

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10560

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA, AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN A CONTRACT WITH UNIFIED BOARD OPERATIONS IN THE AMOUNT OF \$67,400.00 FOR UPDATES TO THE SARGENT'S STADIUM VIDEO BOARD

WHEREAS, the City of Johnstown has budgeted funding from the City's American Rescue Plan Act (ARPA) Program for improvements within Sargent's Stadium at the Point; and

WHEREAS, the existing video board within Sargent's Stadium requires both hardware and software updates to maximize the use of the video board; and

WHEREAS, the City of Johnstown solicited proposals from contractors via a Request for Proposals procurement process and received a single proposal from Unified Board Operations; and

WHEREAS, the purchase is appropriated through the 2023 City budget, in the American Rescue Plan Act allocation for Sargent's Stadium, line item 28.466.28.572.00.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Johnstown, that the City Manager is authorized and directed to sign a contract with Unified Board Operations in the amount of \$67,400.00 per bid received on March 1, 2023.


ADOPTED: March 8, 2023

By the following Vote:

Yeas: Ms. Huchel, Mrs. Mock, Rev. King, Mayor Janakovic, Mr. Arnone, Mr. Britt, Mr. Capriotti

Nays:


Absent:



Frank J. Janakovic, Mayor
Michael Capriotti, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10560** as the same by the City Council of the City of Johnstown, Pennsylvania.




Ethan Imhoff, City Manager

VENDOR INFORMATION

VENDOR NAME (PRINTED): Unified Board Operations LLC dba Visua

ADDRESS: W5750 Sherwood Drive
La Crosse WI 54601

PHONE NUMBER: (920) 810-2459

AUTHORIZED SIGNATURE: 

NAME (PRINTED): Matt Baker

TITLE: General Manager

VISUA PROJECT AGREEMENT

UNIFIED BOARD OPERATIONS, LLC DBA VISUA | SALES@VISUACORP.COM | (866) 847-8228

Date: March 1st, 2023
Project Name: Sargent's Stadium Videoboard
Update

Project Number: P1785
Prepared By: Matt Baker

THIS SALE AGREEMENT (including the TERMS and CONDITIONS attached, the "AGREEMENT") made on March 1st, 2023 by and between Unified Board Operations, LLC dba Visua herein after called "SELLER," at W5750 Sherwood Dr. La Crosse, WI., and the City of Johnstown, herein after called "BUYER," at 401 Main St Johnstown, PA 15901. to supply the "EQUIPMENT and SERVICES" as outlined below.

EQUIPMENT

Visua (herein "SELLER") will provide the equipment and related services (the "EQUIPMENT" and the "SERVICES"), respectively, described below and more particularly described on any Schedules attached hereto (collectively the "SPECIFICATIONS").

This system includes deliverables as stated in Appendix A. The detail of responsibilities by Buyer and Seller are attached to this document.

PRICE AND PAYMENT TERMS: For delivery of EQUIPMENT, BUYER shall pay SELLER the cash price of \$67,400.00 U.S.D. which shall be due in payments as follows:

Payment Description	Amount*
70% Down Payment	\$47,180.00
10% Due Net 10 Business Days after ACCEPTANCE	\$20,220.00
TOTAL	\$67,400.00

**All payments due include standard freight or expedited freight or other incurred cost additions as designated in the scope of work.*

Payments to be made in accordance with attached Payment Options and Methods Form

ALL TAXES, INCLUDING SALES AND USE TAXES ARE NOT INCLUDED. SELLER SHALL NOT BE LIABLE FOR, AND BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY TAXES INCURRED IN CONNECTION WITH THE EQUIPMENT AND SERVICES PROVIDED HEREUNDER, EXCEPT FOR ANY TAXES BASED ON THE NET INCOME OF SELLER.

TRAINING: SELLER will provide training to BUYER's personnel and to any sub-contracted maintenance company's personnel. Training will consist of operational system procedures, troubleshooting, repair and replacement of the equipment, plus training of all software systems. Additional training may be coordinated with equipment manufacturers representative.

DELIVERY AND ACCEPTANCE OF THE EQUIPMENT: Upon accepting this Agreement, SELLER agrees that the aforesaid EQUIPMENT shall be manufactured and shipped to BUYER in accordance with this Agreement. If SELLER has EQUIPMENT ready for shipment in accordance with the BUYER'S agreed upon schedule in this agreement and the BUYER or the BUYER's customer is not ready to accept the EQUIPMENT at the designated location for installation for any reason, then BUYER will be responsible for storage costs for the EQUIPMENT. In addition, BUYER will be responsible for the scheduled payment

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due prior to shipment. BUYER agrees to allow full site access to SELLER during the duration of the scheduled installation outlined in ATTACHMENT B. If SELLER is unable to finish the project within the installation timeline (Attachments B) due to BUYER delays such as conflicting events and projects, and/or fault in communication from BUYER, a change order of \$1,495.00 per man day lost plus related travel expenses and equipment costs may apply. All on-site technical support during installation, if any, shall be scheduled as agreed upon between the SELLER and BUYER. However, the BUYER agrees to accommodate SELLER's technical support scheduling requirements whenever possible and will work with the SELLER to ensure the EQUIPMENT is installed in the required time period as described in the attached schedule.

ACCEPTANCE shall be deemed to have occurred if BUYER uses the EQUIPMENT in the ordinary course of its business for a period of 1 day or has signed the SELLER Project Sign Off Form. If final payment is not received within 10 business days of ACCEPTANCE, a 1.5% interest fee per month will apply. Non-payment of balance owed will also result in equipment operational licenses being suspended, or equipment being confiscated from the project site until balance is paid in full. CLIENT will be responsible for all travel and labor expenses associated with the confiscation process.

EQUIPMENT AND SERVICES ONLY: This Agreement is for purchase of equipment and services as described herein only. SELLER assumes responsibility for any damage to the equipment caused by SELLER until final ACCEPTANCE. BUYER retains the sole responsibility for site selection and site preparation for EQUIPMENT installation, as well as compliance with all laws and ordinances and any other BUYER deliverables. These include procuring building permits and compliance with applicable building codes and adhering to zoning laws and any other applicable law or governmental regulation. SELLER shall have no liability for BUYER's failure to timely perform or provide any BUYER DELIVERABLE.

CHANGE ORDERS: Without voiding the contract, the parties may agree to change the scope, timing, or other aspect of the deliverables. Such changes shall be in accordance with the Terms and Conditions outlined in this contract. All Change Order work performed by Visua or a subcontractor of Visua will be performed at a cost plus 20% over head and profit.

WARRANTY; LIMITATION OF LIABILITY: SELLER warrants that the VISUALED EQUIPMENT shall be of good material and workmanship and free of material defects for a period outlined in the attached Warranty DOCUMENT. All third-party integrated equipment shall be warranted based on the Manufacturer's WARRANTY TERMS. Registration of third-party equipment is the RESPONSIBILITY of the BUYER.

MODIFICATIONS: No modification of the Agreement (including any additional or different terms in SELLER's acceptance or BUYER's purchase order, if any) shall be binding on the parties.

APPLICABLE LAW- VENUE: The laws of the State of Wisconsin - shall govern the Agreement, without giving effect to any choice or conflict of law provision or rule (whether of the State of Wisconsin or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Wisconsin. SELLER (i) irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of Wisconsin, (ii) irrevocably waives any objection, including, without limitation, any objection to the laying of venue based on the grounds of forum non conveniens, that it may now or hereafter have to the bringing of any lawsuit, proceeding or action in the state or federal courts sitting in the State of Wisconsin, and (iii) irrevocably consents to the service of process by any of the courts

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referred to above in any lawsuit, proceeding or action by the mailing of copies of the process to its principal place of business.

ATTORNEY'S FEES: In the event that either BUYER or SELLER is required to incur expenses due to a breach of this Agreement, the non-breaching party shall be entitled to compensation from the breaching party for any and all expenses, including reasonable attorney's fees incurred as a result of said breach. Such rights shall be in addition to any damages the non-breaching party may otherwise be entitled to.

ENTIRE CONTRACT: This Agreement shall constitute the entire Agreement between the BUYER and SELLER and no other Agreement or understanding exists. Neither BUYER nor SELLER shall have authority to amend or supplement this Agreement except in writing and signed by both the BUYER and SELLER. This applies to any change orders requested and approved by the BUYER throughout the duration of the project.

FORCE MAJEURE: No Party shall be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), pandemic, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, third-party transportation/logistics delays, strike, lockout or interruption or failure of electricity or telephone service, and no other Party will have a right to terminate this Agreement in such circumstances. Any Party asserting Force Majeure as an excuse for a delay shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other Party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

NOTICES: Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by registered or certified mail with postage and fees prepaid, addressed to the other party hereto, if to BUYER, at BUYER's address as reflected on the records of SELLER, and if to SELLER, at the address of its principal offices on the date upon which such notice is given.

SUCCESSORS AND ASSIGNS: The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

COUNTERPARTS; FACSIMILE: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SEVERABILITY: In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability

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shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

RELATIONSHIP OF THE PARTIES: In connection with this Agreement, each Party is an independent contractor and, as such, shall not have any authority to bind or commit the other Party. Nothing in this Agreement will be deemed or construed to create a joint venture, partnership or agency relationship between the Parties for any purpose. With respect to its own personnel, each Party is, accordingly, independently responsible for all obligations incumbent upon an employer. In connection with BUYER's use of SELLER as an independent contractor for the EQUIPMENT and the related services, the Parties are not joint employers for any purpose. BUYER acknowledges that ultimate decision-making authority with respect to the EQUIPMENT and the services and any other work that BUYER requests SELLER to undertake resides solely within SELLER's business judgment and own discretion.

I agree to the above terms and conditions.

Buyer Signature: 

Title: City Manager

Date: 3/13/23

Visua Signature: 

Title: General Manager

Date: 2/27/23

ATTACHMENTS

ATTACHMENT A: Deliverables

ATTACHMENT B: Schedule

ATTACHMENT C: Responsibility Matrix

ATTACHMENT D: Payment Method & Dates



QTY	DESCRIPTION
1	ICE Cable Systems RG-6 HDTV 500FT 18awg, BC Center, 95% TC Shield, Translucent Outer Jacket
1	Ice Cable Cat 6 Direct Burial 23awg, 4 Pr, Solid, UV Resistant & Gel-Filled, HDBaseT Certified

INTEGRATION SERVICES

QTY	DESCRIPTION
1	Visua INSTALLATION by VISUA AV Systems Integrators

VIDEO PRODUCTION UPDATES TOTAL **\$67,400.00**