EXHIBIT A

Council Bill 2024-256
2-20-24

CONTRACT NO._____

ADDRESS & PHONE OF CITY
Finance Department
602 South Main Street
Joplin, MO 64801
417-624-0820

NAME, ADDRESS & PHONE OF CONSULTANT
Alvarez and Marsal Infrastructure and Capital Projects LLC
655 15th Street, NW Suite 600,
Washington, D.C. 20005

AGREEMENT

THIS AGREEMENT, made and entered into this 24 day of March, 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 2023-RFP-12 which Request for Proposal is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the Consultant submitted a proposal dated October 20, 2023 which proposal is attached hereto and incorporated herein as Exhibit B; and

WHEREAS, the Consultant has become the lowest and best value Offeror for performing the services listed in this RFP attached hereto and incorporated herein as Exhibit A;

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

1. **Term:** All work tasks under this Agreement shall be completed no later than July 31, 2026, unless specifically agreed to in writing by the City and Consultant..

2. **Services:** The services of the Consultant shall commence only as authorized in writing by City purchase order or other written notice. The services provided by the Consultant (the Services") hereunder may include advice and recommendations, but A&M will not make any decisions on behalf of Client in connection the implementation of such advice and recommendations. The Client represents and warrants that it has the power and authority to execute this agreement on behalf of, and to bind, itself and its related entities.

   A. Introduction of Services: The Consultant has provided a proposal dated October 20, 2023 (Exhibit B), which outlines a range of services that the Consultant is capable of providing to the City. This proposal is intended to serve as a list of potential consulting activities from which the City may select based on its evolving needs and priorities. The City acknowledges that the actual scope of services to be provided by the Consultant will be determined on an as-needed basis, according to the City's direction and within the constraints of the City's budget and timeline. The scope outlined in the proposal shall not be construed as a binding obligation on the Consultant to perform all services listed but rather as a flexible framework from which specific tasks may be selected.
   B. Modification of Scope: The parties may agree to add to the Consultant Services or delete therefrom activities of a similar nature to those set forth in Exhibit A. All such directives and

changes shall be in written form (a "Change Order") and prepared and approved by the City and, once accepted by the Consultant, countersigned by the Consultant. The Consultant shall not be obligated to undertake such changed activities unless and until the mutual execution of a Change Order.

3. **Payment:** The City agrees to pay the Consultant in accordance with the prices and terms set forth in Exhibit B for work authorized by City purchase order or other written Notice by the City upon presentation of proper invoice and inspection by the City of work completed by the Consultant.

4. **Exchange of Data:** All information, data, and reports as are existing, available, and necessary for the carrying out 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. **Personnel/Sub-contractor:** 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 or sub-contractors 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. Services performed hereunder by A&M's subcontractors shall be invoiced as professional fees on the same basis as Services performed by A&M's personnel, unless otherwise agreed.

7. **Termination:** Either party may terminate this Agreement without cause by giving thirty (30) days' prior written notice to the other party. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by A&M under this contract shall at the option of the Client become its property; provided that any work-in-progress shall be provided on an as-is basis, without warranty or indemnity of any kind.

8. **Assignment:** Neither party shall 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 other party 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, in each case 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. **Confidentiality of Documents:** a) All Services and Deliverables shall be solely for Client's benefit and are not intended to be relied upon by any person or entity other than Client. Client shall not disclose the Services or Deliverables, or refer to the Services or Deliverables in any communication, to any person or entity except (i) as specifically set forth in the Agreement, or (ii) to Client's contractors solely for the purpose of their providing services to Client relating to the subject matter of the engagement, provided that such contractors comply with the restrictions on disclosure set forth in this sentence, or (iii) as otherwise required by law. The parties recognize and agree that the Client, City of Joplin, is a municipal corporation organized under the laws of the State of Missouri and subject to RSMo Chapter 610 ("sunshine law"). Client, however, may create its own materials based on the content of such Services and Deliverables and use and disclose such Client-created materials for external purposes, provided that, Client does not in any way, expressly or by implication, attribute such materials to A&M or its subcontractors.

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. 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.

12. **General Independent Consultant Clause:** This agreement does not create an employee/employer relationship between the parties. It is the party's 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 carrying out 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, that 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. **City Benefits:** 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 basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other characteristic protected by law, 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. **Conflict of Interest:** 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. **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 section 18 hereof and in like

amounts. Consultant shall require all subcontractors with whom it enters into a contract to perform work on this project to protect the City through insurance against applicable hazards or risks and shall, upon request of the City, provide evidence of such insurance.

18. **Insurance:** Without limiting any of the other obligations or liabilities of the Consultant, the Consultant 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, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City against hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. It shall be the responsibility of the Consultant to always maintain the required insurance coverage during the term of the Contract. Failure of the Consultant to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability under the Contract Documents.

    The certificates of insurance shall be filed with the City within 24 hours of the time that this contract is signed by the Consultant. The required endorsements shall be provided within forty-five days after the applicable policies renew. Consultant shall provide thirty (30) days written notice prior to cancellation or non-renewal of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to: City of Joplin – Planning, Development and Neighborhood Services, 602 S. Main, Joplin, MO 64801

    All policies except for the professional liability policy shall include 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, 2022, 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 Contractual Liability. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Two Million Eight Hundred Four Thousand Forty- Six and no/100 Dollars ($2,804,046.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Twenty Thousand Six Hundred Six and no/100 Dollars ($420,606.00) 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 to cause its insurer to include City as an additional insured on such insurance policy, 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 Two Million Eight Hundred Four Thousand Forty- Six and no/100 Dollars ($2,804,046.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Twenty Thousand Six Hundred Six and no/100 Dollars ($420,606.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

19. **Liability and Indemnity :**
    a. Each party, its subsidiaries and subcontractors, and their respective personnel shall not be liable for any claims, liabilities, or expenses relating to this contract or the Services ("Claims") for an aggregate amount exceeding one times the contract fees, except to the extent resulting from the recklessness, bad faith, or intentional misconduct of A&M or its subcontractors, in which case the aforementioned limit of liability shall not apply. Except for claims subject to indemnification hereunder in no event shall either party, its subsidiaries or subcontractors, or their respective personnel be liable to the other for any loss of use, data, goodwill, revenues, or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense relating to this engagement. In circumstances where any limitation on damages or indemnification provision

hereunder is unavailable, the aggregate liability of each party, its subsidiaries, subcontractors, and their respective personnel for any Claim shall not exceed an amount that is proportional to the relative fault that the conduct of each party bears to all other conduct giving rise to such Claim.

b. A&M shall indemnify, defend and hold harmless Client and its personnel from all Claims attributable to claims of third parties solely for bodily injury, death or damage to real or tangible personal property, to the extent directly and proximately caused by the negligence or intentional misconduct of A&M while engaged in the performance of the Services. A&M shall indemnify, defend, and hold harmless Client and its personnel from all Claims attributable to the claims of third parties for infringement by a Deliverable of any U.S. patent existing at the time of delivery and known to A&M or copyright or any unauthorized use of any trade secret, except to the extent that such infringement or unauthorized use arises from, or could have been avoided except for (i) modification of such Deliverable other than by A&M or its subcontractors or use thereof in a manner not contemplated by this Agreement, (ii) the failure of the indemnified party to use any corrections or modifications made available by A&M, (iii) information, materials, instructions, specifications, requirements or designs provided by or on behalf of the indemnified party, or (iv) the use of such Deliverable in combination with any platform, product, network or data not provided by A&M. If Client's use of any such Deliverable, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, A&M, at its option and expense, shall have the right to (x) procure for Client the continued use of such Deliverable, (y) replace such Deliverable with a non-infringing Deliverable, or (z) modify such Deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by A&M, the replacement or modified Deliverable is capable of performing substantially the same function. In the event A&M cannot reasonably procure, replace or modify such Deliverable in accordance with the immediately preceding sentence, A&M may require Client to cease use of such Deliverable and refund the professional fees paid to A&M with respect to the Services giving rise to such Deliverable. The foregoing provisions of this Section constitute the sole and exclusive remedy of the indemnified parties, and the sole and exclusive obligation of A&M, relating to a claim that any of A&M's Deliverables infringes any patent, copyright or other intellectual property right of a third party.

c. Client shall indemnify and hold harmless A&M, its subsidiaries and subcontractors, and their respective personnel from all Claims attributable to the claims of third parties solely for bodily injury, death, or physical damage to real or tangible personal property to the extent directly and proximately caused by the negligence or intentional misconduct of Client while A&M is engaged in the performance of the Services.

d. As a condition to the foregoing indemnity obligations, the indemnified party shall provide the indemnifying party with prompt notice of any Claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with the indemnifying party in connection with any such Claim. The indemnifying party shall be entitled to control the handling of any such Claim and to defend or settle any such Claim, in its sole discretion, with counsel of its own choosing.

20. **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.

21. **Jurisdiction.** This contract, including attachments and all matters relating to the Services shall be governed by, and construed in accordance with, the laws of the State of Missouri. Venue for any dispute shall lie exclusively in the Circuit Court of Jasper County, Missouri or the U.S. District Court, Western District of Missouri.

22. **Miscellaneous:**
    a. Substantial and meaningful involvement of management of the City is critical to the success of this engagement. The City will be responsible for ensuring that the identified City personnel

actively participate in both the planning and execution of the Services. A&M agrees to be responsible for providing management oversight of its performance under this contract.

b. The City is, and will continue to be, solely responsible for establishing and maintaining effective internal control over financial reporting, including, without limitation, systems designed to assure achievement of its control objectives and its compliance with applicable laws and regulations.

c. Consultant will not be responsible for the accuracy or completeness of any data made available to Consultant through any third-party tool, database, or software application. The City further acknowledges and agrees that Consultant will have no responsibility for evaluating the functionality of such third-party tool, database, or software application, nor for any results obtained by Consultant through the use of such third-party tool, database, or software application.

d. This is a services engagement. Except as specifically provided herein, A&M DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

23. **Client Responsibilities:** Each party shall cooperate with the other in the performance of the Services. Client will provide A&M with reasonable facilities and timely access to data, information, and personnel of Client. With respect to the data and information provided by Client to A&M or its subcontractors for the performance of the Services, Client shall have all rights required to provide such data and information, and shall do so only in accordance with applicable law and with any procedures agreed upon in writing. Client shall be solely responsible for, among other things (a) the performance of its personnel and agents; (b) the accuracy and completeness of all data and information provided to A&M for purposes of the performance of the Services; (c) making all management decisions, performing all management functions, and assuming all management responsibilities; (d) designating a competent management member to oversee the Services; (e) evaluating the adequacy and results of the Services; (f) accepting responsibility for the results of the Services; (g) establishing and maintaining internal controls, including monitoring ongoing activities; (h) timely decision making and funding of the contract.

24. **Force Majeure:** Neither party shall be liable for any delays or nonperformance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including fire, epidemic or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order, or requirement of any governmental agency or authority.

25. **Limitation on Actions:** Any action or cause of action brought under this contract must be brought within the timeframe permitted by the applicable statute of limitations, but in no event more than seven (7) years from the date the cause of action accrued.

26. **Independent Agent:** Each party hereto is independent of each other and neither party is, nor shall be considered to be, nor shall purport to act as, the other's agent, partner, fiduciary, joint venturer, or representative.

27. **Survival and Interpretation:** All provisions that are intended by their nature to survive performance of the Services shall survive such performance, or the expiration or termination of such performance. No affiliated or related entity of A&M, or such entity's personnel, shall have any liability hereunder to Client and Client will not bring any action against any such affiliated or related entity or such entity's personnel in connection with this contract. Each of the provisions of these terms shall fully apply of the law, whether in contract, statute, tort (such as negligence), or otherwise, notwithstanding the failure of the essential purpose of any remedy. Any references herein to the term "including" shall be deemed to be followed by "without limitation."

28. **Waiver of Jury Trial:** THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITIED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM RELATING TO THIS CONTRACT OR THE SERVICES.

itself, or for others, any materials or processes, including those that may be similar to those produced as a result of the Services, provided that A&M complies with its obligations of confidentiality set forth hereunder.

30. **Non-solicitation:** During the term of the contract and for a period of one (1) year thereafter, each party agrees that its personnel (in their capacity as such) who had substantive contact with personnel of the other party during such engagement shall not, without the other party's consent, directly or indirectly employ, solicit, engage, or retain the services of such personnel of the other party. In the event a party breaches this provision, the breaching party shall be liable to the aggrieved party for an amount equal to thirty percent (30%) of the annual base compensation of the relevant personnel in his or her new position. Although such payment shall be the aggrieved party's exclusive means of monetary recovery from the breaching party for breach of this provision, the aggrieved party shall be entitled to seek injunctive or other equitable relief. This provision shall not restrict the right of either party to solicit or recruit generally in the media.

31. **Records and Audits:** The Consultant shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds. These records will be made available for audit purposes to the City or any authorized representative and will be retained for three years after the expiration of this Contract.

32. **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: _____
Troy Bolander
Director of Planning, Development and
Neighborhood Services

CONSULTANT

Alvarez & Marsal Infrastructure and Capital Projects
Company Name

By: _____
Rob Reid, Managing Director

Name: Robert Reid
Print or type

Title: Managing Director

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney