

**IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI**

**A RESOLUTION** authorizing the Director of Parks + Rec to execute a Memorandum of Understanding with Lee's Summit Underwater Recovery for rescue and recovery dives and other emergency and non-emergency services to be provided to Jackson County on an as-needed basis, at an actual cost to the County not to exceed \$20,000.00.

**RESOLUTION NO. 20421**, May 4, 2020

**INTRODUCED BY** Tony Miller, County Legislator

WHEREAS, the Director of Parks + Rec recommends the execution of the attached Memorandum of Understanding (MOU) with Lee's Summit Underwater Recovery to provide for rescue and recovery dives and other emergency and non-emergency services; and,

WHEREAS, Lee's Summit Underwater Recovery is a non-profit organization that has worked collaboratively with the County since 1987; and,

WHEREAS, the attached MOU further outlines and clarifies the responsibilities of the Association and the County; and,

WHEREAS, this MOU creates no employment relationship between Lee's Summit Underwater Recovery and the County; and,

WHEREAS, the execution of the attached MOU is in the best interests of the health, safety, and welfare of the citizens of Jackson County; now therefore,

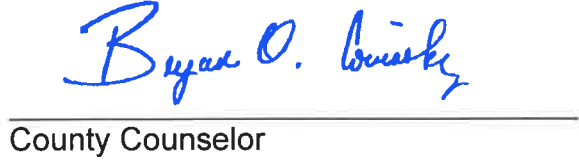
BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the Director of Parks + Rec be and hereby is authorized to execute, on the behalf of the County, the attached MOU with the Lee's Summit Underwater Recovery; and,

BE IT FURTHER RESOLVED that the Director of Finance and Purchasing be and hereby is authorized to make all payments including final payment on the MOU.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Chief Deputy County Counselor

  
\_\_\_\_\_  
County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution No. 20421 of May 4, 2020, was duly passed on May 11, 2020 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 8

Nays 0

Abstaining 0

Absent 1

5-11-2020  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Mary Jo Spino, Clerk of Legislature

There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made each sufficient to provide for the obligation herein authorized.

ACCOUNT NUMBER: 003 1601 56790  
ACCOUNT TITLE: Park Fund  
Director of Parks  
Other Contractual Services  
NOT TO EXCEED: \$20,000.00

4-30-2020  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Chief Administrative Officer

**Memorandum of Understanding  
Between Lee's Summit Underwater Recovery and  
Jackson County Parks + Rec**

THIS MEMORANDUM OF UNDERSTANDING (“**Memorandum of Understanding**” or “**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between JACKSON COUNTY, MISSOURI, (County), through its Parks + Rec Department, and Lee's Summit Underwater Recovery, Inc. (LSUR), a Missouri not-for-profit corporation.

WHEREAS, the County manages over 21,000 acres of parkland and lakes for the use and enjoyment of Jackson County residents; and,

WHEREAS, LSUR is a volunteer operated rescue and recovery agency that provides emergency and non-emergency underwater rescue and other valuable services to the County, other entities within Jackson County, and to the residents of Jackson County; and,

WHEREAS, the County and LSUR previously entered into an Agreement on May 7, 1987 whereby the County leased land at Fleming Park for LSUR to construct and operate a storage facility; and,

WHEREAS, the County and the Association wish to further outline responsibilities through this new Memorandum for mutual public benefit for ongoing valuable assistance and services from LSUR to County; and,

WHEREAS, the Director of Jackson County Parks+Rec is authorized and empowered by the County to execute Memorandums of Understanding (Agreement) on behalf of the County;

NOW, THEREFORE, in consideration of the mutual covenants of the parties contained herein, the parties hereto do mutually agree as follows:

**Sec. 1. LSUR Services and Responsibilities.**

LSUR shall perform the following services and activities (“Services”) on an on-call as needed basis as staff is available:

- a. Respond and assist with rescue and recovery dives and other emergency or non-emergency Services as needed.
- b. Assist with locating and removal of large items from lakes, including automobiles and submerged boats.
- c. Conduct yearly inspection of all marina boat ramps and provide written findings report.
- d. Assist with location and adjustment of submerged courtesy docks.
- e. Assist with maintenance of mooring balls, including hardware replacement/repair and underwater location Services.
- f. Conduct general water rescue awareness training as requested to County Associates.
- g. Conduct Public Safety Diving awareness & support training as requested to County Associates.

- h. Answer questions and provide initial consultation with outside agencies at request of County for underwater projects and Services. LSUR shall reserve the right to negotiate compensation for services with outside agencies who may be authorized by County to utilize County facilities.
- i. LSUR shall participate in community and educational programs as able, such as National Marina Day, and other events and programs sponsored or authorized by County.
- j. LSUR shall remain responsible for all maintenance of the facilities constructed by LSUR on leased property, including but not limited to cleaning, general building maintenance, repair, and improvements. County shall continue to be responsible for the upkeep and maintenance of all grounds including, but not limited to: snow removal, pavement and parking lot maintenance, and lawn and tree care.

**Sec. 2. Supervision and Training.**

LSUR shall remain responsible for all applicable training, and supervision of board members, staff, and volunteers of the LSUR.

- a. All LSUR staff or volunteers performing underwater Services per this Agreement shall be trained through an LSUR-internal academy course which follows the guidelines recommended by Lifeguard Systems and supervised by certified instructors. As required, but no less than once every 5 years, LSUR Staff will participate in a Rapid Deployment Search and Rescue/Recovery diving specialty course under the instruction of certified Lifeguard Systems Instructors.

**Sec. 3. Term.**

Unless terminated by either party in conformity with the termination provisions contained herein, the term of this Agreement shall be three (3) years from date of execution.

**Sec. 4. Modification and Termination.**

- a. This Agreement may be extended, modified or amended with the written consent of both parties. Verbal representations and extra-contractual writings shall not be construed or relied upon as modifications, amendments or waivers of any term of this Agreement.
- b. This Agreement may be terminated with a 120-day written notice by either party. Should LSUR terminate this agreement prior to December 31<sup>st</sup> of any calendar year, LSUR shall repay to County any pro rata funds granted to LSUR during year of termination for each month of Services not performed.

**Sec. 5. Indemnification.** LSUR agrees to indemnify and hold harmless the County and the United States from any and all bodily injury to or death of any third-party and any third-party property damage, loss, or liability of any kind whatsoever, if and to the extent caused by the negligent act, error, or omission, of LSUR or any of its agents, representatives, assignees, or employees during the performance of this Agreement, and LSUR, at its own cost and expense, will defend and protect County against any and all such claims and demands. Notwithstanding the foregoing, LSUR shall not have to pay for County's defense cost if there is a final judicial determination that County was negligent but LSUR was not.

**Sec. 6. Insurance.** LSUR shall procure and maintain in effect throughout the duration of this Agreement general liability insurance with limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate (both

general and products-completed operations), written on an "occurrence" basis, for any claims, damages liability, losses, costs and expenses, court costs and reasonable attorney fees incurred by the County for enforcement of this section and for any accidents, injuries, including death, damage to property, or other claims arising as a result of or in connection with the performance by LSUR and its volunteers, employees, agents or subcontractors, under this Agreement. The County, the United States, its officers employees, and agents shall be named as additional insureds under such policy. LSUR shall also carry a \$1,000,000 umbrella policy. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Insured Contractual Liability
- c. Per Project Aggregate Liability Limit or, where not available, an aggregate limit of \$2,000,000.
- d. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.

The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to County, ten (10) days in the event of nonpayment of premium. Upon signing of this Agreement, LSUR shall provide to County a certificate of insurance showing all required endorsements and additional insureds.

All insurance coverage must be written by 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 do business in Missouri.

Regardless of any approval by County, it is the responsibility of LSUR to see the required insurance coverage is in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of LSUR's failure to assure the required insurance in effect, County may order LSUR to immediately stop all activities.

**Sec. 7. Annual Operation's Report.** By January 31<sup>st</sup> of each year, LSUR shall provide a written Annual Operation's Report to County summarizing activities for the previous year, including the following. Reports may be submitted to the County via email to an agreed upon address.

- a. Summary of all Services and activities performed, including number of deployments for rescue and recovery, deployments for maintenance and operations assistance, and the nature of the Services provided.
- b. Annual Report shall also include a summary of the future anticipated programs and projects LSUR plans to complete for the coming year, if any.

**Sec. 8. Notices.** All notices required by this Agreement shall be in writing sent by either regular U.S. mail, postage prepaid, or commercial overnight courier, or via electronic mail, to the following. All notices mailed by regular U.S. mail are effective three (3) days after mailing.

**JACKSON COUNTY PARKS+REC**

C/O: Director of Parks+Rec  
22807 Woods Chapel Road  
Blue Springs, Missouri 64015  
(816) 503-4821 Fax (816) 795-1234

**Lee's Summit Underwater Recovery, Inc.**

C/O Chief (& Corporate President)  
PO Box 6575  
Lee's Summit, MO 64064  
(816) 525-9555

Additional Contact:  
Chief of Park Safety  
Joe Piccinini  
[jp Piccinini@jacksongov.org](mailto:jp Piccinini@jacksongov.org)

Email: [director@lsunderwater.org](mailto:director@lsunderwater.org)

**Sec. 9. Assignability or Subcontracting.** LSUR shall not subcontract, assign or transfer any part or all of its obligations under this Agreement without County's prior written approval. If LSUR shall subcontract, assign, or transfer any part of Association's interests or obligations under this Agreement, without the prior

written approval of County, it shall constitute a material breach of this Agreement. Notwithstanding the foregoing, LSUR may subcontract certain services during the performance of its diving Services without the County's prior written approval, including, but not limited to, rental or lease of equipment, tow services, and rigging consultants.

**Sec. 10. Independent Contractor.** LSUR is an independent contractor with respect to all Services performed under this Agreement. LSUR accepts full and exclusive liability for the payment of any and all premiums, contributions or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by LSUR on work performed under the terms of this Agreement. LSUR shall defend, indemnify and save harmless County from any claims or liability for such contributions or taxes. Nothing contained in this Agreement or any act of County, or LSUR, shall be deemed or construed to create any third-party beneficiary or principal and agent relationship with County. LSUR is not County's agent and has no authority to take any action or execute any documents on behalf of County.

**Sec. 11. Financial Responsibility.** LSUR shall be solely responsible for all costs associated with performance of all Services and activities during the term of this Agreement and any extensions thereof.

**a. Payments by County to LSUR.** Subject to appropriation, the County agrees to pay LSUR the total amount of \$20,000 for fiscal year 2020, in one installment upon execution of this Agreement. LSUR shall submit its funding requests via proposal to the representatives listed in Section 8 by August 1, 2020.

**b. Conditions for Payments.** Funding for 2020, and any future years, shall be subject to annual budget and appropriation by County.

To be eligible for any payments, LSUR shall submit a written proposal setting out in detail the intended use of the County's funding. LSUR's proposal must be received by August 1<sup>st</sup> for requested funding in any future year. Any funds provided by the County shall only be utilized for LSUR's expenses to provide Services, equipment leases, and insurance authorized by this Agreement. County funds may not be utilized for capital equipment purchases or capital improvements.

Any future payments by County shall be made within the first quarter of each year, provided all requirements for payment have been satisfied by LSUR. No future payments shall be made under this Agreement unless LSUR shall have submitted to the Parks + Rec Department an Annual Financial Report by January 31<sup>st</sup> of each year, including:

- i. LSUR's IRS Form 990 from the previous fiscal year;
- ii. Statement of LSUR's total budget for its most recent fiscal year; and
- iii. Detailed explanation and documentation of actual past expenditures of the County's funds (pertains to final payments and payments on contracts for future years). If LSUR has previously received funding from the County, to be eligible for future payments, LSUR must submit either an audited financial statement for their most-recent fiscal or calendar year, or a certified public accountant's program audit of the County's funds.

No payment shall be made if LSUR is out of compliance on any other County contract, or has not paid county taxes on all properties owned by Organization and assessed by the County.

**c. Equal Opportunity.** LSUR shall maintain policies of employment as follows to be eligible for funding from County.

- i. LSUR and subcontractor(s) shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. LSUR shall take affirmative action as set forth to ensure that applicants for employment and employees are treated without regard to their race, religion, color, sex, age, disability, or national origin. Such action shall include, but not be limited, to the following: recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. LSUR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.
- ii. LSUR and subcontractor(s) shall, in all solicitation or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, disability, or national origin.

**d. Hiring Practices.** Pursuant to §285.530.1, RSMo, and in order to remain eligible for County funding, LSUR assures that it does not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri and/or Jackson County, and shall affirm, by sworn affidavit and provision of documentation, its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted Services. Further, LSUR shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with any Services.

**e. Audit.** The parties agree that the County may, for any reason and at any given time with reasonable notice, examine and audit the books and records of LSUR pertaining to this Agreement. Further, LSUR agrees to establish and adopt such accounting standards and forms as recommended by the County prior to receipt of the County's first distribution of funds under the terms of this Agreement. The forms used to document expenditure of these funds may be changed from time to time by the County.

**Sec. 12. Not Used.**

**Sec. 14. Governing Law.** This Agreement shall be construed and governed in accordance with the law of the State of Missouri. Any action in regard to the Agreement or arising out of its terms and conditions must be instituted and litigated in the courts of the State of Missouri within Jackson County, Missouri, and in no other. The parties submit to the jurisdiction of the courts of the State of Missouri and waive venue.

**Sec. 15. Compliance with Laws.** LSUR shall comply with all applicable federal, state and local laws, ordinances and regulations, including Missouri Prevailing Wage laws applicable to any improvements to Property. LSUR shall secure all applicable occupational and professional licenses and permits from public or private sources necessary for the fulfillment of obligations under this Agreement. All references to "Code" shall mean County's Code of Ordinances, including any amendments thereto or recodification thereof.

**Sec. 16. Waiver.** Waiver of any provisions of this Agreement or any breach of this Agreement shall not thereafter be deemed to be a consent by the waiving party to any further waiver, modification or breach by the other party, whether new or continuing, or of the same or any other covenant, condition or provision of this Agreement. Failure by one of the parties to this Agreement to assert its rights for any breach of this Agreement shall not be deemed a waiver of such rights.

**Sec. 17. Rights and Remedies Cumulative and Not Exclusive.** To the extent this Agreement sets forth a specific remedy for a breach of the Agreement, such remedy shall be the exclusive remedy of the Parties. For other breaches of the Agreement the Parties shall have all remedies available under the governing law



of contracts and applicable injunctive relief. Such remedies are in lieu of others available at law or otherwise.

**Sec. 18. Merger.** This Agreement, including any referenced Attachments, constitutes the entire agreement between County and LSUR with respect to this subject matter, and supersedes all prior agreements between County and LSUR, and any such prior agreement shall be void and of no further force or effect as of the date of this Agreement.

**Sec. 19. Severability of Provisions.** Except as specifically provided herein, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

**Sec. 20. Representations and Warranties.** County and LSUR each certify that it has the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with its terms.

**Sec. 21.** LSUR warrants that it shall perform the Services in accordance with the standards of care and diligence normally practiced by recognized public safety diving organizations in performing Services of a similar nature. **NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IS INCLUDED IN THIS AGREEMENT.** The obligations and representations contained in this Section are LSUR's sole warranty and guarantee obligations and County's exclusive remedy in respect of quality of the Services.

**Sec. 22. Waiver of Consequential Damages; Limitation of Liability.** County and LSUR shall not be liable to each other for, and County expressly waives all claims for, loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities, goods or services; cost of capital; increased operating costs; governmental and regulatory sanctions; and claims of customers for such damages; and for any special, incidental, indirect, punitive, exemplary, or consequential damages. The total cumulative liability of LSUR to County for all claims, losses, damages, and expenses resulting in any way from the performance of this Agreement shall not be greater than the amount compensation actually received by LSUR under this Agreement.

**Sec. 23. County Assistance in Procurement Efforts; Licensing Requirements.** County agrees that access to certain county assets may be required for LSUR to provide its Services. County shall extend use of, and provide access to the following items at no cost to LSUR:

- a. Park(s) and Park(s) Facilities.** The County agrees that LSUR shall be provided with 24 hour, 7 days a week unescorted access to gates, roads, boat ramps, docks, fuel pumps and other facilities to conduct its services. After hours activities shall require notification of the Jackson County Park Rangers by LSUR.
- b. Park campgrounds.** The County agrees that LSUR shall be provided with 24 hour, 7 days a week use of campground waste dumping stations at no cost to LSUR.
- c. Communications.** Subject to availability, County may provide portable radios to LSUR staff during emergency events, for LSUR's use during events.
- d. Surplus Property.** Subject to the requirements of Chapter 11 of the Jackson County Code, County may assist LSUR in obtaining surplus property for LSUR's use in performing the duties contained within this Memorandum.

**IN WITNESS WHEREOF**, the parties, by their authorized representatives, have caused this Agreement to be executed as of the date first written above.

**Lee's Summit Underwater Recovery**

I certify that I am authorized to execute this Memorandum of Understanding on behalf of **Lee's Summit Underwater Recovery, Inc.:**

\_\_\_\_\_  
Signature, President

\_\_\_\_\_  
Printed Name

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

**JACKSON COUNTY**

\_\_\_\_\_  
Michele Newman, Director of Jackson County Parks+Rec

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

ATTEST: \_\_\_\_\_