CITY OF JOPLIN MISSOURI

ADDENDUM No. 1

Issued to all Bid Document Holders of Record.

Date: March 1st, 2021

Project Name: On Call Infrastructure and Utility Cuts 2021

When submitting bid, Contractor must execute and submit a copy of all issued Addendum as well as Addendum No.1 proposal included in this addendum along with an executed acknowledgement of receipt of addendum form

Proposal Changes

- Adjusted quantities in proposal have been indicated in red.

Job Special Provisions (JSP) Changes

The following sections have been added or modified in the Job Special Provisions

Section B – Schedule of Work

2.0 Failure to complete the utility cut repairs within FIFTEEN (15) business days from when the permit is listed online (except for reasons listed below) will result in a damage of THREE HUNDRED DOLLARS ($300.00) per business day per individual excavation.

Section C – Work Zone Traffic Management Plan

- 14.0 All Traffic Control Plans are the responsibility of the contractor. Temporary traffic control plans shall be provided for review preceding any work being performed on arterial or collector streets. Traffic control plans will not be required for residential streets unless contractor fails to follow MUTCD guidelines, then plans will be required. The contractor is liable for all traffic control installation pending a City review. All traffic control plans should be submitted to both Drusk@joplinmo.org and Llawson@joplinmo.org failure to do so will result in delay of work.
- 15.0 Contractor will not be required to work in Mo-DOT Right of Way as part of this contract.

Section L – 4" Black Dirt Seed and Mulch

- Black Dirt Seed and Mulch is considered incidental to construction unless otherwise approved by the Engineer prior to work taking place.

Section M – Transportation and Disposal of Contaminated Materials

- Excavation of contaminated material to be included in unclassified excavation. This line item is only associated with additional cost of transporting material to repository per City of Joplin Standard Specifications Section 1800. Removal and Replacement of unsuitable is not associated with contaminated material.

Section N – Pull Box and Manhole Adjustments

- Excavation included in Pull Box and Manhole Adjustments.

Construction Agreement Changes

- Section 3 item d "Owner's and Contractor's Protective Liability Insurance" of the construction agreement has been revised to conform to the latest insurance requirements for the City of Joplin.

CITY OF JOPLIN

On Call Infrastructure and Utility Cuts 2021

Addendum No. 1

Questions and Answers Received by 3/1/2021

The Following clarifications shall be utilized for preparing bids.

1. Can a line item be included for saw cutting?
    a. No additional payment will be made for saw cutting and shall be considered incidental for all items unless otherwise approved by the Engineer.
2. Will base rock be needed for paved ditches?
    a. Yes, base rock will be required for paved ditches as per the City's standard drawings and specifications. The cost of the base rock is incidental to the work and is to be included in the cost of the line item.
3. Will the contractor be working on MODOT roads as part of this contract?
    a. No.
4. Can you clarify what kind of pavement you mean in the line item for pavement removal?
    a. Two separate line item have been created. One for Asphalt Pavement Removal and one for Concrete Pavement Removal.
5. Can you clarify traffic control responsibility?
    a. See Revised Section C 14.0 of the Job Special Provisions
6. Does the line item for flaggers account for 2 flaggers?
    a. Yes. A note indicating this has been added to the proposal for clarification purposes.
7. Can you add a bid item for Black Dirt?
    a. Line item #5 was changed from seed and mulch to Black Dirt Seed and Mulch. Black Dirt seed and mulch line item has been added for instances where black dirt seed and mulch is needed **and is not considered incidental to the work being performed per City of Joplin Specifications**.
8. Did all contractors demonstrate capability of using the ESRI ArcGIS Online Account that was required for the pre-bid?

a. The bid packet indicates that contractors were required to demonstrate/describe their ability to access and download a sample list of permits. As Sprouls is the current Utility Cut Restoration contractor, they have demonstrated they are capable as they utilize it weekly. The other two contractors at the pre-bid brought in print-outs demonstrating that they are capable.

This addendum forms a part of the contract described above. The original Contract Documents and any prior addenda remain in full force and effect as modified by the following that shall take precedence over any contrary provisions in the prior documents.

David K. Hertzberg, PE
Director of Public Works

Date 3/1/2021

Each bidder shall acknowledge receipt of this addendum by affixing his signature below by noting this addendum on his bid form, and by attaching this addendum to his bid.

ACKNOWLEDGEMENT
The undersigned acknowledges receipt of this addendum and the Bid submitted in accordance with information, instructions and stipulations set forth herein.

Bidder: _____

Signed By: _____

Date: _____

Addendum #1 BID FORM

On Call Infrastructure and Utility Cuts 2021

The original signed proposal must be submitted to the Public Works Director, Public Works Office, 602 South Main Street, Joplin, MO 64801, March 9th, 2021 at 10:00 a.m. The Contractor certifies that the information provided by it in its offer is accurate and complete. The execution of this proposal is certification that the undersigned Contractor has read and understands the instructions, terms, conditions and specifications of this solicitation, and agrees to fulfill the requirements of any awarded contract at the prices offered. By executing this offer, the Contractor further certifies that they are duly authorized to execute contracts on behalf of the Contractor and have obtained all necessary or applicable approvals to make this contract fully binding upon the Contractor. Quantities listed represent a portion of the expected quantities for bid analysis only. Actual quantities required for the contract will vary.

Contractor:

_____

Company Name

_____

Print Name **Print Title** **Signature**

Address: _____

_____

Business Phone: _____

Cell Phone: _____

BID FORM

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT COST	TOTAL COST
1	Full Depth Concrete Fiber Reinforced Pavement Repair (Base Included)	2500	SY		
2	Black Dye	2500	SY		
3	Full Depth Steel Reinforced Concrete Pavement Repair (Base Included)	2500	SY		
4	8" Concrete Pavement Repair w/ 2" Asphalt Cap (Base Included)	500	SY		
5	Black Dirt Seed and Mulch	500	SY		

BID FORM

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT COST	TOTAL COST
6	Cold Mix min 4"	500	SY		
7	Removal of Unsuitable Material	500	CY		
8	Replacement of Unsuitable Material	500	CY		
9	Asphalt Pavement Removal	3000	SY		
10	Steel Plates Various Size (1" minimum)	10	EA		
11	Manhole Adjustments	50	EA		
12	Concrete Pavement Removal	1000	SY		
13	Channelizers	4000	EA		
14	Signage	1000	SF		
15	Changeable Message Board, Standard Use	100	Calendar Day		
16	Type 3 Barricade, rent per day	350	EA		
17	Arrow Board	275	Calendar Day		
18	Flaggers (2)	300	Hour		
19	Transportation and Disposal of Lead Contaminated Soil	300	CY		
20	Type-S Curb (Base Included)	300	LF		
21	Poured Concrete Sidewalk Wall (Base Included)	200	SY		
22	Concrete Flume (Base Included)	250	SY		
23	8" Commercial Driveway Approach (Base Included)	500	SY		
24	8" Commercial Driveway Removal (Base Included)	500	SY		
25	6" Residential Driveway Approach (Base Included)	500	SY		
26	6" Residential Driveway Removal (Base Included)	500	SY		
27	Pull Box Adjustments	15	EA		
28	Standard Curb (0-15 LF) (Base Included)	1500	LF		
29	Standard Curb (16-50 LF) (Base Included)	1500	LF		

30	Standard Curb (≥ 51 LF) (Base Included)	1500	LF		
31	Nonstandard Curb (0-15 LF) (Base Included)	1500	LF		
32	Nonstandard Curb (16-50 LF) (Base Included)	1500	LF		
33	Nonstandard Curb (≥ 51 LF) (Base Included)	1500	LF		
34	4" Residential Sidewalk, ≤ 15 LF (Base Included)	250	SY		
35	4" Residential Sidewalk, > 15 LF (Base Included)	250	SY		
36	6" Sidewalk, Commercial, Point Repair < 15 LF (Base Included)	250	SY		
37	6" Sidewalk, Commercial, Rebuild >15 LF (Base Included)	250	SY		
38	Concrete Steps (Removal)	20	CY		
39	Concrete Steps Install (Base Included)	50	SY		
40	ADA Curb Ramp, Type A (Includes Truncated domes) (Base Included)	500	SY		
41	ADA Curb Ramp, Type B (Includes Truncated domes) (Base Included)	500	SY		
42	ADA Curb Ramp, Type C (Includes Truncated domes) (Base Included)	500	SY		
43	ADA Curb Ramp, Type D (Includes Truncated domes) (Base Included)	500	SY		
44	Installation of Flexa-Mat or Equivalent Material	500	SY		
45	6" French Drain (Granular Fill Included)	500	LF		
46	12" - 24" Grouted Riprap (including geotextile fabric)	500	SY		
47	MO-DOT Type 1 Rock Ditch Liner (3"-6") (including geotextile fabric)	100	CY		
48	MO-DOT Type 2 Rock Ditch Liner (6"-10") (including geotextile fabric)	100	CY		
49	MO-DOT Type 3 Rock Ditch Liner (12"-20") (Requires Bedding see MO-DOT 609.60.2.5) (including geotextile fabric)	200	CY		
50	MO-DOT Type 4 Rock Ditch Liner (19"-28") (Requires Bedding see MO-DOT 609.60.2.5) (including geotextile fabric)	200	CY		
51	15" Class III RCP (includes trenching, bedding, and cover)	500	LF		
52	18" Class III RCP (includes trenching, bedding, and cover)	500	LF		

53	24" Class III RCP (includes trenching, bedding, and cover)	800	LF		
54	30" Class III RCP (includes trenching, bedding, and cover)	100	LF		
55	36" Class III RCP (Includes trenching, bedding, and cover)	100	LF		
56	42" Class III RCP (Includes trenching, bedding, and cover)	100	LF		
57	Conc. Paved Ditch (Base Included)	500	SY		
58	Curb Inlet, Type A (Includes trenching, bedding, and cover) (≤ 4')	10	EA		
59	Curb Inlet, Type A Additional Depth	100	FT		
60	Curb Inlet, Type C (Includes trenching, bedding, and cover) (≤ 4')	25	EA		
61	Curb Inlet, Type C Additional Depth	100	FT		
62	Curb Inlet, Type D (Includes trenching, bedding, and cover) (≤ 4')	25	EA		
63	Curb Inlet, Type D Additional Depth	100	FT		
64	Junction Box 6' X 6' (Includes trenching, bedding, and cover) (≤ 4')	15	EA		
65	Junction Box 6' X 6' Additional Depth	100	FT		
66	Junction Box 5' X 5' (Includes trenching, bedding, and cover) (≤ 4')	15	EA		
67	Junction Box 5' X 5' Additional Depth	100	FT		
68	Junction Box 4' X 4' (Includes trenching, bedding, and cover) (≤ 4')	15	EA		
69	Junction Box 4' X 4' Additional Depth	100	FT		
70	Concrete Gutter Crossing (Base Included)	500	SY		
71	Concrete Gutter Crossing Removal	250	SY		
72	Concrete Trickle Channel (Base Included)	500	SY		
73	Trickle Channel Removal	100	SY		
74	Concrete Flume (Removal)	100	SY		
75	Rock Excavation	250	CY		
76	Unclassified Excavation	1500	CY		
77	Embankment	1500	CY		
TOTAL AMOUNT BID					

*Response time is required to be within 1 hour of notification to address problems on arterials and collectors. Liquidated damages shall be assessed at $100 per hour for delayed response.

- Prices include pickup and delivery along with monitoring of site with necessary adjustments.
- Sand bags are considered incidental on all installations.
- Steel plate installation must be approved by the City and must include steel plate warning signs.

Note: City reserves the right to add or delete from the contract.

Estimated quantities are for basis of award only. City makes no guarantee that quantities will be actual future quantities.

The undersigned agrees to enter a contract within fifteen (15) calendar days from notice of award should this proposal be accepted and enter bonds with good and sufficient securities. Above said bonds shall also indemnify and save harmless the said City from all damages or injuries to any person or persons, either in the employ of the contractor, his agents, servants, or employees.

No bid bond required.

Dated this_____day of_____, 2021.

Complete Address _____

_____

Company _____

By (signature) _____

AGREEMENT
BETWEEN
CITY OF JOPLIN AND

CITY		CONTRACTOR	
CITY OF JOPLIN **602 S. MAIN STREET** **JOPLIN, MO 64801**		Name: Address:	
Attention:		Attention:	
Department:		Phone:	Fax:
Phone:	Fax:	On Call Infrastructure and Utility Cuts 2021	

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, 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:

On Call Infrastructure and Utility Cuts 2021

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. Term of contract will run for one (1) year from the notice to proceed date. Both parties reserve the right to extend the contract for up to three (3) years if mutually agreed upon.

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. 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, 2021, 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 Nine Hundred Forty Thousand Eight Hundred Sixty-eight and no/100 Dollars ($2,940,868.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Forty-one Thousand One Hundred Thirty and no/100 Dollars ($441,130.00) 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 Nine Hundred Forty Thousand Eight Hundred Sixty-eight and no/100 Dollars ($2,940,868.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Forty-one Thousand One Hundred Thirty and no/100 Dollars ($441,130.00) 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 Nine Hundred Forty Thousand Eight Hundred Sixty-eight and no/100 Dollars ($2,940,868.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Forty-one Thousand One Hundred Thirty and no/100 Dollars ($441,130.00) 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 TWENTY FIVE THOUSAND DOLLARS and no/100 Dollars ($25,000.00) 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 $25,000.00 must be listed in United States Treasury Circular 570.

5. Certification Regarding Disbarment, Eligibility, Indictments, Convictions or Civil Judgements for all Federal Aid Projects: By signing and submitting the bid, the president or authorized official of the bidder, under penalty of perjury under the laws of the USA, shall certify that, except as noted in the exceptions, the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor or any position involving the administration of federal funds:
(Reference can be made to "The System for Award Management" website as a helpful resource).

a. Is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency.

b. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years.

c. Does not have a proposed debarment or suspension pending.

d. Has not been indicted, convicted or had a civil judgment rendered against any of the listed parties by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

5.1 If there are any exceptions, the bidder shall submit the exceptions on company letterhead, signed by the bidder and inserted inside the bid submitted. Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, the bidder shall indicate to whom it applies, the initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

5.2 By signing the contract, the contractor shall further certify that all related subcontracts of $25,000 shall comply with this requirement. This includes all subcontractors, material suppliers and vendors.

6. 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.

7. 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.

8. 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 0000, General Requirements and Provisions, Section 0400.19, (http://mo-joplin.civicplus.com/DocumentCenter/View/3460) Contractor (or surety) shall be liable to the City in the amount of $300.00 per business day per individual excavation not completed within 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. All utility cuts within an arterial or collector street will be assessed double this rate and shall be deducted from the contract amount until said work is completed to the satisfaction of the Director of Public Works. The amount assessed as liquidated damages may be withheld from any moneys otherwise due to Contractor from the City.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. Payment. The City will pay the Contractor in accordance with the rate set forth in the contract documents on file in the Public Works Department and by this reference made a part hereof, 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. If the City or the architect or engineer determines that a higher rate of retainage is required to ensure performance of the contract, the City may withhold up to ten (10) percent retainage until the work is fully completed and accepted by the City.

16. 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 (Latest Revised Edition)
e. Special Conditions & Provisions
f. 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. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

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

APPROVED AS TO FORM

_____

Peter Edwards, City Attorney

CONTRACTOR:

By:

_____

_

Printed Name:

_____

Title:

_____

CITY OF JOPLIN, MISSOURI

By: _____

David Hertzberg, Public Works Director