ADDRESS & PHONE OF CITY

City of Joplin
Finance Department
602 South Main Street
Joplin, MO 64801
417-624-0820 ext. 1251

NAME, ADDRESS & PHONE OF

Allen, Gibbs & Houlik, L.C. (AGH)
10801 Mastin, Suite 250
Overland Park, KS 66210

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2023, 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 Street, Joplin, Missouri and Allen, Gibbs & Houlik, L.C. (AGH) hereinafter referred to as the "Auditor."

WITNESSETH:

WHEREAS, the City of Joplin desires to engage the Auditor to render certain services hereinafter described in Request For Proposal **2023-RFP-08** which Request For Proposal is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the Auditor submitted a proposal dated September 14, 2023, which proposal is attached hereto and incorporated herein as Exhibit B; and

WHEREAS, the Auditor has become the lowest and best Offeror for performing the services;

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

1. The City agrees to engage the Auditor and the Auditor agrees to perform, in strict accordance with Exhibit A, and within the time specified therein, the services set forth in Exhibit B.

2. The services of the Auditor 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 Auditor in Exhibit B. The term of the Agreement shall be for the period specified in Exhibit B, which is for the 2023 fiscal year. The City has

the option to renew the contract for the subsequent four (4) years.

3. The City agrees to pay the Auditor 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 Auditor. For the 2023 fiscal year, the fee shall be $72,000.00 for the ACFR, $750.00 for the PFC Audit, $7,750.00 for the Pension Plan Audit. The fee for the A-133 Single Audit shall be based upon the major programs. However, for two major programs, the fee shall be $6,500.00 for 2023.

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

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

6. The Auditor represents that Auditor will secure at Auditor's own expense, all personnel required to perform the services called for under this contract by Auditor. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Auditor. All of the services required hereunder will be performed by the Auditor or under Auditor'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 Auditor shall fail to fulfill in timely and proper manner Auditor's obligations under this contract, or if the Auditor 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 Auditor 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 such event, the Auditor shall be entitled to receive just and equitable compensation for any satisfactory work completed. Notwithstanding the above, the Auditor 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 Auditor.

8. **Assignment**: The Auditor 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 Auditor 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 Auditor under this contract which the City requests to be kept as confidential shall not be made available to any individual or organization by the Auditor without prior written approval of the City unless required by law, subpoena or professional standard.

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 Auditor and processed through the Finance Department. Upon request by the City, the Auditor 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 Auditor 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 Auditor's Proposal and amendments thereto. However, the City reserves the right to clarify any Contractual relationship in writing with the concurrence of the Auditor, and such written clarification shall govern in case of conflict with the applicable requirements stated in the Request for Proposal or the Auditor's proposal. In all other matters not affected by the written clarification, if any, the Request For Proposal shall govern. The Auditor is cautioned that his proposal shall be subject to acceptance without further clarification.

12. **Appropriation of Funds:** In the event that funds are not appropriated by the Council of the City of Joplin for any term of the contract or extension thereto or portion of any term of the contract which falls in a fiscal period other than a fiscal period for which funds have been appropriated, the contract shall terminate without notice at the end of the fiscal period for which funds are appropriated.

13. The Auditor agrees and understands that the City of Joplin's Agreement to the Contract may be predicated,

in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) as identified and/or described in the Auditor's proposal. Therefore, the Auditor agrees that no substitution of such specific individuals and/or personnel qualifications shall be made without the prior written approval of the City. The Auditor further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the City's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The City of Joplin agrees that an approval of a substitution will not be unreasonably withheld.

14. **General Independent Contractor Clause:** This agreement does not create an employees/employer relationship between the parties. It is the parties intention that the Contractor will be an Independent Contractor 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 Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor 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 Contractor and the City, and the City will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

15. The Auditor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Workmen Compensation Program of the City.

16. **Certification of Non-Resident/Foreign Auditors:** If the Auditor is a foreign corporation or non-resident Auditor, it is agreed that the Auditor 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.

17. **Nondiscrimination:** The Auditor 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 Auditor or applicant for employment and shall include a similar

provision in all subcontracts let or awarded hereunder.

18. Auditor 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 Auditor further covenants that in the performance of this contract no person having such interest shall be employed.

19. **Auditor's Responsibility for Subcontractors:** It is further agreed that Auditor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Auditor shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Auditor by all the terms herein set forth, insofar as applicable to the work of subcontractors and to give Auditor the same power regarding termination of any subcontract as the City may exercise over Auditor 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.

20. **Liability and Indemnity:** The parties mutually agree to the following:

(A) In no event shall the City, its agents and employees, be liable to the Auditor 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, its agents and employees, shall be limited to the amount of money to be paid or received by the City under this contract.

(B) The Auditor shall defend, indemnify, and hold the City, its agents and employees, harmless from and against all claims, losses, and liabilities arising out of personal injuries, including death, and damage to property which are caused by the Auditor arising out of or in any way connected with this contract. Auditor further agrees to defend, indemnify, and hold the City, its agents and employees, harmless from and against any claims, losses, and liabilities arising out of the award of this contract to the Auditor.

(C) The Auditor assumes full responsibility for relations with Subcontractors, and shall defend, indemnify and save harmless the City, its agents and employees, from and against, any and all liability, suits, claims, damages, costs (including attorneys' fees), losses, outlays, and expenses in any manner caused by, arising out of or connected with this contract, notwithstanding any possible negligence (whether sole, concurrent, or otherwise) on the part of the City, its agents or employees.

(D) The Auditor shall indemnify and hold the City, its agents and employees, harmless from all wages or overtime compensation due its employees in rendering services pursuant to this agreement, including payment of reasonable attorney's fees and costs in the defense of any claim made under the Fair Labor Standards act or any other federal or state law.

21. **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.

22. **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.

23. **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.

24. **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.

25. **Notices:** All notices required or permitted hereunder and required to be in writing may be given by first class mail addressed to Finance Department, 602 South Main Street, Joplin, Missouri, 64801 and the Auditor at 10801 Mastin, Suite 250, Overland Park, KS 66210. 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 seals the date first above written.

CITY OF JOPLIN, MISSOURI

By:_____

Nicholas Edwards, City Manager

AUDITOR

Allen, Gibbs & Houlick, L.C. (AGH)
Company Name

By:_____
Signature

Name: Jonathan Nibarger
Print or type

Title: Vice President, Assurance Services

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

ATTEST:

_____
Holly Nagy, City Clerk