous agreements, representations, promises and conditions relating to CONTRACTOR's services described herein are superseded.

19. Taxes. CONTRACTOR will pay when due, or promptly reimburse CITY for payment of, all taxes imposed on a Unit, or the Rent. CONTRACTOR will also pay or reimburse CITY for all (i) license and registration fees, (ii) fines, penalties, interest, or additions to any tax, (iii) charges similar to those stated in clauses (i) and (ii) that are imposed in connection with the ownership, possession, use, or lease of a Unit from the time Caterpillar Financial Services Corporation purchases the Unit until it is returned to Caterpillar Financial Services Corporation. CONTRACTOR will remain responsible for the payment, or reimbursement of, any such charges, regardless of when CITY receives notice of the charge. CONTRACTOR will prepare and file, in a manner satisfactory to CITY, all reports or returns required with respect to a Unit. CONTRACTOR will reimburse CITY in full for any amounts that CITY pays or advances without regard to early payment discounts. CITY may estimate the amount of, and bill CONTRACTOR periodically in advance for, any charge. CITY will be responsible, however, for any difference between the estimated amount and the actual amount.

20. Transportation of Unit for service. CONTRACTOR shall be solely responsible for the transportation and any costs associated with the transportation of the Unit for warranty service when such servicing requires transportation off of CITY's property.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement in triplicate the day and the year of the last signatory noted below.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

FABICK AND COMPANY

By: _____

Name: SAM PRIMM

Date: 5/24/17

ATTEST:

By: _____

Name: _____

Title _____