AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2023 ("the Effective Date"), by and between the City of Joplin, Missouri, a Missouri Municipal Corporation ("OWNER"), and Olsson, Inc., a Nebraska Corporation ("ENGINEER"), collectively referred to as "the Parties."

WHEREAS, OWNER desires to engage an engineer for the purpose of providing professional services for the design and construction of improvements to the property commonly known as Ewert Park, specifically a splash park, as described in OWNER's Request for Proposal, attached hereto and incorporated by reference as Exhibit A; and

WHEREAS, ENGINEER desires to be engaged as OWNER's engineer for the purpose of providing professional services for the design and construction of improvements to the property commonly known as Ewert Park, specifically a splash park, as described in ENGINEER's Response to City's Request for Proposal, attached hereto and incorporated by reference as Exhibit B; and

WHEREAS, OWNER has selected ENGINEER as the lowest and best bidder based on full consideration of all factors, preferences, and conditions deemed applicable by OWNER.

NOW, THEREFORE, in exchange for valuable consideration each received from the other, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1 General

1.1.1 ENGINEER shall perform professional services as hereinafter stated which include customary civil, structural, mechanical, and electrical engineering services.

1.1.2 ENGINEER shall represent OWNER, insofar as OWNER desires, to governmental entities and agencies, institutions, and other individual and collective parties in dealings related to the Project.

1.1.3 ENGINEER shall attend meetings and hearings with and on behalf of OWNER, insofar as OWNER desires, provided that such meetings and hearings pertain to the Project and provided that OWNER gives ENGINEER reasonable notice of such meetings and hearings and of OWNER's desire to have ENGINEER in attendance.

1.1.4 In general, the Project consists of the improvements to OWNER's property commonly known as Ewert Park, specifically a splash park, as described in OWNER's Request for Proposal, attached hereto and incorporated by reference as Exhibit A, and ENGINEER's Response to City's Request for Proposal, attached hereto and incorporated by reference as Exhibit B.

Upon execution of this Agreement by OWNER, ENGINEER shall proceed with the design phase of the project.

Basic services of ENGINEER included as part of this Agreement include the following:

1.2 Design Phase

Upon execution of this agreement, ENGINEER shall:

1.2.1 Conduct topographic surveys to the extent necessary for design of the infrastructure facilities.

1.2.2 Develop design plans, specifications, and contract documents used to solicit competitive bids for construction of the improvements.

1.2.3 Furnish to OWNER such documents and design data as may be required and assist in the preparation of the required documents so that OWNER may apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

1.2.4 On the basis of the accepted final design documents, provide to OWNER an opinion of probable cost for the Project.

1.2.5 Prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions, supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.2.6 Furnish copies of the above documents and present and review them in person with OWNER.

1.2.7 Submit copies of the plans, specifications, bid and contract documents, and other related documents to the governmental agencies having jurisdiction over the project for their review and approval.

1.3 Bidding Phase.

After receiving written authorization to proceed with the bidding phase, ENGINEER shall:

1.3.1 Assist OWNER in advertising and obtaining bids for construction of the Project. Develop and distribute invitations to bid to contractors, plan rooms, etc. Provide interested contractors and suppliers copies of the plans and specifications as requests are made.

1.3.2 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor for those portions of the work as to which such acceptability is required by the bidding documents.

1.3.3 Consult with and advise OWNER as to the acceptability of substitute materials and

equipment proposed by Contractor when substitution prior to the award of contracts is allowed by the bidding documents.

1.3.4 Respond to pre-bid questions, review pre-bid submittal, prepare any necessary addenda, and assist in opening the bids.

1.3.5 Assist OWNER in evaluating bids or proposals and in assembling and awarding contracts.

1.4 Construction Phase.

During the construction phase, ENGINEER shall:

1.4.1 Consult with and advise OWNER and act as its representative. All of OWNER's instructions to contractor(s) will be issued through ENGINEER, who will have authority to act on behalf of OWNER.

1.4.2 Review contractor's proposed project schedule.

1.4.3 Review and approve (or take other appropriate action in respect of) shop drawings and samples, the results of tests and inspections and other data which Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the contract documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques, or procedures of construction or to safety precautions and programs incident thereto); determine the acceptability of substitute materials and equipment proposed by contractor; and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by contractor in accordance with the contract documents.

1.4.4 Issue all instructions of OWNER to contractor; issue necessary interpretations and clarifications of the contract documents and in connection therewith prepare change orders as required; have authority, as OWNER's representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the contract documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and contractor relating to the acceptability of the work or the interpretation of the requirements of the contract documents pertaining to the execution and progress of the work.

1.4.5 Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, determine the amounts owing to contractor and recommend in writing payments to contractor in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated: that, to the best of ENGINEER's knowledge, information, and belief, the quality of such work is in accordance with the contract documents (subject to an evaluation of such work as a functioning Project upon substantial completion, to the results of any subsequent tests called for in the contract documents, and to any qualifications stated in his recommendation); and that payment of the amount recommended is due contractor. But by recommending any payment, ENGINEER will not thereby

be deemed to have represented that continuous or exhaustive examinations have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques, or procedures of construction or safety precautions or programs incidental thereto; or that ENGINEER has made an examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price; or that title to any of the work, materials, or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances; or that contractor(s) have completed their work exactly in accordance with the contract documents.

1.4.6 Conduct site observation periodically and as reasonably required by the OWNER or RPR to observe conditions and progress of the work and to answer questions of the OWNER or RPR, to determine if the Project is substantially complete and conduct a final site review to determine if the work has been completed in accordance with the contract documents and if Contractor has fulfilled all of his obligations thereunder so that ENGINEER may recommend, in writing, final payment to Contractor and may give written notice to OWNER and the contractor that the work is acceptable (subject to any conditions therein expressed); but any such recommendation and notice shall be subject to the limitations expressed in paragraph 1.4.4.

1.4.7 Provide the OWNER two sets of record prints of drawings and one electronic (PDF) version of drawings showing those changes made during the construction process, based on the marked-up prints, drawings, and other data furnished by the contractor to ENGINEER and which ENGINEER considers significant. If desired by OWNER, reproducible record prints can be obtained as set forth in Section 2.1.10 of this agreement.

1.4.8 ENGINEER shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the contractor(s)' or subcontractors' agents or employees, or any other persons (except ENGINEER's own employees and agents) at the site, or otherwise performing any of the contractor(s)' work; however, nothing contained in paragraph 1.4.1 through 1.4.7, inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties undertaken by him in the contract documents.

1.4.9 ENGINEER shall at the conclusion of construction combine field changes noted by the contractor and the resident project representative into a complete, as-built set of plans, representing what was constructed in the field to the best of our knowledge.

1.5 Resident Project Representation.

1.5.1 ENGINEER shall furnish a resident project representative (RPR), assistants, and other field staff to assist ENGINEER in observing performance of the work of contractor. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of contractor; but the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for contractor's failure to perform the work in accordance with the contract documents.

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

1.5.2 Duties and Responsibilities of RPR.

1.5.2.1 Schedules: Review the progress schedule, schedule of shop drawing submittals, and schedule of values prepared by contractor and consult with ENGINEER concerning acceptability.

1.5.2.2 Conferences and Meetings: Attend meetings with contractor, such as progress meetings, job conferences, and other project-related meetings.

1.5.2.3 Liaison:

a) Serve as ENGINEER's liaison with contractor, working principally through contractor's superintendent and assist in understanding the intent of the contract documents; and assist ENGINEER in serving as OWNER's liaison with contractor when contractor's operations affect OWNER's on-site operations.

b) Assist in obtaining from OWNER additional details or information required for proper execution of the work.

1.5.2.4 Shop Drawings and Samples:

a) Record date of receipt of shop drawings and samples.

b) Receive samples which are furnished at the site by contractor, and notify ENGINEER of availability of samples for examination.

c) Advise ENGINEER and contractor of the commencement of any work requiring a shop drawing or sample if the submittal has not been approved by ENGINEER.

1.5.2.5 Review of Work, Rejection of Defective Work, Inspections and Tests:

a) Conduct on-site observations of the work in progress to assist ENGINEER in determining if the work is in general proceeding in accordance with the contract documents.

b) Report to ENGINEER whenever RPR believes that any work is unsatisfactory, faulty, or defective or does not conform to the contract documents, or has been damaged, or does not meet the requirements of any inspection, test, or approval required to be made; and advise ENGINEER of work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection,

or approval.

c) Verify that tests, equipment, and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that contractor maintains adequate records thereof; and observe, record, and report to ENGINEER appropriate details relative to the test procedures and startups.

d) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.

1.5.2.6 Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the contract documents are needed and transmit to contractor clarifications and interpretations as issued by ENGINEER.

1.5.2.7 Modifications: Consider and evaluate contractor's suggestions for modifications in drawings or specifications and report with RPR's recommendations to ENGINEER. Transmit to contractor decisions as issued by ENGINEER.

1.5.2.8 Records:

a) Maintain orderly files for correspondence, reports of job conferences, shop drawings and samples, reproductions of original contract documents including all work directive changes, addenda, change orders, field orders, additional drawings issued subsequent to the execution of the contract, ENGINEER's clarification and interpretations of the contract documents, progress reports, and other project related documents.

b) Keep a diary or log book, recording contractor hours on the job site, weather conditions, data relative to questions of work directive changes, change orders, or changed conditions, list of job site visitors, daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.

c) Record names, addresses, and telephone numbers of all contractors, subcontractors, and major suppliers of materials and equipment.

1.5.2.9 Reports:

a) Furnish ENGINEER with periodic reports as required of progress of the work and of contractor's compliance with the progress schedule and schedule of shop drawings and sample submittals.

b) Consult with ENGINEER in advance of scheduled major tests, inspections, or start of important phases of the work.

c) Draft proposed change orders and work directive changes, obtaining backup material

from contractor and recommend to ENGINEER change orders, work directive changes, and field orders.

d) Report immediately to ENGINEER and OWNER upon the occurrence of any accident.

1.5.2.10 Payment Requests: Review applications for payment with contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, work completed, and materials and equipment delivered at the site but not incorporated in the work.

1.5.2.11 Certificates, Maintenance, and Operation Manuals: During the course of the work, verify that certificates, maintenance, and operation manuals and other data required to be assembled and furnished by contractor are applicable to the items actually installed and in accordance with the contract documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the work.

1.5.2.12 Completion:

a) Before ENGINEER issues a certificate of substantial completion, submit to contractor a list of observed items requiring completion or correction.

b) Conduct final inspection in the company of ENGINEER, OWNER, and contractor and prepare a final list of items to be completed or corrected.

c) Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

1.5.3 Limitations of Authority. Resident project representative:

1.5.3.1 Shall not authorize any deviation from the contract documents or substitution of materials or equipment, unless authorized by ENGINEER.

1.5.3.2 Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the contract documents.

1.5.3.3 Shall not undertake any of the responsibilities of contractor, subcontractors, or contractor's superintendent.

1.5.3.4 Shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction unless such advice or directions are specifically required by the contract documents.

1.5.3.5 Shall not advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the work.

1.5.3.6 Shall not accept shop drawing or sample submittals from anyone other than contractor.

1.5.3.7 Shall not authorize OWNER to occupy the project in whole or in part.

1.5.3.8 Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1 General

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others additional services of the following types which are not considered normal or customary basic services; these will be paid for by OWNER as indicated in Section 5.

2.1.1 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.2 Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design documents or contract documents when such revisions are due to causes beyond ENGINEER's control.

2.1.3 Preparing documents for out-of-sequence work.

2.1.4 Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow, and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.5 Furnishing the services of special consultants requested by the OWNER for other than the normal civil, structural, mechanical, and electrical engineering; such as consultants for interior design, furnishings, communications, acoustics, and landscaping; and providing data or services of the types described in paragraph 3.3 when OWNER authorizes ENGINEER to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.3.

2.1.6 Reviewing contractors' and subcontractors' payroll records.

2.1.7 Providing any type of field staking to enable contractor(s) to proceed with their work; and providing other special field surveys other than those for design purposes.

2.1.8 Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for basic services is not commensurate with the additional services rendered, services after the award of each contract in evaluating substitutions proposed by contractor(s), and in making revisions to drawings and specifications occasioned thereby, and

services resulting from significant delays, changes, or price increased occurring as a direct or indirect result of material, equipment, or energy shortages.

2.1.9 Services during out-of-town travel required of ENGINEER other than visits to the site as required by Section 1.

2.1.10 Preparing for OWNER, on request, a set of reproducible record prints of drawings showing those changes made during the construction process, based on the marked-up prints, drawings, and other data furnished by contractor(s) to ENGINEER and which ENGINEER considers significant.

2.1.11 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of contractor(s), (3) prolongation of the contract time of any prime contract by more than sixty days, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by contractor(s).

2.1.12 Preparation or review of environmental assessments and impact statements and review and evaluation of the effect on the design requirement of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the project.

2.1.13 Services after completion of the construction phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.

2.1.14 Preparing to serve or serving as a consultant or witness for OWNER in any litigation or other legal or administrative proceeding involving the Project (except as agreed to under basic services).

2.1.15 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise provided for in this agreement.

SECTION 3 – OWNER'S RESPONSIBILITIES

OWNER shall:

3.1 Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the drawings and specifications.

3.2 Assist ENGINEER by placing at his disposal all reasonably available information pertinent to the Project, including previous reports and any other data relative to design or construction of the Project.

3.3 Furnish to ENGINEER, as required for performance of ENGINEER's basic services, data prepared by or services of others, including without limitation core borings, probings, and subsurface

explorations, hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data or consultations not covered in Section 2; all of which ENGINEER may reasonably rely upon in performing his services.

3.4 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as reasonably required for ENGINEER to perform his services.

3.5 Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor, and other consultants as OWNER deems appropriate for such examination and render decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

3.6 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

3.7 Provide such accounting, independent cost estimating, and insurance counseling services as may be reasonably required for the Project; such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by contractor(s); such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract; and such inspection services as OWNER may require to ascertain that contractor(s) are complying with any law, rule, or regulation applicable to their performance of the work.

3.8 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements, and systems pertinent to ENGINEER's services.

3.9 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect in the work of contractor(s).

3.10 Furnish, or direct in writing ENGINEER to provide, necessary additional services as stipulated in Section 2 of this agreement or other services as required.

3.11 Bear all costs incidental to compliance with the requirements of this Section 3. The Parties acknowledge and agree that all such costs must be approved in advance by OWNER in writing.

SECTION 4 - PERIOD OF SERVICE

4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided for elsewhere in this agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the construction phase. ENGINEER's

obligation to render services hereunder will extend for a period which may reasonably be required for the design and construction of the Project.

4.2 Upon execution of this Agreement by the OWNER, ENGINEER shall proceed with the performance of the services called for in the design phase (Section 1.2), and shall submit final design and contract documents and a revised opinion of probable Project cost within 180 calendar days.

4.3 After acceptance by regulatory agencies of the ENGINEER's drawings, specifications, and other design-phase documentation, including the most recent opinion of probable project cost, and upon written authorization to proceed, ENGINEER shall proceed with performance of the services called for in the bidding phase (Section 1.3).

4.4 All engineering services provided subsequent to the bidding phase and as set forth under Sections 1.4 and 1.5 of this Agreement shall be completed within 6 months after receipt by the ENGINEER of written authorization to proceed.

4.5 If OWNER has requested significant modifications or changes in the extent of the Project, the time of performance of ENGINEER's services and his various rates of compensation shall be adjusted appropriately.

4.6 If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the construction phase has not commenced within 120 calendar days after completion of the final design phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this agreement.

4.7 If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control or if ENGINEER for any reason is required to render services more than one year after substantial completion, the various rates of compensation provided for elsewhere in this agreement shall be subject to renegotiation.

SECTION 5 - PAYMENTS TO ENGINEER

5.1 Methods of Payment for Services and Expenses of Engineer

5.1.1 Payment for Services:

5.1.1.1 For Design Phase Services: OWNER shall pay ENGINEER for time expended in the performance of design phase services rendered under Section 1.2, at the labor rates and non-labor rates shown in Exhibit C, and according to the phases of work shown in Exhibit D.

5.1.1.2 For Contract Administration including Bidding and Basic Construction Phase Services: OWNER shall pay ENGINEER for time expended in the performance of bidding and basic construction phase services rendered under Sections 1.3 and 1.4, at the labor rates shown in Exhibit C, and according to the phases of work shown in Exhibit D.

5.1.1.3 For Resident Services During Construction: OWNER shall pay ENGINEER for the actual time expended and expenses incurred in the performance of resident services during construction as outlined in Section 1.5 at the labor rates and non-labor rates shown in Exhibit C, and according to the phases of work shown in Exhibit D. However, it is understood that the duration of construction is subject to delays beyond the control of the ENGINEER and the actual time required for resident services may be more or less than the time estimated by the ENGINEER and reflected in the fee specified above, therefore delays in construction may warrant the issuance of an amendment to the contract at a later date.

5.1.1.4 The total not to exceed amount for all sections of the contract shall be $828,000. If one section of the contract does not use the full amount allocated above, another section of the contract can utilize the unused portion to complete those services, as long as the total amount for all sections does not exceed $828,000.

5.1.2 Additional Services. Subject to the not to exceed price specified in Section 5.1.1.4, OWNER shall pay ENGINEER for additional services rendered under Section 2 as follows:

5.1.2.1 General. For time expended in the performance of additional services rendered under paragraphs 2.1.1 through 2.1.15, inclusive (except services covered by paragraph 2.1.5) on the basis of the labor rates shown in Exhibit C.

5.1.2.2 Special Consultants. For services and reimbursable expenses of special consultants employed by ENGINEER pursuant to paragraph 2.1.5, the amount billed to ENGINEER therefor times a factor of 1.10.

5.1.3 The term "Reimbursable Expenses" will have the meaning assigned to it in paragraph 5.3 below.

5.2 Times of Payments

5.2.1 ENGINEER shall submit monthly statements for basic and additional services rendered and for reimbursable expense incurred. The amount of ENGINEER's professional fee billed will be based upon the actual time and expenses incurred by ENGINEER's personnel in the performance of this Agreement at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

5.3 Other Provisions Concerning Payments.

5.3.1 If OWNER fails to make any payment due ENGINEER for services and expenses within sixty days after receipt of ENGINEER's bill therefor, the amounts due ENGINEER shall include a charge at the rate of 1% per month from said sixtieth day and in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this agreement until he has been paid in full all amounts due him for services and expenses.

5.3.2 In the event of termination by OWNER under paragraph 7.1, ENGINEER will be paid for services rendered to date of termination by principals and employees assigned to the Project. In the

event of any such termination, ENGINEER will be paid for all unpaid additional services and unpaid reimbursable expenses, subject to the not to exceed price specified in Section 5.1.1.4

5.3 Definitions.

Reimbursable expenses mean the actual expenses incurred directly in connection with the Project for: furnishing and maintaining field office facilities; subsistence, lodging, and transportation of project staff and resident project representatives; reproduction of reports, drawings, and specifications; postage and express delivery services; survey materials; and similar Project-related items.

SECTION 6 - OPINIONS OF COST

6.1 Opinions of Cost

Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project costs and construction cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Engineer cannot and does not guarantee that proposals, bids, or actual Project or construction cost will not vary from opinions of probable cost prepared by him. If prior to the bidding or negotiating phase, OWNER wishes greater assurance as to Project or construction cost he shall employ an independent cost estimator as provided in Section 3.

SECTION 7 - GENERAL CONSIDERATIONS

7.1 Amendments. The covenants and obligations herein contained are the full and complete terms of this Agreement, and no alteration, amendments, or changes to such terms shall be binding unless first reduced to writing and executed with the same formality as this Agreement.

7.2 Assignment. This Agreement, including payment hereunder, shall not be sub-let, assigned, or otherwise disposed of, except with the prior written consent of OWNER.

7.3 Attorney's Fees and Expenses. If OWNER files suit in order to enforce any term of this Agreement and is the prevailing party, ENGINEER shall be liable for OWNER's reasonable attorney's fees and expenses. In no event shall OWNER be liable for ENGINEER's reasonable attorney's fees and expenses.

7.4 Choice of Law and Venue. This Agreement has been made, and its validity, performance and effect shall be determined, in accordance with the laws of the State of Missouri and venue for litigation between the parties shall be solely and exclusively in Jasper County, Missouri.

7.5 Compliance with Laws. ENGINEER shall observe and comply with all Federal, State, and local laws and ordinances that affect those employed or engaged by it on the project, or the material

or equipment used, or the conduct of the work, and shall procure all necessary licenses, permits, and insurance.

7.6 Consequential Damages. In no event shall OWNER be liable to ENGINEER for special, indirect, or consequential damages.

7.7 Contract Documents. The contract documents shall consist of the following: this Agreement, OWNER's Request for Proposal, attached hereto and incorporated by reference as Exhibit A, ENGINEER's Response to OWNER's Request for Proposal, attached hereto and incorporated by reference as Exhibit B, Rate Schedule, attached hereto and incorporated by reference as Exhibit C, and Estimate of Costs, attached hereto and incorporated by reference as Exhibit D. In the event of conflict between the contract documents, this Agreement will prevail. In the event of conflict between Exhibit A and Exhibit B, C, or D, Exhibit A will prevail. In the event of conflict between Exhibit B and Exhibit C or D, Exhibit B will prevail.

7.8 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Facsimile signatures shall be given the same force and effect as original signatures.

7.9 Entire Agreement. This Agreement (including any Exhibits) contains the entire understanding of the parties with respect to the subject matter hereof. It may not be altered or amended except by an agreement in writing signed by both parties.

7.10 Ethics. ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for ENGINEER, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for ENGINEER, any fee, commission, gift, or contingent fee.

7.11 Headings. The headings of paragraphs in this Agreement are for convenience only. The headings form no part of this Agreement and shall not affect its interpretation.

7.12 Indemnification. To the fullest extent permitted by law, ENGINEER agrees to defend with counsel selected by OWNER, and indemnify and hold harmless OWNER, its officers, engineers, representatives, agents, and employees from and against any and all liabilities, damages, losses, claims, or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by OWNER or others, arising from breach or enforcement of this Agreement or out of services and operations negligently performed hereunder by ENGINEER, or claims relating thereto, and including but not limited to OWNER's reliance on or use of the services or products provided by ENGINEER under the terms of this agreement. ENGINEER shall not be liable for any loss or damage attributable solely to the negligence of OWNER.

7.13 Independent Contractor. This Agreement does not create an employer-employee relationship between the parties. ENGINEER is an independent contractor and is not entitled to any benefits including health, dental, vision, disability, life, and unemployment insurance, worker's compensation coverage, and LAGERS. ENGINEER is an independent contractor and not an

employee for all purposes including the application of the Fair Labor Standards Act Minimum Wage and Overtime Payments, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, and the provisions of the Internal Revenue Code, Missouri Revenue and Taxation Laws, and Missouri's Worker Compensation Laws and Unemployment Insurance Laws.

7.14 Insurance. ENGINEER shall secure and maintain at its own cost and expense, throughout the duration of this Agreement, insurance of such types, including but not limited to Worker's Compensation Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance, and in such amounts as may be necessary to protect it against all hazards or risks of loss as hereunder specified or which may arise out of the performance of this Agreement, 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). The foregoing shall not be construed as a waiver of sovereign immunity.

7.15 Intellectual Property. OWNER shall own all right, title, and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of ENGINEER created in performance of or relating to this Agreement.

7.16 Non-Appropriation. Notwithstanding any provision herein to the contrary, OWNER is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during OWNER's then current fiscal year at the discretion of OWNER. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of OWNER to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

7.17 Notices. All notices required or permitted hereinunder and required to be in writing may be given by first class mail addressed to OWNER and ENGINEER at the addresses as follows:

City of Joplin, Missouri	Olsson, Inc.
ATTN: City Manager	ATTN: Ronald L. Mersch
602 S. Main St.	1027 S. Main St., Suite 503
Joplin, MO 64801	Joplin, MO 64801

The date of delivery of any notice given by mail shall be the date falling on the second full day after the day of its mailing.

7.18 Payment for Labor and Materials. ENGINEER agrees and binds itself to pay for all labor done, and for all the materials used in the construction of the work to be completed pursuant to this contract.

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

7.20 Representations. The signatories hereto represent and warrant that they have read this Agreement, that they are fully authorized in the capacities shown, that they understand the terms of this Agreement, and that they are executing the same voluntarily and solely for the consideration described herein.

7.21 Severability. If any of the provisions of this Agreement shall be construed to be invalid or illegal, the legality or validity of the other provisions of this Agreement shall not be effected thereby. Any illegal or invalid provision of this Agreement shall be severable and any other provisions shall remain in full force and effect.

7.22 Termination. OWNER reserves the right to terminate this contract by giving at least five (5) days prior written notice to ENGINEER, without prejudice to any other rights or remedies of OWNER, should ENGINEER be adjudged bankrupt, or if ENGINEER should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for ENGINEER or for any of its property, or if ENGINEER should persistently or repeatedly fail or refuse to supply enough properly skilled workmen or proper material, or if ENGINEER should fail or refuse to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of OWNER or fail to observe or perform any provisions of the contract. OWNER may terminate this Agreement, without cause, by giving ENGINEER thirty (30) days' written notice of the same.

7.23 Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

7.24 Unauthorized Aliens. That pursuant to Missouri Revised Statute Sections 285.525 through 285.555, if this contract exceeds the amount of $5,000.00 and ENGINEER is associated with a business entity, ENGINEER shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, ENGINEER must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

7.25 Waiver. Waiver of any provision of this Agreement or 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, 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.

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

8.1 The following exhibit is attached to and made a part of this agreement: Exhibit A – OWNER's Request for Proposal, Exhibit B – ENGINEER's Response to Owner's Request for Proposal, Exhibit C – Rate Schedule, and Exhibit D – Estimate of Costs.

8.2 This agreement, including the exhibits referenced herein, constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This agreement and said exhibits may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed in duplicate as of the day and year first above written.

OWNER:	ENGINEER:
CITY OF JOPLIN, MISSOURI	OLSSON, INC.
_____	_____
Nick Edwards, City Manager	

ATTEST:

_____
Holly Nagy, City Clerk