CITY		CONTRACTOR	
CITY OF JOPLIN 602 S. MAIN STREET JOPLIN, MO 64801		Name: RE Smith Construction Company, Inc. Address: 1036 W. 2nd Street JOPLIN, MO 64801	
Attention: Samuel L. Anselm		Attention: Richard D. Smith, President	
Department: City Manager		Phone: 417-623-4545	Fax:
Phone: 417-624-0820, ext 205	Fax:	EDA PROJECT #05-79-05345	

AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2015, by the parties identified above.

WITNESSETH: That whereas, the Contractor has become the lowest responsible bidder for furnishing the supervision, labor, tools, equipment, materials and supplies and for constructing the following City improvements:

NEW LIBRARY FACILITY FOR THE CITY OF JOPLIN, MO

The City and Contractor agree to the following:

1. Manner and Time for Completion. The Contractor will furnish all supervision, labor, tools, equipment, materials and supplies necessary to perform, and to perform said work at Contractor's own expense in accordance with the contract documents and any applicable City ordinances and state and federal laws within **420** calendar days from the date Contractor is ordered to proceed, which order shall be issued by the Director of Public Works within 30 days after the date of this contract.

2. Prevailing Wages. All labor utilized in the construction of the aforementioned improvements shall be paid a wage of no less than the "prevailing hourly rate of wages" for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri or by the U.S. Secretary of Labor in accordance with the Federal Davis-Bacon Act (Title 40 U.S.C. Chapter 31, subchapter IV), whichever is higher. At any time the contractor is found to not have paid prevailing wages, the contractor shall forfeit as a penalty to the city one hundred dollars for each underpaid worker employed, for each calendar day, or portion thereof such worker is paid less than the said stipulated rates for any work done under this contract.

3. Insurance Requirements. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City of Joplin, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City of Joplin against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City of Joplin. Regardless of such approval, it shall be the responsibility of the contractor to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under the Contract Documents.

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

City of Joplin - Public Works, 602 S. Main Street, Joplin, MO 64801

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

As of January 1, 2015, the minimum coverage for the insurance referred to herein shall be as set out below:

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

Employer's Liability..... $1,000,000.00

b. **Commercial General Liability Insurance,** including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and endorsed for blasting if blasting required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Two Million Seven Hundred Twenty-Seven Thousand Four Hundred Eighty-Nine and no/100 Dollars ($2,727,489.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Nine Thousand One Hundred Twenty-Three and no/100 Dollars ($409,123.00) 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. Contractor agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorneys' fees of Contractor, its employees, officers or agents. Contractor agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

c. **Automobile Liability Insurance** covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at least Two Million Seven Hundred Twenty-Seven Thousand Four Hundred Eighty-Nine and no/100 Dollars ($2,727,489.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Nine Thousand One Hundred Twenty-Three and no/100 Dollars ($409,123.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

d. **Owner's and Contractor's Protective Liability Insurance** to protect the City, its agents, servants and employees from claims which may arise from the performance of this Contract, with limits of at least Two Million Seven Hundred Twenty-Seven Thousand Four Hundred Eighty-Nine and no/100 Dollars ($2,727,489.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Nine Thousand One Hundred Twenty-Three and no/100 Dollars ($409,123.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

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

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

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

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

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

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

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

4. Performance, Labor, and Materials Payment Bond: The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the City and on the forms approved by the City, each bond shall be in the amount of Fourteen Million Dollars ($14,000,000.00) (full amount of contract) conditioned upon the full and faithful performance of all major terms and conditions of this contract and payment of all labor and material suppliers. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bond(s) hereto attached for its faithful performance and payment of labor and material suppliers, the City shall deem the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the City to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Contractor shall be deemed to be due under this contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the City. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds Twenty Five Thousand Dollars ($25,000.00) must be listed in United States Treasury Circular 570.

5. Contractor's responsibility for subcontractors. The Contractor 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. 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 the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City or between any subcontractors.

6. General Independent Contractor Clause. This agreement does not create an employee/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 Contribution 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 it has a full opportunity to find other business, that it 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.

7. Liquidated Damages. Time of completion of work by the Contractor is of the essence. Should Contractor, or in the case of default, the surety, fail to complete the work within the time specified in the contract, or within such extra time as may be allowed in accordance with City of Joplin Standard Specifications, Division 0, General Requirements and Provisions, Section 000700, Contractor (or surety) shall be liable to the City in the amount of $1,000.00 per day for each and every calendar day that the contract remains uncompleted after the time allowed for completion, as liquidated damages, and not as a penalty, it being stipulated that actual damages to the City and the public arising from Contractor's failure to timely complete the work would be difficult, if not impossible, to ascertain. The amount assessed as liquidated damages may be withheld from any moneys otherwise due to Contractor from the City.

8. Termination. The City reserves the right to terminate this contract by giving at least five (5) days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a 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 refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract.

9. City's Right to Proceed. In the event this contract is terminated pursuant to Paragraph 8, then the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

10. Termination for Convenience of City. The City shall have the right at any time by written notice to Contractor to terminate and cancel this contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

11. Guards and Lights. The Contractor agrees that during the performance of said work, adequate barricades, guards and warning signs, lights or devices consistent with the requirements contained in the Manual on Uniform Traffic Control Devices shall be provided by Contractor during construction.

12. Liability and Indemnity.

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

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

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

d. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

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

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

g. The Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

13. Payment for Labor and Materials. The Contractor 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.

14. Payment. The City will pay the Contractor in accordance with the rate set forth in the Contractor's Bid Proposal, which is incorporated fully herein, which shall constitute full and complete compensation for the Contractor's work provided hereunder. Such compensation will be paid in progress payments (less five (5) percent retainage), as established by the City, subject to receipt of a requisition for payment and a statement of work provided by the Contractor and agreement by both the City and the Contractor that the Contractor has fully performed the work to be paid for in such progress payments in conformance with the contract. The total costs for Contractor's services under this Agreement **shall not exceed FOURTEEN MILLION DOLLARS ($14,000,000.00)**.

15. Contract Documents. The contract documents shall consist of the following:

a. This Contract
b. All Change Orders
c. Bid Plans and Specifications
d. City of Joplin Standard Specifications (11-11-2014 Revised Edition)
e. City of Joplin General Conditions
f. EDA Contracting Provisions for Construction Projects
f. RFP #2015-017 and Contractor's Bid Response/Proposal
g. Statement of Bidder's Qualifications
h. Acknowledgment
i. Performance Bond
h. Payment and Material Bond
k. Instructions to Bidders
l. Non-collusion Affidavit
m. Davis Bacon and Missouri Prevailing Wage Rates
n. Notice to Proceed

Notice to Contractors: This contract, together with the other documents enumerated in this paragraph, forms the contract between the parties. These documents are as fully a part of the contract as if attached hereto or repeated herein. The Contractor agrees to perform all of the work described in the contract documents and to comply with the terms and conditions defined therein for a total sum not to exceed **FOURTEEEN MILLION DOLLARS ($14,000,000.00)**, said amount being subject to any approved addenda or change order.

16. Subsurface Conditions. Contractor agrees that information contained in the published reports and public actions of the Missouri Division of Geology and Land Survey shall be conclusive and binding upon the Contractor as to what subsurface conditions at the job site are reasonably anticipated or reasonably foreseeable. Contractor acknowledges and agrees that it shall not be entitled to any adjustment in the Contract Sum or Contract Times for any concealed condition of any nature, including but not limited to unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, in addition to the information contained in the published reports and public actions of the Missouri Division of Geology and Land Survey. Contractor recognizes that it has assumed the risks of concealed conditions and is being compensated for assuming these risks.

17. Flood Disaster Protection: This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L.93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

18. Environmental Compliance (24 CFR 85.36(i)(12)): The Contractor must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (H)), Section 508 of the Clean Water Act (33 USC 1368),

Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) prohibiting the use of facilities included on the EPA List of Violating Facilities.

19. Conflict of Interest. In accepting this contract, Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Joplin, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest, direct or indirect, in this contract. All applicable federal regulations and provisions of R.S.Mo. Section 105.450 et seq. shall not be violated.

20. Assignment. The Contractor 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 Contractor 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 and the bond surety. 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.

21. Anti-Lobbying: The Contractor shall ensure that no federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

22. Nondiscrimination. The Contractor 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, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a)ii and 41 C.F.R. § 60-741.5(a), if applicable.

a. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

b. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

23. Nonresident/Foreign Contractors. The Contractor shall procure and maintain during the life of this contract:

a. If the Contractor is a foreign corporation, 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 R.S.Mo.

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

24. Notices. All notices required or permitted hereinunder and required to be in writing may be given by FAX or by first class mail addressed to City and Contractor at the addresses shown above. 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. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

25. Statement that Project Federally Funded: It is understood that this contract is funded in whole or in part with Federal Funds from the United States Department of Commerce, Economic Development Adminstration (EDA) and therefore is subject to the Federal Laws and Regulations associated with that Program and restrictions normally associated with federally-funded programs

and any other requirements that the state may prescribe.

26. 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.

27. General Independent Contractor Clause. This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that 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 Contribution 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. CONTRACTOR will retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder. CONTRACTOR agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize the skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between CONTRACTOR and the City, and the City will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

28. Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees as follows:

a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, religion, or sex. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, religion, or sex. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.

b) The Contractor will, in all solicitation or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, religion, or sex.

c) The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f) The Contractor shall ensure that the hours of minority and female employment and training must be substantially uniform throughout the length of the contract and throughout each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hour performed.

g) In the event of the Contractor's noncompliance with the non-discrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, the Contractor may request the United States Government to enter into such litigation to protect the interests of the United States.

28. Women and Minority Business: The Contractor will use its best efforts to afford small businesses, minority business enterprises, women's business enterprises (including Section 3 businesses) and veteran –owned businesses the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans and American Indians. The Sub recipient and/or borrower may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation. The contractor must demonstrate to the City of Joplin's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the City of Joplin contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

a) Evidence of a "good faith effort" includes, but is not limited to:
b) The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development,
c) The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
d) The Contractor shall actively solicit and shall provide the City of Joplin with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media.

29. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

30. Section 3 of the Housing and Urban Development Act of 1968

a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work, in connection with the project, be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.
b) The parties to this contract will comply with the provision of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
c) The consultant will send to each labor organization or representative of workers, if applicable, with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause, and shall post copies of the notice in conspicuous place available to employees and applicants for employment or training.
d) The consultant will include this Section 3 clause in every subcontract for work, if applicable, in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary

statement of ability to comply with the requirements of these regulations.

e) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, and its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

31. Section 109(a) of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, shall also apply to any such program or activity.

32. Affirmative Action for Handicapped Workers

a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and to otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices, such as employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

b) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

c) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of the applicants and employees.

e) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

f) The Contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

33. Section 504 of the Rehabilitation Act of 1973, as amended, provides for nondiscrimination of an otherwise qualified individual solely on the basis of his handicap in benefiting from any program or activity receiving Federal financial assistance. All recipients must certify to compliance with all provisions of this Section.

34. Age Discrimination Act of 1975. No person in the United States, on the basis of age, be excluded from participation in, be denied benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

35. Authorized Employees. Contractor acknowledges that Section285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Contractor therefore covenants that is not knowingly in violation of subsection 1 or Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully to work in the United States.

36. Interest of Contractor and Employees. The Contractor covenants that he/she presently has no interest and shall not

acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.

37. Interest of Members of a City. No member of the governing body of the City and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract, and the Contractor shall take appropriate steps to assure compliance.

38. Interest of Other Local Public Officials. No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract, and the Contractor shall take appropriate steps to assure compliance.

39. Affidavit for Contracts Over $5,000.00. That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, 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.

40. Nonresident/Foreign Contractors. The Contractor shall procure and maintain during the life of this contract:

a) If the Contractor is a foreign corporation, 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 351.572 RSMo.

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

41. General Independent Contractor Clause. This agreement does not create an employee/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 Contribution 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 it has a full opportunity to find other business, that it 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.

42. City Benefits. The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

43. Occupational License: The Contractor shall obtain and maintain an occupational license with the City of Joplin, Missouri, if required by city code and any required state or federal license. The cost for this occupational license shall be borne by the Contractor. No contract will be executed by the City until this occupational license has been obtained and that the Contractor is current on any City taxes is verified.

44. Safety Training. Pursuant to Missouri Revised Statute Section 292.675, Contractors and subcontractors who sign a contract to work on public works projects must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within sixty (60) days of beginning work on the construction project. Contractors and subcontractors in violation of this provision will forfeit to the public body $2,500 plus $100 a day for each employee who is employed without training. Public bodies and contractors may withhold/assess these penalties from the payment due to those contractors and subcontractors if found to be in non-compliance.

45. Affidavit for Contracts Over $5,000.00. That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, 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.

46. Compliance with Laws. Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

47. Entire Agreement. This agreement contains the entire agreement of 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.

48. Remedies. Except as may be otherwise found in the contract documents, all claims, disputes, counter-claims, and other matters in question between the Owner and Contractor arising out of or related to this agreement or the breech thereof, will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the state in which the Owner is located.

49. 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.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

CONTRACTOR:

By: _____

Printed Name: Richard D. Smith

Title: President

CERTIFICATE OF DIRECTOR OF FINANCE

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefor.

_____

Leslie Haase, Director of Finance

CITY OF JOPLIN, MISSOURI

APPROVED AS TO FORM

By: _____

Nicholas A. Heatherly, Public Works Director

_____

Peter Edwards, City Attorney

Notice and Instructions to Bidders/Vendors

Regarding Sections 285.525 through 285.550 RSMO, Effective January 1, 2009 and Section 292.675 RSMO, Effective August 28, 2009

Effective January 1, 2009 and pursuant to the State of Missouri's RSMO 285.530 (1), No business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.

As a condition for the award of any contract or grant in excess of five thousand dollars by the state or by any political subdivision of the state (e.g., City of Joplin, Mo.) to a business entity, the business entity (Company) shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. [RSMO 285.530 (2)]

RSMO 285.530 pertains to all solicitations for services over $5,000. RSMO 285.530 does not apply to solicitations for commodities only. If a solicitation is for services and commodities, RSMO 285.530 applies if the services portion of the solicitation is over $5,000.

Effective August 28, 2009 and pursuant to the State of Missouri's RSMO 292.675, Contractors and subcontractors who sign a contract to work on public works projects must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within sixty (60) days of beginning work on the construction project. Contractors and subcontractors in violation of this provision will forfeit to the public body $2,500 plus $100 a day for each employee who is employed without training. Public bodies and contractors may withhold assessed penalties from the payment due to those contractors and subcontractors.

In order to comply with sections 285.525 through 285.550 and 292.675 RSMO, City requires the following bid and contract documents:

1. Affidavit for Contracts over $5,000.00 (US) – Effective 1-1-2009, Company shall comply with the provisions of Section 285.525 through 285.550 R.S.Mo. Contract award is contingent on Company providing an acceptable notarized affidavit stating:

a. that Company is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services; and

b. that Company does not knowingly employ any person who is an unauthorized alien in connection the contracted services.

2. Affidavit for any Public Works Project Contract – Effective 8-28-2009, Company shall comply with the provisions of Section 292.675 R.S.Mo. Within 60 days of issuance of Notice to Proceed, Company shall provide an acceptable notarized affidavit stating that Company has verified the completion of a 10-hour construction safety program with respect to the employees working in connection with the contracted services.

3. Additionally, Company must provide documentation evidencing current enrollment in a federal work authorization program (e.g. electronic signature page from E-Verify program's Memo of Understanding (MOU). *See attached sample*

The City of Joplin encourages companies that are not already enrolled and participating in a federal work authorization program to do so. E-Verify is an example of this type of program. Information regarding E-Verify is available at http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm or by calling **888-464-4218**.

If you have any questions, please contact the City Human Resources Department at 417- 624-0820 ext 423.

*1 Affidavit of Compliance with Section 285.500, RSMo., et seq.

For All Agreements In Excess Of $5,000.00.
Effective January 1, 2009

STATE OF Missouri)
) ss.
COUNTY OF Jasper)

Before me, the undersigned Notary Public, in and for the County of Jasper, State of Missouri, personally appeared Richard D. Smith *(Name)* who is President *(Title)* of R. E. Smith Construction Company *(Name of company)*, a *(circle one)* corporation, partnership, sole proprietorship, limited liability company, and is competent and authorized to make this affidavit, and being duly sworn upon oath deposes and says as follows:

(1) that said company is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services; and

(2) that said company does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

The terms used in this affidavit shall have the meaning set forth in Section 285.500 R.S.Mo., et seq.

Documentation of participation in a federal work authorization program is attached to this affidavit.

Signature

Print Name: Richard D. Smith

Subscribed and sworn to before me this 12th day of December, 2015.

Notary Public

My commission expires: October 8, 2017

VICKIE SPRAGUE
Notary Public - Notary Seal
State of Missouri
Commissioned for Jasper County
My Commission Expires: October 08, 2017
Commission Number: 13880529

E-Verify™

E-VERIFY IS A SERVICE OF DHS

Company ID Number: 254739

Approved by:

Employer R.E.Smith Construction Co.

Richard Smith	
Name (Please Type or Print)	Title
Electronically Signed	09/21/2009
Signature	Date

Department of Homeland Security – Verification Division

USCIS Verification Division	
Name (Please Type or Print)	Title
Electronically Signed	09/21/2009
Signature	Date

*1 Affidavit of Compliance with Section 292.675 R.S.Mo., Et Seq.
For Any Public Works Project Contract
Effective August 28, 2009

STATE OF Missouri)
) ss.
COUNTY OF Jasper)

Before me, the undersigned Notary Public, in and for the County of Jasper, State of Missouri, personally appeared Richard D. Smith *(Name)* who is President *(Title)* of R. E. Smith Construction Company *(Name of company),*(a corporation), (a partnership), (a sole proprietorship), (a limited liability company), and is competent and authorized to make this affidavit, and being duly sworn upon oath deposes and says as follows:

(1) that said company has verified the completion of a 10-hour construction safety program with respect to the employees working in connection with the contracted services.

The terms used in this affidavit shall have the meaning set forth in Sections 292.675 R.S.Mo., et seq.

Signature

Name: Richard D. Smith

Subscribed and sworn to before me this 12th day of December, 2015.

Notary Public

My commission expires: October 8, 2017

VICKIE SPRAGUE
Notary Public - Notary Seal
State of Missouri
Commissioned for Jasper County
My Commission Expires: October 08, 2017
Commission Number: 13880529