“NOTICE: This Agreement is included as a sample only and should not be considered a final document. Any agreement between the City and a successful bidder may be significantly different than the agreement attached following legal review.

EXHIBIT A

CONTRACT NO._____

ADDRESS & PHONE OF CITY
Information Technology Department
602 South Main Street
Joplin, MO
417-624-0820 ext. 1247

NAME, ADDRESS & PHONE OF FIRM

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2021, by and between the City of Joplin, a municipal corporation of the State of Missouri, hereinafter referred to as the "City" with offices at 602 South Main, Joplin, Missouri and Firm hereinafter referred to as the "Firm."

WITNESSETH:

WHEREAS, the City of Joplin desires to engage the Firm to render certain services hereinafter described in Request for Proposal 2021-RFP-10 which Request for Proposal is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the Firm submitted a proposal dated August 20, 2021 which proposal is attached hereto and incorporated herein as Exhibit B; and

WHEREAS, the Firm has become the lowest and best Offeror for performing the services listed in the Notice of Award, which Notice of Award is attached hereto and incorporated herein as Exhibit C;

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

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

2. The services of the Firm shall commence only as authorized in writing by City purchase order or other written notice and shall be undertaken and completed as promised by the Firm in Exhibit B. The term of the Agreement shall be for the period specified in Exhibit C.

3. The City agrees to pay the Firm in accordance with the prices and terms set forth in Exhibit B for work authorized by City purchase order or other written Notice by the City upon presentation of proper invoice and inspection by the City of work completed by the Firm.

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

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

6. The Firm represents that Firm will secure at Firm's own expense; all personnel required to perform the services called for under this contract by Firm. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Firm. All the services required hereunder will be performed by the Firm or under Firm's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this contract shall be subcontracted without the

written approval of the City.

7. **Termination:** If, through any cause, the Firm shall fail to fulfill in a timely and proper manner Firm's obligations under this contract, or if the Firm shall violate any of the covenants, agreements, or stipulations of this contract, the City shall thereupon have the right to terminate this contract by giving written notice to the Firm of such termination and specifying the effective date thereof, at least five (5) days before the effective day of such termination. The City may, without cause, terminate this contract upon 30 day's prior written notice. **In either such event, all finished or unfinished documents, data, studies, reports, or other materials prepared by the Firm shall, at the option of the City become its property.** The Firm shall be entitled to receive just and equitable compensation for any satisfactory work completed. Notwithstanding the above, the Firm shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the contract by the Firm.

8. **Assignment:** The Firm 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 Firm from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement, though City will attempt to so notify any such assignee.

9. Any reports, data, or similar information given to or prepared or assembled by the Firm under this contract which the City requests to be kept as confidential shall not be made available to any individual or organization by the Firm without prior written approval of the City.

10. **Modification of Contract:** The Scope of Work to be done under the Contract shall be subject to modification and supplementation upon the written Agreement of the duly authorized representatives of the Contracting parties. No provision in the Contract shall be changed or modified without the execution of a formal amendment to the Contract, mutually agreed to by the City and the Firm and processed through the Division of Purchases. Upon request by the City, the Firm shall provide an estimate of cost of any additional work or services to be incorporated by a modification to the Scope of Work and the Contract.

11. **Contract Documents:** The agreement between the City of Joplin and the Firm shall consist of (1) The Contract form which embodies the requirements contained herein, (2) the Request for Proposal, and any amendments thereto and, (3) the proposal, as accepted, submitted in response to the Request for Proposal. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the Contract shall govern over all other documents, and the Request for Proposal and amendments thereto shall govern over the Firm's Proposal and amendments thereto. However, the City reserves the right to clarify any Contractual relationship in writing with the concurrence of the Firm, and such written clarification shall govern in case of conflict with the applicable requirements stated in the Request for Proposal or the Firm's proposal. In all other matters not affected by the written clarification, if any, the Request for Proposal shall govern. The Firm is cautioned that the proposal shall be subject to acceptance without further clarification.

12. **General Independent Firm Clause:** This agreement does not create an employee/employer relationship between the parties. It is the parties intention that the Firm will be an Independent Firm and not the City's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue code, Missouri revenue and taxation laws, Missouri Workers' Compensation and unemployment insurance laws. The Firm will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Firm's activities and responsibilities hereunder. The Firm agrees that it is a separate and independent enterprise from the public employer, that is has a full opportunity to find other business, that is has made its own investment in its business, and that it will utilize a high level

of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Firm and the City, and the City will not be liable for any obligation incurred by the Firm, including but not limited to unpaid minimum wages and/or overtime premiums.

13. The Firm shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Workers Compensation Program of the City.

14. **Certification of Non-Resident/Foreign Firms:** If the Firm is a foreign corporation or non-resident Firm, it is agreed that the Firm shall procure and maintain during the life of this contract:

    A. A certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 RSMo.

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

15. **Nondiscrimination:** The Firm agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Firm or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

16. Firm covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this contract. The Firm further covenants that in the performance of this contract no person having such interest shall be employed.

17. **Firm's Responsibility for Subcontractor**: It is further agreed that Firm shall be as fully responsible to the City for the acts and omissions of its subcontractor, and of persons either directly or indirectly employed by them, as Firm is for the acts and omissions of persons it directly employs. Firm shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractor to Firm by all the terms herein set forth, insofar as applicable to the work of subcontractor and to give Firm the same power regarding termination of any subcontract as the City may exercise over Firm under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between any subcontractor and the City or between any subcontractors.

18. The certificates of insurance, including evidence of the required endorsements of the policies shall be filed with the City of Joplin within ten (10) days of the date of receipt of the Award of the contract to the Firm and prior to the start of work. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company in question, prior to modification or cancellation of insurance. Such notices shall be mailed, return receipt requested to:

    City Attorney
    City of Joplin
    602 South Main
    Joplin, MO 64801

19. **Liability and Indemnity:**

    A. In no event shall the City be liable to the Firm 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 Firm 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 there under (the Firm 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 Firm.

C. The Firm 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 Firm hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Firm, 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. Firm affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Firm'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.

20. **Conflict of Interest:** No salaried officer or employee of the City and no member of the City Council shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Any federal regulations and applicable provisions in RSMo. Chapter 105 shall not be violated.

21. **Entire Agreement:** This agreement, including the contract documents contained or referenced herein, constitutes the entire agreement between the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto and signed by both parties.

22. **Waiver:** No provision of the contract documents shall be construed, expressly or by implication, as a waiver by the City of any existing or future right or remedy available by law in the event of any claim of default or breach of contract.

23. **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.

24. **Notices:** All notices required or permitted hereunder and required to be in writing may be given by first class mail addressed to Division of Purchases, 602 South Main, Joplin, Missouri, 64801, and the Firm at the address indicated. The date of delivery of any notice shall be the date falling on the second full day after the day of its mailing.

IN WITNESS WHEREOF the parties have hereunto set their hands and seal the date first above written.

CITY OF JOPLIN, MISSOURI

By: _____
City Manager

FIRM

_____
Company Name

By: _____
Signature

Name: _____
Print or type

Title: _____

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney