INDEPENDENT CONTRACTOR AGREEMENT

This AGREEMENT is entered into this _____ day of December, 2021, by and between the City of Joplin, Missouri (hereinafter "City"), and _Jeff Asbell Excavating & Trucking, Inc. (hereinafter "Contractor"), and with City and Contractor being referred to collectively as the "Parties."

WHEREAS, City desires to engage an independent contractor for the purpose of providing pre-treatment and snow removal services; and

WHEREAS, Contractor desires to be engaged as an independent contractor for the purpose of providing pre-treatment and snow removal services.

NOW, THEREFORE, in consideration of the mutual agreements set forth below, and other good and valuable consideration, the Parties do hereby agree as follows:

1. Term. The term of this Agreement is from December 6, 2021 through December 5, 2022, unless terminated as provided herein. The Parties may agree to renew this Agreement on the same terms and conditions for up to two (2) additional one-year terms.

2. Contractor's Services. Contractor agrees to diligently perform in a professional and workmanlike manner the scope of services specified in City's Request for Proposal, attached hereto and incorporated by reference as Exhibit A, and Contractor's Response to City's Request for Proposal, attached hereto and incorporated by reference as Exhibit B. Specifically, Contractor agrees to provide pre-treatment and snow removal services.

3. Costs and Payment. It is agreed by the parties that Contractor will be compensated for the foregoing Scope of Services as follows: Contractor will be paid according to the following hourly rates: $_100_ per hour per CDL driver/operator for City-owned truck and snow plow and pre-treating equipment as specified, and $_115_ per hour per Supervisor/Foreman to oversee Contractor's operations during storm events. Within thirty (30) days of City's receipt and approval of an invoice, City will make payment to Contractor. Contractor will provide all labor.

4. Independent Contractor. This Agreement does not create an employer-employee relationship between the parties. Contractor 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. Contractor 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.

5. 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.

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

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

8. Binding Effect. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, legal representatives, successors, and assigns, and shall be binding in the event of the death or legal disability of the parties. Provided, however, that nothing in this paragraph shall be construed as a consent by City to any assignment of this Agreement or any interest therein by Contractor.

9. 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.

10. Compliance with Laws. Contractor 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.

11. Consequential Damages. In no event shall City be liable to Contractor for special, indirect, or consequential damages.

12. Contract Documents. The contract documents shall consist of the following: this Agreement, City's Request for Proposal, and Contractor's Response to City's Request for Proposal. In the event of conflict between the contract documents, this Agreement will prevail. In the event of conflict between City's Request for Proposal and Contractor's Response to City's Request for Proposal, City's Request for Proposal will prevail.

13. 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.

14. Ethics. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, 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 Contractor, any fee, commission, gift, or contingent fee.

15. 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.

16. Indemnification. Contractor hereby assumes all risk of, and responsibility for, and agrees to indemnify and save harmless City, from and against any and all claims, demands, suits, actions, recoveries, judgments, costs, and expenses, including reasonable attorney's fees and expenses, therewith made, brought or obtained on account of the loss of life or property or injury or damage to the person or property of any person or persons whomsoever, whether such person or persons be Contractor, its agents or employees, or City, its agents or employees, or any third-person in any way connected with the parties hereto, which loss of life or property, or injury or damage to persons or property, shall be due to, or arise out of, result from, or be in any way connected with, this Agreement.

17. Insurance. Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Agreement, insurance of such types and in such amounts as may be necessary to protect it and the interests of City against all hazards or risks of loss as hereunder specified or which may arise out of the performance of this Agreement. Such policies shall name 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)

18. Intellectual Property. Intentionally omitted.

19. Non-Discrimination. In performance of the work covered by this Agreement, Contractor shall not discriminate against any worker because of race, creed, color, political affiliation, handicap, or national origin.

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

City of Joplin
ATTN: Director of Public Works
602 S. Main St.
Joplin, MO 64801

Jeff Asbell Excavating & Trucking, Inc.
9400 State HWY 171
Carl Junction, MO 64834

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.

21. Payment for Labor and Materials. Intentionally omitted.

22. Records and Audits. The Contractor 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.

23. 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.

24. Right to Proceed. Intentionally omitted.

25. 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.

26. Subcontractors. Contractor shall be as fully responsible to 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. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as City may exercise over Contractor under any provisions of this Agreement. Nothing contained in this Agreement shall create any contractual relation between the subcontractor and City or between any subcontractors.

27. Subsurface Conditions. Intentionally omitted.

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

29. 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.

30. 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 Contractor is associated with a business entity, Contractor 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, Contractor must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

31. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date shown below.

CITY OF JOPLIN, MISSOURI

_____
Nick Edwards, City Manager

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

CONTRACTOR:
JEFF ASBELL EXCAVATING & TRUCKING, INC.

_____
By:
Its: