# CITY OF JOPLIN
# COUNCIL AGENDA ITEM

**ITEM**
Council Bill 2024-601 – Approving a contract with Joplin Industrial Electric Company to complete Mercy Park electrical improvements.

**MEETING DATE**
January 16, 2024

**ORIGINATING DEPT**
Parks and Recreation

**ATTACHMENTS**
CB 2024-601 Ordinance; Exhibit "A" Joplin Industrial Electric Company Contract; Exhibit "B" City of Joplin RFP;

**REVIEWED BY**
Department Head: Leslie Haase; Parks Director: Paul Bloomberg; City Attorney: Peter Edwards; City Manager: Nick Edwards

**SUMMARY**
This Council Bill approves a contract with Joplin Industrial Electric Company to complete Mercy Park electrical improvements in the amount of $365,726. The electric improvements are budgeted and funded through two Parks Stormwater ¼ cent Sales Tax Renewal projects, Mercy Park Electrical ($211,066) and Parks Security Lighting ($154,660). The original bid was $398,115 but there is a savings of $32,389 since city staff will be doing the trenching, backfilling, and concrete repair.

**BACKGROUND**
The electrical improvements to Mercy Park were included as projects in the Parks Stormwater ¼ cent Sales Tax Renewal which was approved by voters in the August 2021 elections. As you are aware, Mercy Park has become very popular for events, but the power supply is insufficient, so by adding outlets to each light pole and additional event panels will make this park complete for any event that is being held. Also, making our parks safer was a high priority based on comments from our citizens during the Parks Master Plan process and the City Manager's Listening Tour. By adding additional lighting around the western loop of the park, and lower bowl area towards the parking lot and restroom facility, will make this park safer for our community to use.

**FUNDING SOURCE**
Parks Stormwater ¼ cent Sales Tax Renewal budget.

**RECOMMENDATION**
Staff recommends approval of this council bill on first reading.

# NOTICE OF REQUEST FOR PROPOSAL

## REQUEST FOR PROPOSAL NO. 2024-RFP-02

# Mercy Park Electrical Improvements

**RFP Due Date:** **10:00 A.M., Monday, December 18, 2023**

**Location:** City of Joplin
Parks Department
3301 West 1st Street
Joplin, MO 64801

**Staff:** Greg Bertoncino, Assistant Director
**Email:** gbertonc@joplinmo.org

**Phone:** 417-625-4750

***Proposals will be received by the Parks Department at the specified location until the time and date cited above. Only proposals received by the correct time and date will be recorded.***

***Proposals must be submitted in an envelope with the Request for Proposals number and the Vendor's name and address clearly indicated on the envelope. All proposals must be completed in ink or typewritten and submitted by the time and date above.***

Consultants are strongly encouraged to carefully read the entire Request for Proposals.

**11/17/2023**
Issue Date

# NOTICE TO BIDDERS

The City of Joplin, Missouri will accept sealed bids until ***10:00 a.m., Monday, December 18, 2023,*** at the *Joplin Athletic Complex* located at *3301 West 1st Street*, Joplin, Missouri 64801 to PURCHASE the following:

## Scope of Work

The City of Joplin, Missouri is issuing this Request for Proposals (RFP) to provide and install the following.

## Electrical improvement(s) and Additional light poles

Please provide and install all event panels, receptacles and additional lighting per specs specified below.

**(1) <u>Event Panels</u>**

- Two (2) 60" x 36" x 12" event panels installed on 3" GRC and solid galvanized Unistrut racks. Event Panels to include a means to plug in equipment when door is closed.
- Concrete footings for racks.
- 100A, 208A, 3 phase Load centers in each event panel.
- One (1) 100A pin & sleeve, two (2) 50A twist-lock receptacles, two (2) 30A twist-lock receptacles, and six (6) GFCI receptacles in each event panel.
- Conduit and conductors as per national electrical code to existing power panel in restroom building. Please calculate voltage drop for conductors.

**(2) <u>Existing Event Panel Upgrade</u>**

- West side of restroom building re-fed with a 100A breaker.

**(3) <u>Lighting and Receptacles</u>**

- Provide a 100-amp, 240-volt service panel powered by an existing meter pedestal for the Mohaska Trail pedestrian crossing. This panel would be located on the north side of the lake approximately eighty (80) feet south of the existing meter pedestal.
- Provide convenience receptacles on **twenty-two (22)** of the existing light poles surrounding the lake. There would be two (2) receptacles per circuit which would allow for roughly 8 amps of electrical load at each location. Device box & cover to be black.
- Provide a new 200-amp, 240-volt service on the north side of the west walking loop to provide power and control for the light poles and receptacles on the west walking loop.
- Provide **twenty-three (23)** new LED light poles to match existing with convenience receptacles on the west walking loop. There would be three (3) receptacles per circuit which would allow for roughly 5 amps of electrical load at each location.
- Provide **fifteen (15) new** LED light poles to match existing with convenience receptacles on the walking loop nearest the butterfly art feature. There would be

three (3) receptacles per circuit which would allow for roughly 5 amps of electrical load at each location.

- Provide one (1) LED flood lights on each of two (2) light poles that are immediately east and west of the butterfly art feature.

**Please list separate from above pricing for all areas within project:**

- Trenching, backfill, saw cutting, and concrete sidewalk repair is provided by others.

**Please Provide additional pricing to all above if provided by others:**

- **Black Dirt over ditch areas**
- **Seed or sod**
- **Liberty Utilities charges for a new meter pedestal**

**ADDENDA TO THE RFP AND REQUESTS FOR INFORMATION:**

The City may, at its sole discretion, issue Addenda to this Request for Proposals containing responses to questions and requests for information, clarifications or revisions of the RFP, or any other matters that the City deems appropriate. Addenda will be issued to those to whom the City sent the original RFP.

Any question, request for clarification, or request for additional information regarding this RFP should be submitted no later than 5 days prior to close December 11, 2023 via e-mail to gbertonc@joplinmo.org OR pbloombe@joplinmo.org, or in writing, to Paul Bloomberg (Attn: Mercy Park Electrical Improvements RFP), City of Joplin, 3301 West 1st Street, Joplin, MO 64801. No oral response by any employee or agent of the City shall be binding on the City or shall in any way be considered a commitment by the City. If a consultant finds any inconsistency or ambiguity in the RFP, the Consultant is requested to contact the Parks Department, at the above address.

**PROPOSAL EVAULATION PROCESS**

Proposals, which the City determines in its sole discretion, which are deemed responsive to this RFP, will be reviewed, and evaluated by the City. The City reserves the right to request Consultants to make one or more presentations to the City at the City's offices at the Consultant's sole cost and expense, addressing Consultants' ability to achieve the scope of work of this RFP. Proposals will be evaluated, in part, according to whether the Consultant meets the minimum qualifications and submits a proposal complying with all the requirements of this RFP.

**RESPONSIBILITY AND COSTS**

The Consultant shall be fully responsible for all costs associated with the development, preparation, transmittal, and submission of any Proposal or material submitted in response to
this RFP. The City assumes no contractual or other obligations as a result of the issuance of this RFP, the preparation or submission of a Proposal by a Consultant, the evaluation of Proposals, or the selection of any Consultant for further negotiations.

**CONTRACT TERMS AND CONDITIONS**

The City may condition award of the Contract on the Consultant's acceptance of the terms and conditions contained in the form of agreement attached hereto and made a part hereof as Exhibit A. Consultants may submit with its Proposal, written objections to the terms and conditions established in this RFP and/or agreement by identifying the specific section(s) and paragraph(s) objected to, stating the reason(s) for the objection and proposing alternative terms. Should Consultant object to any of the terms and conditions established in this RFP, including the form of agreement, the City reserves the right, in its sole discretion, to permit Consultant to rescind any or all such exceptions at any time prior to award of a contract. The City, in its sole discretion, may evaluate proposals according to whether the Consultant objects to terms

and conditions and if Consultant does object, the number and type of objections. In no event shall the City's selection of a Consultant for further negotiations constitute acceptance of any objection or proposed alternative to the terms and conditions established in this RFP. The City reserves the right, however, to add, delete, revise, or negotiate terms and conditions different than those included in the RFP, if, in the sole judgment of the City, it is in the best interest of the City to do so.

**EXHIBITS**

The following exhibits are referenced in this RFP, incorporated into, and made a part of this RFP:

A. Bid form
B. City of Joplin Standard Professional Services Agreement

**FORMAT AND CONTENT OF PROPOSAL**

***Proposal Terms and Conditions***

The following terms and conditions apply to submitting proposals in response to this Request for Proposal:

***Request for Additional Information***

The proposer shall furnish such additional information as the City of Joplin may reasonably require. The City reserves the right to make investigations of the qualifications of the proposer as it deems appropriate.

***Acceptance/Rejection/Modification to Proposals***

The City reserves the right to negotiate modifications to proposals that it deems acceptable, reject any and all proposals, and to waive minor irregularities in the procedures.

***Proposals Binding***

All proposals submitted shall be binding for one hundred twenty (120) calendar days following the opening.

***Proposer's Certification***

By submitting a proposal, the proposer certifies that the proposal has been fully read and understood. The proposer has full knowledge of the scope and nature and quality of work to be performed. The proposer further certifies that no employee of the City has any direct or indirect financial interest in any resultant contract, and that no gratuities will be offered or provided to the City of Joplin employees or their family members.

***Non-exclusive Contract***

The agreement resulting from this RFP shall be a non-exclusive contract, and the City reserves the right to purchase same or like services from other sources the City deems necessary and appropriate.

***Late proposals***

Proposals received by the City after the time specified for receipt will not be considered. Proposers shall assume full responsibility for timely delivery of the proposals to the location designated for receipt of proposals. The City of Joplin is not responsible for the U.S. Mail or private couriers regarding mail being delivered by the specified time so that a proposal can be considered. All proposals will be received at the time and place specified and made available for public inspection when an award decision is made.

***Completeness***

All information required by the Request for Proposal must be supplied to constitute a legitimate proposal. The City of Joplin reserves the right to use any and all information presented in any response to the Request for Proposal. Acceptance or rejection of the RFP does not affect this right.

**Execution of Agreement**

It is anticipated the city will make their selection of a firm by 5 days after close Dec 22, 2023. The successful proposer shall enter into a contract with the City for the performance of work awarded to firm and shall simultaneously provide any required bonds, indemnities, and insurance certificates prior to the commencement of work. A copy of the sample agreement is attached. Failure to comply within the established deadline for submittal of required documents may be grounds for cancellation of the award.

**SUBMISSION OF PROPOSALS**

In order for the City to adequately compare proposals and evaluate them uniformly and objectively, all proposals shall be submitted in accordance with this format. The proposal should be prepared simply and economically, providing straight-forward and concise information as requested.

***Amendments***

If it becomes necessary to revise or amend any part of this Request for Proposal, the City will furnish the revision by written Amendment to all prospective proposers who received an original Request for Proposal.

***Proposal Evaluation Process***

The steps and activities in the proposal process will include the following:

1. The City will review and evaluate all proposals submitted in response to this Request for Proposals (RFP). The City shall conduct an evaluation of all proposals based on the information provided and other evaluation criteria as set forth in this Request for Proposals or as reasonably determined by the City.

2. The City reserves the right to reject any and all proposals and to waive minor irregularities. The City further reserves the right to seek new proposals when such a procedure is reasonable and in the best interests of the City to do so.

## Mercy Park Electrical Improvements

Specifications and bid forms are available from **Greg Bertoncino or Paul Bloomberg, by calling 417-625-4750** or by writing to the address indicated above. Any bids received after the specified deadline will be returned to the vendor.

The City reserves the right to evaluate all bids, to reject any or all bids and re-bid at a later date. The City may waive any irregularities in the bid or negotiate variances from specifications, and make awards that are in the best interests of the City. The City will have final decision in all matters regarding acceptance of bids and issuance of awards.

The City encourages minority and female owned businesses to submit bids on all City purchases.

Finance Director

Leslie Haase

*Publication Date: Friday, Nov 17, 2023*

# INSTRUCTIONS TO BIDDERS

The City of Joplin, Missouri proposes to PURCHASE the following:

## Electrical upgrades and additional light poles.

All bids shall have firm-fixed F.O.B. Joplin, Missouri price and shall be honored for a minimum of one hundred twenty (120) days following the bid opening.

All bids shall be exclusive of Federal, State, and City taxes.

It is the intent of the specifications included with this bid document to generally describe the item(s) desired in sufficient detail as to secure bids on comparable items. All parts not specifically mentioned which are necessary in order for the item(s) to perform as intended shall be included. The strength, quality of workmanship, and material shall be in accordance with the best trade practices.

Specification variances, manufacturer's literature and additional information should be attached to the bid form. All blanks on the attached bid specifications shall be filled in completely and accurately. Any bid not meeting this requirement may be considered non-responsive.

Any protest or grievance must be issued in writing and delivered to the office of the Director of Finance within five (5) working days following the bid opening. Any protest filed after this time period has elapsed will not be considered.

The City encourages selection of products manufactured, assembled and/or produced in the United States, as long as the quality and price are comparable with other items bid.

Businesses which are located within the city limits of Joplin may be given preference in the awarding of a bid, providing the bid from the local business does not exceed the lowest bid by more than 3% or $2,500, whichever is less.

The City may give preference to vendors handling products that contain post-consumer recovered materials, providing the bid does not to exceed the lowest bid by more than 5% or $2,500, whichever is less.

Once the bids are reviewed and evaluated, the successful vendor will be notified, in writing, and will receive an authorized City of Joplin purchase order. Verbal acknowledgments will not be considered as official notification and will not obligate the City in any way. Delivery or performance should not be completed without the receipt of an authorized purchase order.

Minimum information to be submitted with each bid shall consist of the following:

1. Verification of Bid Specifications (with variances noted)
2. Bid Form

***MARK BID ENVELOPES: "Mercy Park Electrical - BID #2024-RFP-02, 10:00 A.M., Monday, December 18, 2023"***

Questions concerning the specifications and bidding procedures should be directed to Greg Bertoncino, Asst. Director (417)-625-4750 or Paul Bloomberg, Director 417-625-4750. CITY OF JOPLIN, MISSOURI

## SPECIFICATIONS

***SPECIFICATION DETAIL VARIANCE***

1) Site familiarizations visit and meeting with Parks and Recreation Director.

2. View Park site, provide input on location considerations taking into account current park activity and potential future developments, relation to utilities, access and parking, pedestrian flow, support facilities, etc., and provide project timeline

3. Installation Plan: Design layout, construction budget, timeline and present to Park and Recreation Director.

4. Contractor shall be responsible for the cost of all permits, sales taxes, and insurance.

5. Contractor must be licensed, bonded, and insured with the City of Joplin.

6. Wage rates for this project shall be in accordance with wage rate determination made by the Industrial Commission of Missouri on file in the Public Works Department.

7. Contractor must have 10 years verifiable experience and must submit references.

8. Documents and Specifications: Develop construction documents, shop drawings and specifications for accepted plan, including any above ground structures needed to accommodate park infrastructure.

9. Construction: Provide oversight and technical expertise during installation of base, installation of poles and wiring and that installation is of a workman like manner.

10. Final Review: Inspect final project with Parks Director, develop and complete final checklist, and turnover construction, as built and operations documents. Provide staff training to ensure proper long-term operations.

# CITY OF JOPLIN, MISSOURI
# BID PROPOSAL RESPONSE FORM

## Mercy Park Electrical Improvements

| Item | Description | Cost |
|---|---|---|
| **Event Panels** | Two (2) 60" x 36" x 12, Concrete footings, 100A load centers, (1) 100A pin & sleeve, (2) 50A twist lock receptacles, (2) 30A twist lock receptacles, (6) GFCI receptacles in each event panel | |
| ********** | Trenching/backfill, Drawings and seeding/sod | |
| **Lighting and Receptacles** | ***** | **Cost** |
| Item 1 | Provide a 100 amp, 240 volt service panel powered by an existing meter pedestal for the Mohaska Trail pedestrian crossing. This panel would be located on the north side of the lake approximately eighty (80) feet south of the existing meter pedestal. | |
| ********** | Trenching, backfill, saw cutting and concrete sidewalk repair if provided by others. | |
| Item 2 | Provide convenience receptacles on **twenty-two (22)** of the existing light poles surrounding the lake. There would be two (2) receptacles per circuit which would allow for roughly 8 amps of electrical load at each location. | |
| ********** | Trenching, backfill, saw cutting and concrete sidewalk repair if provided by others | |

| | | |
|---|---|---|
| Item 3 | Provide a new 200-amp, 240-volt service on the north side of the west walking loop to provide power and control for the light poles and receptacles on the west walking loop. | |
| ********** | Trenching, backfill, saw cutting and concrete sidewalk repair if provided by others. | |

| **Lighting and Receptacles** | **Description** | **Cost** |
|---|---|---|
| Item 4 | Provide **twenty-three (23)** new LED light poles to match existing with convenience receptacles on the west walking loop. There would be three (3) receptacles per circuit which would allow for roughly 5 amps of electrical load at each location. | |
| ********** | Trenching, backfill, saw cutting and concrete sidewalk repair if provided by others. | |
| Item 5 | Provide **fifteen (15) new** LED light poles to match existing with convenience receptacles on the walking loop nearest the butterfly art feature. There would be three (3) receptacles per circuit which would allow for roughly 5 amps of electrical load at each location. | |
| ********** | Trenching, backfill, saw cutting and concrete sidewalk repair if provided by others. | |
| Item 6 | Provide one (1) LED flood lights on each of two (2) light poles that are immediately east and west of the butterfly art feature. | |
| ********** | ********** | ********** |
| **Additional Expenses** | **Black Dirt over ditch areas**<br>**Seed or sod**<br>**Liberty Utilities charges for a new meter pedestal** | |
| | **Total Project Cost** | |

***MARK BID ENVELOPES: "Mercy Park Electrical - BID #2024-RFP-02, 10:00 A.M., Monday, December 18, 2023"***

Park Addresses:
ATHLETIC COMPLEX
3301 W 1ST ST.
JOPLIN MO. 64801

Unauthorized Aliens Workers Act

The successful bidder will have to sign an agreement that they are enrolled and participating a Federal Work Authorization Program ("FWAP") that ensures that all of its employees or agents or subcontractors have the legal right to work in the United States, as defined in 8 U.S.C. 1324a(h)(3) and RSMo § 285.525-285.555, and that it will maintain this compliance for the entire duration of its contract with the City of Joplin, and will provide an Affidavit of Compliance to the City stating the same.

**AFFIDAVIT OF COMPLIANCE**
**(Missouri Unauthoriz ed Alien Workers Act)**

My name is _____ (name) _____ and I am the _____ (Title) _____ of _____ (Company Name) _____. I hereby represent, affirm and certify to the City of Joplin that my company does not knowingly employ any person who is an unauthorized alien in connection with contracted services with the City. I further affirm that my company is actively enrolled and participating in a federal work authorization program with respect to all employees working in connection with the contract services provided to the City.

_____

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Affiant

**CITY OF JOPLIN, MISSOURI**
**FORMAL BID TABULATION FORM**
ITEMS VALUED OVER $3,000

BID #: 2024-RFP-02 BID ITEM DESCRIPTION: Mercy Park Electrical

BID OPENING DEADLINE: _____ DEPARTMENT: Parks

REQUISITION NUMBER: _____ DATE & TIME OPENED: Dec. 18, 2023 10:00 Am

OPENED BY: _____ WITNESSED BY: M Endicott

| VENDOR NAME | DATE RECEIVED | CONTACT NAME | PHONE NUMBER | BID AMOUNT |
|---|---|---|---|---|
| Joplin Industrial Electric | | | | $398,115.00 |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
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**ATTACH ALL FORMAL BID DOCUMENTS FROM VENDORS**

**CONTRACT NO._____**

**ADDRESS & PHONE OF CITY**
Parks Department
3301 West 1st Street
Joplin, MO
417-625-4750

**NAME, ADDRESS & PHONE OF CONSULTANT**
Joplin Industrial Electric Co, Inc.
2202 S. Prigmore Ave.
Joplin, MO 64804
417-623-3425

# AGREEMENT

**THIS AGREEMENT,** made and entered into this ____ day of ___, 2024, by and between the City of Joplin, a municipal corporation of the State of Missouri, hereinafter referred to as the "City" with offices at 602 South Main, Joplin, Missouri and Consultant hereinafter referred to as the "Consultant."

**WITNESSETH:**

**WHEREAS,** the City of Joplin desires to engage the Consultant to render certain services hereinafter described in Request for Proposal #**2024-RFP-02** which Request for Proposal is attached hereto and incorporated herein as Exhibit A; and

**WHEREAS,** the Consultant submitted a proposal dated December 18, 2023, which proposal is attached hereto and incorporated herein as Exhibit B; and

**NOW, THEREFORE,** the parties to the contract agree to the following:

1. The City agrees to engage the Consultant and the Consultant agrees to perform, in strict accordance with Exhibit A, and within the time specified therein.

2. The services of the Consultant shall commence only as authorized in writing by City purchase order or other written notice and shall be undertaken and completed as promised by the Consultant in Exhibit B.

3. **Payment**. The City will pay the Consultant in accordance with the rate set forth in the contract documents on file in the Parks Department and by this reference made a part hereof, which shall constitute full and complete compensation for the Consultant 's work provided hereunder. Such compensation will be paid in progress payments (less five (5) percent retainage), as established by the City, subject to receipt of a requisition for payment and a statement of work provided by the Consultant and agreement by both the City and the Consultant that the Consultant has fully performed the work to be paid for in such progress payments in conformance with the contract. If the City or the architect or engineer determines that a higher rate of retainage is required to ensure performance of the contract, the City may withhold up to ten (10) percent retainage until the work is fully completed and accepted by the City. The Consultant agrees to perform all of the work described in the contract documents and to comply with the terms and conditions defined therein for a total sum not to exceed Three Hundred Sixty Five Thousand Seven Hundred Twenty Six Dollars ($365,726.00), said amount being subject to any approved addenda or change order.

4. All information, data, and reports as are existing, available, and necessary for the conducting of the work, shall be furnished to the Consultant without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of services.

5. The Consultant shall fully coordinate its activities in the performance of the contract with the activities of the City.

6. The Consultant represents that Consultant will secure at Consultant's own expense; all personnel

required to perform the services called for under this contract by Consultant. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Consultant. All the services required hereunder will be performed by the Consultant or under Consultant's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.

7. **Termination:** If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner Consultant's obligations under this contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this contract, the City shall thereupon have the right to terminate this contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective day of such termination. The City may, without cause, terminate this contract upon 30 day's prior written notice. **In either such event, all finished or unfinished documents, data, studies, reports, or other materials prepared by the Consultant shall, at the option of the City become its property.** The Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed. Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the contract by the Consultant.

8. **Assignment:** The Consultant shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto. Provided, however, that claims for money due or to become due to the Consultant from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement, though City will attempt to so notify any such assignee.

9. Any reports, data, or similar information given to or prepared or assembled by the Consultant under this contract which the City requests to be kept as confidential shall not be made available to any individual or organization by the Consultant without prior written approval of the City.

10. **Modification of Contract:** The Scope of Work to be done under the Contract shall be subject to modification and supplementation upon the written Agreement of the duly authorized representatives of the Contracting parties. No provision in the Contract shall be changed or modified without the execution of a formal amendment to the Contract, mutually agreed to by the City and the Consultant and processed through the Division of Purchases. Upon request by the City, the Consultant shall provide an estimate of cost of any additional work or services to be incorporated by a modification to the Scope of Work and the Contract.

11. **Contract Documents:** The agreement between the City of Joplin and the Consultant shall consist of (1) The Contract form which embodies the requirements contained herein, (2) the Request for Proposal, and any amendments thereto and, (3) the proposal, as accepted, submitted in response to the Request for Proposal. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the Contract shall govern over all other documents, and the Request for Proposal and amendments thereto shall govern over the Consultant's Proposal and amendments thereto. However, the City reserves the right to clarify any Contractual relationship in writing with the concurrence of the Consultant, and such written clarification shall govern in case of conflict with the applicable requirements stated in the Request for Proposal or the Consultant's proposal. In all other matters not affected by the written clarification, if any, the Request for Proposal shall govern. The Consultant is cautioned that the proposal shall be subject to acceptance without further clarification.

12. **General Independent Consultant Clause:** This agreement does not create an employee/employer

relationship between the parties. It is the parties intention that the Consultant will be an Independent Consultant and not the City's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue code, Missouri revenue and taxation laws, Missouri Workers' Compensation and unemployment insurance laws. The Consultant will retain sole and absolute discretion in the judgment of the manner and means of conducting the Consultant's activities and responsibilities hereunder. The Consultant agrees that it is a separate and independent enterprise from the public employer, that is has a full opportunity to find other business, which is has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Consultant and the City, and the City will not be liable for any obligation incurred by the Consultant, including but not limited to unpaid minimum wages and/or overtime premiums.

13. The Consultant shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Workers Compensation Program of the City.

14. **Certification of Non-Resident/Foreign Consultants:** If the Consultant is a foreign corporation or non-resident Consultant, it is agreed that the Consultant shall procure and maintain during the life of this contract:

    A. A certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 RSMo.

    B. A certificate from the Missouri Director of Revenue evidencing compliance with transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

15. **Nondiscrimination:** The Consultant agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Consultant or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

16. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this contract. The Consultant further covenants that in the performance of this contract no person having such interest shall be employed.

17. **Consultant's Responsibility for Subcontractor**: It is further agreed that Consultant shall be as fully responsible to the City for the acts and omissions of its subcontractor, and of persons either directly or indirectly employed by them, as Consultant is for the acts and omissions of persons it directly employs. Consultant shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractor to Consultant by all the terms herein set forth, insofar as applicable to the work of subcontractor and to give Consultant the same power regarding termination of any subcontract as the City may exercise over Consultant under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between any subcontractor and the City or between any subcontractors.

18. **Insurance Requirements**. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City of Joplin, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City of Joplin against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City of Joplin. Regardless of such approval, it shall be the responsibility of the contractor to always maintain adequate insurance coverage during the term of

the Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under the Contract Documents.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the City within ten (10) days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. All insurance policies shall require that the insurance company in question provide thirty (30) days written notice prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to:

City of Joplin – Parks Department, 602 S. Main Street, Joplin, MO 64801

Such policies shall name the City as an additional insured, with limits of liability not less than the sovereign immunity limits for Missouri public entities calculated by the Missouri Department of Insurance as of January 1 each calendar year and published annually in the Missouri Register pursuant to Section 537.610, RSMo. (See, http://insurance.mo.gov/industry/sovimmunity.php)

As of January 1, 2023, the minimum coverage for the insurance referred to herein shall be as set out below:

a. Workers' Compensation…. Statutory coverage per RSMo 287.010 et seq

Employer's Liability……. $1,000,000.00

b. Commercial General Liability Insurance, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and endorsed for blasting if blasting required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Three Million Two Hundred Fifty Eight Thousand Three Hundred Sixty Eight and no/100 Dollars ($3,258,368.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Eighty Eight Thousand Seven Hundred Fifty Five and no/100 Dollars ($488,755.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least $1,000,000 for all claims to property arising out of a single occurrence and at least $100,000 to any one owner with respect to damages to property. Consultant agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorneys' fees of Consultant, its employees, officers or agents. Consultant agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

c. Automobile Liability Insurance covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at least Three Million Two Hundred Fifty Eight Thousand Three Hundred Sixty Eight and no/100 Dollars ($3,258,368.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Eighty Eight Thousand Seven Hundred Fifty Five and no/100 Dollars ($488,755.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

d. Owner's and Consultant's Protective Liability Insurance to protect the City, its agents, servants and employees from claims which may arise from the performance of this Contract, with limits of at least Three Million Two Hundred Fifty Eight Thousand Three Hundred Sixty Eight and no/100 Dollars ($3,258,368.00) for all claims arising out of a single accident or occurrence and at Four Hundred Eighty Eight Thousand Seven Hundred Fifty Five and no/100 Dollars ($488,755.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

The Owner's and Consultant's Protective Liability Insurance must:

(1) Be a separate policy with the named insured being: The City of Joplin, and

(2) Contain an endorsement that disclaims coverage for any claim barred by the doctrines of sovereign immunity or official immunity, except attorney's fees and other litigation costs incurred in defending a claim. Nothing contained in this policy (or this endorsement thereto) shall constitute any waiver of whatever kind of these defenses or sovereign immunity or official immunity for any monetary amount whatsoever.

e. Builders Risk Insurance for contracts involving unoccupied structures. The Consultant shall secure All Risk Builder's Risk Insurance. Unless specifically authorized by the City, the amount of such insurance shall not be less than the total contract price.

f. Subcontracts. In case any or all of this work is sublet, the Consultant shall require the subcontractor to procure and maintain all insurance required in subparagraphs (a), (b) and (c) hereof and in like amounts. Consultant shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City of Joplin through insurance against applicable hazards or risks and shall, upon request of the City, provide evidence of such insurance.

g. Notice. The Consultant and/or subcontractor shall furnish the City prior to beginning the work, the policy as specified in subparagraph (d), and satisfactory proof of carriage of all the insurance required by this contract, with the provision that policies shall not be canceled, modified or non-renewed without thirty (30) days written notice to the City of Joplin.

h. Legislative or Judicial Changes. In the event the scope or extent of the City's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo is broadened or increased during the term of this agreement by legislative or judicial action, the City may require Consultant, upon 10 days written notice, to execute a contract addendum whereby the Consultant agrees to provide, at a price not exceeding Consultant's actual increased premium cost, additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

19. **Liability and Indemnity:**

A. In no event shall the City be liable to the Consultant for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this contract.

B. The Consultant shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract there under (the Consultant hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Consultant.

C. The Consultant shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

D. The indemnification obligations of Consultant hereunder shall not be limited by any limitations

as to the amount or type of damages, compensation or benefits payable by or for the Consultant, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

E. The indemnification obligations herein shall not negate, abridge, or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents, and employees, which are otherwise available under statute, or in law or equity.

F. Consultant affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Consultant's obligation under this agreement to defend, indemnify and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance.

20. **Conflict of Interest:** No salaried officer or employee of the City and no member of the City Council shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Any federal regulations and applicable provisions in RSMo. Chapter 105 shall not be violated.

21. **Entire Agreement:** This agreement, including the contract documents contained or referenced herein, constitutes the entire agreement between the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto and signed by both parties.

22. **Waiver:** No provision of the contract documents shall be construed, expressly or by implication, as a waiver by the City of any existing or future right or remedy available by law in the event of any claim of default or breach of contract.

23. **Jurisdiction:** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Jasper County, Missouri.

24. **Notices:** All notices required or permitted hereunder and required to be in writing may be given by first class mail addressed to Division of Purchases, 602 South Main, Joplin, Missouri, 64801, and the Consultant at the address indicated. The date of delivery of any notice shall be the date falling on the second full day after the day of its mailing.

**IN WITNESS WHEREOF** the parties have hereunto set their hands and seal the date first above written.

**CITY OF JOPLIN, MISSOURI**

By: _____
City Manager

**CONSULTANT**

_____
Company Name

By: _____
Signature

Name: _____
Print or type

Title: _____

**APPROVED AS TO FORM:**

_____
Peter C. Edwards, City Attorney

**COUNCIL BILL NO. 2024-601** **ORDINANCE NO.**

AN ORDINANCE approving a Contract by and between the City of Joplin and Joplin Industrial Electric Company, in the amount of Three Hundred and Sixty-Five Thousand Seven Hundred and Twenty-Six Dollars ($365,726) for Mercy Park Electrical Improvement services authorizing the City Manager to execute said Contract by and on behalf of the City of Joplin.

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:**

Section 1. That the Contract by and between the City of Joplin and Joplin Industrial Electric Company to complete the Mercy Park Electrical Improvements a true and accurate copy of said agreement being attached hereto and incorporated herein by reference as Exhibit "A", be, and the same is, hereby approved.

Section 2. That the City Manager is hereby authorized and directed, upon recommendation and approval of the City Attorney, to execute said Contract, in substantially similar form, by and on behalf of the City of Joplin, Missouri.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day

of _____, 2024, by a _____vote.

_____
Douglas W. Lawson, Mayor

ATTEST:

_____
Holly Nagy, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney