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**OFFICE**

# MEMO

To: HARRISBURG CITY COUNCIL  
From: Kirk Petroski, City Clerk  
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2020      RESOLUTION NO. -2020

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:

  
\_\_\_\_\_  
Deputy City Solicitor

6-8-20  
\_\_\_\_\_  
Date

Requested by Department/Bureau: Public Works

Department/Bureau Contact Person: D. West & C. Nake

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

\_\_\_\_\_

Received by: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION NO. \_\_\_\_ - 2020

Moved by: \_\_\_\_\_

A Resolution authorizing the City of Harrisburg to negotiate and enter into an agreement with Herman International Ministries DBA Wildheart Ministries to provide labor for the disassembly and packaging for transport of the ground-mounted section of the Solar Panel Array at 2525 N 7<sup>th</sup> Street Harrisburg, PA 17110.

**WHEREAS**, the City of Harrisburg (“City”) received a donation of solar panels that are currently in an array located at 2525 N 7<sup>th</sup> Street Harrisburg, PA 17110; and

**WHEREAS**, in order to accept the solar panels the City needs to disassemble and package the solar panels for transport; and

**WHEREAS**, the City has determined that it can most efficiently perform this by contracting with an outside entity to provide labor; and

**WHEREAS**, Herman International Ministries DBA Wildheart Ministries (“Wildheart”) has the capability to provide the necessary labor to disassemble and package the solar panels for transport; and

**WHEREAS**, Wildheart will provide this labor for a flat fee of ten thousand dollars (\$10,000.00); and

**WHEREAS**, a copy of the proposed agreement between the City and Wildheart is attached hereto as Exhibit “A.”

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG**, that the City of Harrisburg is hereby authorized to negotiate and enter into an agreement for the provision of labor to disassemble and package solar panels with Herman International Ministries BDA Wildheart Ministries.

**BE IT FURTHER RESOLVED** that the Mayor, City Controller, and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

I second this resolution \_\_\_\_\_

# **EXHIBIT A**

**CITY OF HARRISBURG SERVICES AGREEMENT**

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**THIS AGREEMENT** is made at Harrisburg, Pennsylvania, by and between the **CITY OF HARRISBURG**, a municipal corporation ("CITY"), and

Herman International Ministries DBA Wildheart Ministries  
333 South 13<sup>th</sup> Street  
Harrisburg, PA 17104

("CONTRACTOR"), who agree as follows:

1. **Contract.** The Contract shall consist of this Agreement and the Scope of Services which is attached hereto as "Exhibit A," and the Request for Proposals. If a conflict exists between these documents the language of this Agreement shall take precedence over any other.
2. **Term.** This Agreement shall become effective on the date the last party hereto signs the Agreement, as indicated by the date next to that party's signature ("Effective Date"). This Agreement shall expire when the services described in Exhibit A are complete.
3. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A for projects as determined and confirmed with the City's representative. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of the services:

(1) CONTRACTOR notifies CITY and CITY agrees that the services are outside the scope of Exhibit A ;

(2) CONTRACTOR estimates the additional compensation required for these additional services; and

(3) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the authorized City Officials or the City authorized designees, or by the Harrisburg City Council.

4. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement as is defined on the fee schedule submitted by CONTRACTOR or as specified in the solicitation documents. The payments specified in Exhibit A shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 3, above, CITY approves additional compensation for additional services.

A Purchase Order Number and Notice to Proceed issued by the CITY is required prior to commencing work. The Purchase Order date (order date) is required to precede the invoice or application for payment for checks to be issued. **Submission of invoicing or payment applications prior to receipt of a Purchase Order will result in severe payment processing delays or non-payment of services, without liability upon the CITY.** If the CONTRACTOR has not received payment within sixty (60) calendar days of CITY'S receipt of invoicing or application of payment, the CONTRACTOR may assess interest on the undisputed portions of invoicing or payment applications computed at the rate of one-half of one percent per month (6% per annum).

5. **Facilities and Equipment.** CONTRACTOR shall, at its sole cost and expense, furnish all facilities, labor,

tools, materials and equipment that may be required for CONTRACTOR to perform services pursuant to this Agreement. Unless otherwise described in Exhibit A.

6. **Changed Conditions.** CONTRACTOR has used its professional judgment in establishing the scope of services and fee for this project, given the information provided by CITY or known to CONTRACTOR about the project's nature and risks and current laws, codes, regulations, standards and permit conditions in effect thirty (30) days prior to the date of this Agreement. Occurrences or discoveries that were not originally contemplated by or known to CONTRACTOR shall constitute changed conditions and shall require an equitable adjustment in scope, schedule and/or fee under this Agreement. If CONTRACTOR should request an adjustment to this Agreement, CONTRACTOR shall identify the changed conditions and the CITY shall promptly and in good faith enter into a renegotiation of the Agreement. If CITY refuses to renegotiate, CONTRACTOR may terminate this Agreement.
7. **Authority.** The person signing this Agreement for CONTRACTOR represents and warrants that he or she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
8. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.
9. **Hazardous Materials.** CONTRACTOR'S scope of services does not include any services related to asbestos or hazardous or toxic materials. CONTRACTOR shall have no responsibility under this Agreement to determine the existence, location, quantity, type or composition of any hazardous or toxic materials that may exist at the site. In the event CONTRACTOR or any other party encounters asbestos or hazardous or toxic materials at the site, or should become known in any way that such materials may be present at the site or any adjacent areas that may affect the performance of CONTRACTOR'S services, CONTRACTOR may, at its option and without liability for consequential or other damages, suspend performance of services on the project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials and warrant that the site is in full compliance with applicable laws and regulations.
10. **Relationship of Parties.** The parties intend that an independent CONTRACTOR relationship will be created by this Agreement and it is understood that the CONTRACTOR will not be an employee of the CITY. The CONTRACTOR shall act in the capacity of an independent CONTRACTOR with respect to the CITY. The CONTRACTOR shall not be, nor represent himself or herself as being, an employee or agent of the CITY, and shall not be, nor represent himself or herself as being authorized to bind the CITY. The CONTRACTOR shall not have the status of an employee of the CITY and shall not be eligible to participate in any employee benefit plans, pension plans, group insurance plans, paid vacation/sick leave programs, or any other employee benefits. CITY shall not provide social security, unemployment compensation, disability insurance, worker's compensation or similar coverage, nor any statutory benefits, to the CONTRACTOR. The CONTRACTOR shall be solely responsible for all taxes, withholdings, and other similar statutory obligations, including, but not limited to workers' compensation Insurance and CONTRACTOR agrees to indemnify and hold the CITY harmless in the event the CITY is required to pay any of the same on behalf of the CONTRACTOR. CONTRACTOR further agrees that any volunteers, employees, agents, or other individuals who perform work on behalf of CONTRACTOR shall not constitute an employee of the CITY, and shall be covered by CONTRACTOR'S insurance policies as more fully described in Paragraph 16.

11. **Publicity.** Neither CONTRACTOR nor any SUBCONTRACTOR shall use the name of the CITY of Harrisburg, publish any information contained in or derived from the CITY's records, or quote the opinion of any CITY employee in any advertising, publicity, endorsement or testimonial, without the prior written approval of the CITY. The terms of this Paragraph shall survive termination of this Agreement.
12. **WBE/MBE/DBE Solicitation.** The City of Harrisburg, in its efforts to promote minority and women owned business (WBE/MBE) participation in CITY contracts, has established guidelines and goals for the purchase of goods and services. The criteria for such purchases are set forth in Chapter 2-901 of the Codified Ordinance or if applicable the Affirmative Action Cooperation Plan (AACP), Chapter 2-903. CONTRACTOR must submit all applicable business certifications and the City of Harrisburg Good Faith Effort Form when subcontractors are solicited for this work.
13. **Conflict of Interest Requirements.**
  - A. **Generally.** Under the Pennsylvania State Ethics Act no public official or public employee or his spouse or child or any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or public employee is associated, unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract. Any contract or subcontract made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is commenced within 90 days of the making of the contract or subcontract.
  - B. **Conflict of Interest Statements.** Contractor covenants and agrees that he has no direct or indirect interest which would conflict in any manner with the performance of services under this Agreement and, during the term of the Agreement or any extension thereof. Contractor will not engage in any activities which could cause a conflict of interest or the appearance of a conflict of interest with the City of Harrisburg.
14. **Insurance Requirements.** During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 16.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the CITY.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

- A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance providing coverage at least as broad as ISO Commercial General Liability (CGL) insurance on Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, advertising injury and personal injury, arising out of activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors, products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors, and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence/\$2,000,000 aggregate. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than one million dollars (\$1,000,000) combined single limit per accident. The policy shall provide coverage for owned, non- owned, and/or hired autos as appropriate to the operations of the CONTRACTOR.
- (3) Excess Insurance: The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage; provided that any umbrella or excess insurance shall contain, or be endorsed to contain, a provision that it shall apply on a primary basis for the benefit of the CITY, and any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of such umbrella or excess coverage and shall not contribute with it.
- (4) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000) per accident/\$1,000,000 disease policy limit/\$1,000,000 disease each employee.

**B. Additional Insured Coverage**

- (1) Commercial General Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors; products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors; and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors under Endorsement CG 20 10 10 01 Additional Insured Owners, Lessees, or Contractors – Scheduled Person or Organization and CG 20 37 10 01 Additional Insured Owners, Lessees, or Contractors – Completed Operations or their equivalents.
- (2) Automobile Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability under Endorsement CA 20 48 02 99 - Designated Insured or its equivalent.

**C. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) CONTRACTOR's insurance coverage, including excess insurance, shall be primary and noncontributory insurance as respects CITY, its officials, employees, and volunteers.

Any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute withit.

- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees, or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.
- (5) Contractor's Automobile Liability, Commercial General Liability and Workers Compensation policies shall contain waiver subrogation provisions in favor of the CITY, its officials, employees and volunteers.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A: VIII. Self- insured retentions, policy terms or other variations that do not comply with the requirements of this Section 16 must be declared to and approved by the CITY in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required prior to execution of this Agreement. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit E. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

City of Harrisburg  
c/o Office of  
Purchasing  
10 North 2<sup>nd</sup> Street, Suite 302A  
Harrisburg, PA 17101  
[purchasing@harrisburgpa.gov](mailto:purchasing@harrisburgpa.gov)

- (3) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

15. **Indemnification.** CONTRACTOR agrees to indemnify, hold harmless, and defend CITY and its agents, employees, directors, and elected and appointed officials from and against any and all claims (including Worker's Compensation Claims), damages, losses and expenses, including but not limited to court costs



and reasonable attorneys' fees, for which CITY may be held liable of whatsoever kind or nature, including but not limited to injury (including death) to any person including the CITY's employees and damages to any property of whatsoever kind or nature, arising out of or in any manner connected with the services to be performed under this Agreement by CONTRACTOR, its subcontractor, or any individual or legal entity working on behalf of or under CONTRACTOR's supervision or in any way connected with the use, misuse, maintenance, operation, or failure of any machinery or equipment (regardless of whether such machinery or equipment was furnished, rented, or loaned by CITY), whether due in whole or part to any act, omission, or negligence of CONTRACTOR, its subcontractor, or any individual or legal entity working on behalf of or under CONTRACTOR's supervision. CONTRACTOR shall not be responsible for any claims, damages, losses or expenses arising out of the CITY's sole negligence.

16. **Limitation of Liability.** Neither CITY nor CONTRACTOR shall be liable for any indirect, incidental, consequential, special or exemplary damages, whether in an action of contract, negligence, strict liability or other tortious action, arising out of this Agreement. Both Parties recognize that this Agreement reflects a reasonable allocation of risks and that such allocation is a significant inducement to provide the services described in this Agreement to the CITY.
17. **Assumption of Risk.** CONTRACTOR shall assume any and all liability incurred if it enters and performs work on property not owned or controlled by CITY during the course of this contract. CONTRACTOR further agrees to obtain any and all necessary rights to enter onto any such private property from the owners of such property should it determine that such entry is necessary or convenient.
18. **Subcontractors.** CONTRACTOR agrees to not subcontract any portion of the Services without prior authorization from the CITY, which authorization shall not be unreasonably withheld. CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in Section 16, above. If CONTRACTOR fails to require or verify such coverage CONTRACTOR shall indemnify, defend, and hold harmless CITY for any and all damages asserted, claimed, or imposed by a court of law, including attorneys' fees.
19. **Assignment.** CONTRACTOR shall not assign this Agreement in whole or in part nor delegate any duties, without the prior written consent of the CITY. Such consent shall not be unreasonably withheld. Any assignment consented to by the CITY shall be evidenced by a written assignment agreement executed by CONTRACTOR and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the original Agreement and to assume the duties, obligations, and responsibilities being assigned.
20. **Mercantile License.** If applicable, CONTRACTOR shall comply with Chapter 5-715 of the Codified Ordinances of the CITY of Harrisburg which requires all persons, firms, companies and corporations engaging in business within the CITY of Harrisburg to obtain a Mercantile License and pay the mercantile tax.
21. **Third Party Beneficiary.** Nothing in this Agreement is intended to confer third-party beneficiary status on any other person or entity to enforce the terms of this Agreement.
22. **Employee Liability.** CITY and CONTRACTOR agree that any claim made by either party arising out of any act or omission of any officer, director, or employee in the execution or performance of this Agreement shall be made against CITY or CONTRACTOR, as the case may be, and not against such officer, director or employee.

23. **Right to Know Law.** CONTRACTOR acknowledges that CITY is subject to the Pennsylvania Right to Know Law (65 P.S. §67.101 *et seq.*) CONTRACTOR agrees to assist the CITY in responding to requests pursuant to the Right to Know Law. Should CONTRACTOR deem requested information “Confidential Proprietary Information” pursuant to 65 P.S. § 67.102 CONTRACTOR may be required to defend such a designation on appeal to the Pennsylvania Office of Open Records.
24. **Recitals.** Any recitals are incorporated into the terms of this Agreement as if fully set forth therein.
25. **Entire Agreement.** This Agreement constitutes the entire contract between the parties. All terms and conditions contained in any other writings previously executed by the parties regarding the matters contemplated herein shall be deemed to be merged herein and superseded hereby. No modification of the Agreement shall be deemed effective unless in writing and signed by the parties hereto.
26. **Waiver of Breach.** The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.
27. **Delay/Force Majeur.** Neither CITY nor CONTRACTOR shall be liable for any delays resulting from acts of God, acts of third parties, orders of any kind of the government of the United States of America or of the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions or officials, or any civil or military authority, equipment failures, strikes, severe weather conditions, fires, riots, wars, earthquakes, equipment or facility shortages or any other causes beyond its reasonable control.
28. **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
29. **Survival of Terms.** The terms and conditions of this Agreement that by their sense and context are intended to survive termination hereof shall so survive, including without limitation the sections relating to indemnification.
30. **Applicable Law & Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of law provisions thereof. Each party hereto consents to the exclusive jurisdiction of the state courts of Pennsylvania situated in the County of Dauphin, Pennsylvania or in the United States District Court for the Middle District of Pennsylvania for any litigation that may arise out of this Agreement and each party hereto waives any objection based on *forum non conveniens* or any other objection to such venue. The United Nations Convention on Contracts for Sale of Goods shall not apply.

## SIGNATURE SHEET

CITY OF HARRISBURG – [VENDOR]

**PROJECT SERVICES AGREEMENT**

**THE CITY OF HARRISBURG:**

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

Eric Papenfuse, Mayor

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

Charlie DeBrunner, Controller

**APPROVED AS TO FORM AND LEGALITY:**

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

Isaac S. Gaylord, Deputy City Solicitor

**Wildheart Ministries:**

\_\_\_\_\_ Date: \_\_\_\_\_

Tannon Herman

*The City of Harrisburg is governed under Pennsylvania's Optional Third Class City Law Charter, 53 P.S. § 41101, et seq. Section 53 P.S. § 41413(c) of the law requires that "all bonds, notes, contracts and written obligations of the city shall be executed on its behalf by the mayor and the controller"*

## **EXHIBIT A**

### **Scope of Work**

The City of Harrisburg is receiving a donation of solar panels, and requires aid in disassembly and packaging of the panels in order to remove them from their current location and transport them to a City owned facility.

Herman International Ministries dba Wildheart Ministries will organize and provide labor in order to carry out the scope of work.

#### **I. Project Description**

This project includes the disassembly, and packaging for transport of the ground-mounted section of the Solar Panel Array at 2525 N 7<sup>th</sup> Street Harrisburg, PA 17110. This portion of the total Solar Array consists of 2964 Schott Poly 245 Watt solar panels bracketed to an aluminum racking frame which are bolted to a large concrete pad and concrete footers on the property. The disassembly and packaging will include the following activities:

- Manually disconnecting the wired connections of each of the Schott 245 Watt panels
- The use of impact drills to unscrew and remove each of the mounting brackets holding the solar panels in place on the racking frame.
- Physically lifting the disconnected panels off of the frame and placing them in palletted gaylords which will be provided and placed by the Department of public works.
- Assisting in using the banding and shrink wrap provided by the Dept. of Public works to secure and wrap the palletted solar panels once the gaylords have been filled (approximately 20 panels per pallet/gaylord).
- Manual disassembly of the aluminum racking frame rows after all solar panels have been removed from the row and packed/secured.

City of Harrisburg Department of Public Works will be responsible for the handling and transportation of completed pallets (filled with solar panels, banded and wrapped and ready to transport for long-term storage). This will include at least one site visit with the City of Harrisburg Department of Public Works and Wildheart Ministries prior to the date the work is to be completed for Public Works personnel to demonstrate the process to representatives for Wildheart Ministries.

#### **II. Wildheart Ministries' Responsibilities**

Wildheart Ministries will provide labor at least thirty (30) individuals to perform the disassembly and packaging activities described in Section I above. Wildheart will arrange for the individuals to arrive at the work location at a time and date to be mutually agreed upon by the parties. The work will be conducted on or before June 15, 2020.

Wildheart has the ability to organize and arrange for sufficient labor to carry out the work described in Section I in one (1) business day, and will arrange for such sufficient labor.

### III. Payment

In consideration for providing the services described herein the City shall pay Wildheart ten thousand dollars (\$10,000.00) after completion of these services.