

PERSONAL SERVICES AGREEMENT

This Agreement is entered into this 21st day of September, 2020 by and between Nicholas Russo (hereinafter, "Contractor") and the City of Pittsfield, through its Department of Public Services (hereinafter, the "City").

WHEREAS, the City desires the personal services of the Contractor to perform consultant services related to the Shared Street and Spaces grant;

WHEREAS, the Contractor desires to provide said services to the City as hereinafter set forth;

WHEREAS, the City has complied with the public bidding procedures, as set forth in M.G.L. chapter 30B;

NOW, THEREFORE, the parties do mutually agree as follows:

1. Scope of Services. The Contractor shall do, perform, and carry out in a satisfactory and proper manner the following (provide detailed list of services):

Task 1: Procurement – Estimate, order and receive materials to build the furniture and infrastructure proposed in each mini project.

Task 2: Installation Management – Work with installation crews on site to install projects as specified in the proposal document, or make minor alterations if unforeseen circumstances are encountered.

Task 3: Community Support & Coordination – Provide updates, answer questions, and offer opportunities to participate in the Shared Streets & Spaces pop-ups; for business owners, resident, and visitors' downtown.

Task 4: Project Documentation – Track purchase expenses versus allotted budget per mini project, track personal work hours to be reported weekly, and gather before and after photos for reporting on project results as directed by Ricardo Morales, Commissioner of Public Services & Utilities.

2. Time of Performance. The services under this Agreement are to be performed during the period of September 21, 2020 through November 30, 2020.
3. Compensation and Method of Payment. The compensation for services rendered under this Agreement is TWENTY EIGHT DOLLARS (\$28.00) PER HOUR at an estimated maximum of TWO HUNDRED (200) hours per week. The Contractor is required to provide an invoice for services rendered at the end of each month to Ricardo Morales, Commissioner of Public Services & Utilities. The invoice should consist of a description of the work performed by the Contractor for the City and the hours and dates worked. The City's obligation under this Agreement reflects funds as appropriated by Shared

Streets and Spaces Grant. This Agreement may terminate upon notice to the Contractor at such time as the funding is either no longer available or limited or the program requirements have been modified in a way that the City determines that the services are no longer necessary.

4. Termination of Agreement for Cause. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this Agreement, or shall violate any of the covenants or stipulations of this Agreement, the City shall thereupon have the right to immediately terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof.
5. Termination of Agreement for Convenience. The City may terminate this Agreement for convenience at any time by ten (10) days notice in writing from the City to the Contractor. If the Agreement is terminated by the City as provided under this paragraph, the Contractor will be paid for those services actually performed prior to his or her receipt of the City's termination notice.
6. Indemnification. The Contractor shall indemnify, defend, and hold harmless the City, its officers, agents, and employees from and against all suits, demands, claims, judgments, liabilities, damages, losses, and actions of any nature whatsoever (including, without limitation, reasonable attorneys' fees and expenses), arising out of, relating to, or in consequence of the intentional acts or omissions of the Contractor in the performance of the services covered by this Agreement. This Paragraph shall survive the expiration or earlier termination of this Agreement.
7. Independent Contractor.
 - a. The Contractor is not an employee or agent of the City, but is an independent contractor. No rights or benefits of an employee shall accrue or be vested in the Contractor under any personnel policies or benefit plans maintained by the City for the benefit of its employees. The Contractor shall not be entitled to any payment from the City in the nature of benefits under the Workers' Compensation Act for any accident, illness, or event occurring in or relating to or arising out of the performance of the services by the Contractor in accordance with this Agreement.
 - b. Neither federal, nor state income tax, nor payroll tax of any kind will be withheld or paid by the City on behalf of the Contractor.
8. Reports, Data, Etc.
 - a. Materials produced in whole or in part under this Agreement shall not be subject to copyright, except by the City, in the United States or in any other country. The City or its duly authorized representatives have unrestricted authority to, without

payment of any royalty, commission, or additional fee or any type or nature, publicly disclose, reproduce, distribute and otherwise use, and authorize others to use, in whole or in part, any reports, data or other materials prepared under this Agreement.

- b. All data, reports, programs, software, equipment, plans, drawings, and any other documentation or product paid for under this Agreement shall vest in the City at the termination of this Agreement. The Contractor shall at all times obtain the prior written approval of the City before he or she, either during or after termination of the Agreement, makes any statement bearing on the work performed or data collected under this Agreement to the press or issues any material for publication through any medium of communication.

9. Audit, Inspection, Etc.

- a. At any time during normal business hours, and as often as the City may deem it necessary, there shall be made available by the Contractor for the purpose of audit, examination, and/or to make excerpts or transcripts, all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.
- b. For a period of three (3) years after final payment pursuant to this Agreement, the Contractor shall make his or her work papers, records and other evidence of audit available to the City or its duly authorized representatives. The City shall be entitled to reproduce any or all such documents at its own expense, for which provision shall be made at the time the need for reproduction arises.

10. Non-Discrimination/Equal Employment. The Contractor shall carry out the obligations of this Agreement in compliance with all of the requirements imposed by or pursuant to Federal, State, and local ordinances, statutes, rules, and regulations prohibiting discrimination in employment, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973, and M.G.L. c. 151B, Massachusetts Executive Order 74, as amended by Executive Orders 116, 143, and 227, and any other executive orders, rules, regulations, and requirements relating thereto enacted by the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation.

11. Conflict of Interest. Both the City and the Contractor stipulate to the applicability of the State Conflict of Interest Law (General Laws Chapter 268A), and this Agreement expressly prohibits any activity, which shall constitute a violation of that law. The Contractor shall be deemed to have investigated its applicability to the performance of this Agreement; and by executing the Agreement, the Contractor certifies to the City,

under the pains and penalties of perjury, that neither he or she nor his or her agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

12. Other Certifications. The Contractor certifies, under the pains and penalties of perjury, that:
 - a. pursuant to M.G.L. c. 62C, §49A, he or she has filed all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes;
 - b. pursuant to M.G.L. c. 151A, §19A, he or she has complied with all the laws of the Commonwealth relating to contributions and payments in lieu of contributions to the Employment Security System;
 - c. he or she is not presently debarred or suspended from providing goods and/or services to the City under the provisions of M.G.L. c. 29, §29F, or an other applicable debarment or suspension provision of any other chapter of the General Laws or federal law, or any rule or regulation promulgated thereunder; and
 - d. he or she has paid all real estate, personal property or excise tax, water charges, fines or any other municipal lien charges due to the City.
13. No Privity of Contract between City and other Parties. Nothing contained in this Agreement shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor absent a written agreement signed by all parties, including the Mayor of the City.
14. Governing Law; Effect. This Agreement shall be governed by and construed in accordance with the substantive law of the Commonwealth of Massachusetts, and shall have the effect of a sealed instrument.
15. Liability of Public Officials. To the full extent permitted by law, no official, employee, agent, or representative of the City shall be individually or personally liable on any obligation of the City under this Agreement.
16. Contractor's Breach and City's Remedies. Failure of the Contractor to comply with any of the terms or conditions of this Agreement shall be deemed a material breach of this Agreement, and the City shall have all of the rights and remedies provided in the Agreement documents, the right to cancel, terminate or suspend the Agreement in whole or in part, the right to maintain any and all actions in law or equity or other proceedings with respect to a breach of this Agreement, including damages and specific performance, and the right to select among the remedies available to it by all of the above.

17. Assignability. The Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation.
18. Compliance with Laws. The Contractor shall fully comply with all existing and future federal, state, and municipal laws and regulations.
19. Severability. If any court or body of competent jurisdiction holds any provision of this Agreement invalid, the remainder of this Agreement shall remain in full force and effect.
20. Headings. The section headings in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.
21. Amendments. This Agreement may be amended or modified only by written instrument duly executed by the parties.
22. Complete Agreement. This Agreement constitutes the entire agreement between the parties with no agreements other than those incorporated herein.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the date first above written.

INDEPENDENT CONTRACTOR

CITY OF PITTSFIELD

By:

Nicholas Russo
Signature of Contractor

By:

Linda M. Iyer
Mayor

Nicholas Russo
Name of Contractor

By:

[Signature]
Department Head

38 North St Apt 3C, Pittsfield
Address of Contractor

By:

Colleen Hunter-Mullett
Purchasing Agent

SS# 018-78-7546

Certified as to Form and Legality:

By:

[Signature]
City Attorney

CITY OF PITTSFIELD
ATTESTATION OF FUNDS

PROJECT: Consulting Services for Shared Streets and Spaces Grant

CONTRACT AMOUNT: not more than \$5,600.00

APPROPRIATION NUMBER: 24285/52000

I hereby certify that as of this date, September 15, 2020, there is \$5,600.00 appropriated and available for expenditure on the above named project.



Allison M. Crespo,
City Accountant

The contract amount will be the **TOTAL AMOUNT** paid by the CITY for the completion of the above named project. Any other amounts for this contract over and above the contract amount and/or the amount appropriated as above attested must be approved by the CITY and its authorized agents in advance, and amounts over and above the original appropriation as above attested are also subject to further appropriation by the Mayor and the CITY Council of the CITY of Pittsfield.

In any estimated amounts of materials to be supplied by the CONTRACTOR in the performance of the terms of this Contract, the CITY makes the best good faith estimate of the quantities. The cost of any materials to be supplied to the CITY in fulfillment of the terms of this Contract in excess of the CONTRACT AMOUNT and/or the appropriated amount attested above must be approved by the CITY and its authorized agents in advance, and amounts over and above the original appropriation as above attested are also subject to further appropriation by the Mayor and the CITY Council of the CITY of Pittsfield.

**THE PROVISIONS OF THIS ATTESTATION APPLY ESPECIALLY TO
CONTRACTS, WHICH HAVE PERFORMANCE COMPLETION BEYOND THE
CURRENT FISCAL YEAR OF THE CITY OF PITTSFIELD.**

The CITY of Pittsfield shall not be held liable for failure of the Mayor or the CITY Council to appropriate funds in excess of the original amount appropriated as above attested, nor shall the CITY be held liable for a failure of the CITY and its authorized agents to approve an amendment of the contract amount.

