NOTICE OF REQUEST FOR PROPOSAL

REQUEST FOR PROPOSAL NO. 2015-RFP-08

PRIORITY BASED BUDGETING SERVICES

RFP Due Date: 10:00 A.M., June 1, 2015

Location: City of Joplin
City Manager's Department
602 South Main
Joplin, MO 64801

Staff: Sam Anselm, City Manager
Email: sanselm@joplinmo.org

Phone: 417-624-0820 ext. 201 **Fax:** 417-625-4707

Proposals will be received by the City Manager's Department at the specified location until the time and date cited above. Only proposals received by the correct time and date will be recorded.

Proposals must be submitted in an envelope with the Request for Proposal number and the Vendor's name and address clearly indicated on the envelope. All proposals must be completed in ink or typewritten and submitted by the time and date above.

Consultants are strongly encouraged to carefully read the entire Request for Proposal.

April 17, 2015
Issue Date

CITY OF JOPLIN, MISSOURI
STANDARD INSTRUCTIONS TO PROPOSERS AND CONDITIONS OF REQUEST FOR PROPOSAL

1. **PREPARATION OF PROPOSALS**

A. Proposers are expected to examine the scope of services, delivery schedule, requirements and all instructions of the Request for Proposal. Failure to do so will be at Proposer's risk. In case of a mistake in extension, the unit price(s) will govern.

B. Firm fixed prices shall be bid and include all packing, handling and shipping charges.

C. Unless otherwise indicated prices quoted shall be firm for acceptance for one hundred twenty days from proposal opening and for the specified contract period.

2. SUBMISSION OF PROPOSALS

A. A proposal submitted by a Proposer must (1) be manually signed by the Proposer; (2) contain all information required by the Request For Proposal; (3) be priced as required; (4) be sealed in an envelope or container; (5) be attached to a security deposit if required; and (6) be delivered to the specified department and officially clocked in no later than the exact time and date specified on the Request For Proposal.

B. The sealed envelope or container containing a proposal should be clearly marked on the outside left corner with (1) the official Request For Proposal number and (2) the official closing date and time.

C. Do not submit proposals in response to other solicitations in the same sealed envelope. If more than one proposal is submitted in the same container, your proposal may be rejected as non-responsive.

3. **MODIFICATION OR WITHDRAWAL OF PROPOSALS**

A. Proposals may be modified or withdrawn by written or telegraphic notice received prior to the official closing date and time specified. A proposal may also be withdrawn or modified in person by the Proposer or his authorized representative provided proper identification is presented before the official closing date and time. Verbal phone requests to withdraw or modify a proposal will not be considered.

B. After the official closing date and time, no proposal may be modified or withdrawn.

C. The proposal is firm for acceptance for one hundred twenty (120) days after proposal opening.

4. **PROPOSAL OPENING**

A. Proposal openings shall be public on the date and at the time specified on the proposal form. It is the Proposer's responsibility to assure that his proposal is delivered at the proper time and place of the proposal opening. Proposals which for any reason are not so delivered will be not considered. Offers by telegram, telephone, or facsimile will not be accepted, unless specifically authorized by the Request for Proposal. Proposal files may be examined during normal working hours by appointment.

5. **AWARDS**

A. Unless otherwise stated in the Request For Proposal, cash discounts for prompt payment of invoices will not be considered in the evaluation of prices, if part of the proposal. However, such discounts are encouraged to motivate prompt payment.

B. As the best interest of the City may require, the right is reserved to make awards; to reject any and all proposals or waive any minor irregularity of technicality in proposals received.

C. Awards will be made to the Proposer whose proposal (1) meets the specifications and all other requirements of the Request For Proposal and (2) is the best proposal, considering price, responsibility of the Proposer and all other relevant factors in the criteria for award.

D. Each proposal is received with the understanding that the acceptance in writing by the City of the offer to furnish any or all materials, equipment, supplies or services described therein shall constitute a contract between the Proposer and the City; and shall bind the Proposer to furnish and deliver at the price, and in accordance with the conditions of said accepted proposal and detailed specifications.

6. **OPEN COMPETITION**

A. It is the intent and purpose of the Division of Purchases that the Request for Proposal permits free and open competition. However, it shall be the Proposer's responsibility to advise the Division of Purchases if any language, requirements, etc., or any combination thereof, inadvertently restricts or limits the requirement to a single source or otherwise prohibits the submission of a proposal. The notification should be received by the specified department at least ten days prior to the Request for Proposal closing date and time. The Proposer may submit a notification after the proposal closing provided sufficient time is permitted for a thorough review by the Division of Purchases and its decision will be final.

CITY OF JOPLIN, MISSOURI
STANDARD TERMS AND CONDITIONS OF PURCHASE

A. This contract expresses the complete agreement of the parties and performance shall be governed solely by the terms and conditions contained herein. Changes, additions or modifications hereto must be in writing and signed by the Purchasing Agent.

B. **INVOICES:** An original of the invoice shall be submitted and shall show the purchase order number or contract and contract release number and contain full descriptive information of item or services furnished.

C. **BANKRUPTCY OR INSOLVENCY:** In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of Seller, or in the event of breach of any of the terms hereof including the warranties of the Seller, City may cancel this contract or affirm the contract and hold Seller responsible in damages.

D. **COMPLIANCE WITH APPLICABLE LAWS:** The Seller warrants it has complied with all applicable laws, rules and ordinances of the United States, or any state, municipality or any other governmental authority or agency in the manufacture or sale of the items covered by this contract, including but not limited to

all provisions of the Fair Labor Standard Act of 1938, as amended.

E. **INTERPRETATION OF CONTRACT AND ASSIGNMENTS:** The contract shall be construed according to the laws of the State of Missouri. The contract, or any rights, obligations or duties hereunder may not be assigned by Seller without the City's written consent or any attempted assignment without such consent shall be void.

F. **TERMINATION OF CONTRACT:** The City reserves the right to terminate the contract at any time if any of the provisions of the contract are violated by the Contractor or by any of his Subcontractors, in the sole judgment and discretion of the City. In the event of such termination, the Contractor shall be liable for any excess costs incurred by the City. If the contract is so terminated, the City may purchase upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to those so terminated, and that the Contractor will be liable for excess costs occasioned thereby.

G. **NON-DISCRIMINATION IN EMPLOYMENT:** In connection with the furnishing of supplies or performances or work under this contract, the Contractor agrees to comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable federal and state laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder.

H. **PROVISIONS BY LAW DEEMED INSERTED:** Each and every provision of the law and clauses required by law to be inserted in this contract will be deemed to be inserted herein and will read and be enforced as though it were included herein, and if through mistake, or otherwise any such provision is not inserted, then upon the application of either party the contract will be physically amended to make such insertion or correction.

I. **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. 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.

1.0 Scope of Work

1.1 Purpose

The City is interested in obtaining the services of a priority based budgeting consulting firm to develop a new budget process utilizing “Priority Based Budgeting” principles. The successful vendor will help the City evaluate services against each other and determine which services are best aligned with the City government’s and the community’s priorities. The City seeks assistance in implementing a new budgeting process focused around developing a budget that achieves major priorities of the community and the Council, rather than a traditional departmental budget approach.

The City’s budget process will be highly collaborative and involve staff from throughout the organization to develop a proposed budget that focuses on priorities that City leaders and citizens would like to see achieved by local government with the limited resources available. The City seeks experienced professional support to facilitate a citizen engagement process, facilitate the priority based budget process and provide general support through the implementation of the new process.

It is the goal of the City to achieve fiscal sustainability, while continuing to provide the best services possible to the citizens and the community. The City intends to award a contract for priority based budgeting services for a three (3) year term, with an option for a one-year extension.

1.2 Background

The City, incorporated in 1873, is located in the southwest corner of Missouri and is the State’s fourth largest metropolitan area. The City is a Home Rule Charter City and has operated under the council-manager form of government since 1954. Policymaking and legislative authority are vested in the governing council, consisting of nine members. The council is responsible for passing ordinances, adopting the budget, appointing committees and hiring the government’s manager, attorney, clerk, and municipal judge. The City Manager is responsible for day-to-day operations of the City and for appointing the heads of the City’s departments. While the City’s census population is 50,150, the daytime population is approximately 240,000.

The City’s fiscal year begins on November 1. The adopted FY 2015 budget is nearly $168 million, of which $82.3 million represents capital expenditures. Following the EF-5 tornado that struck our community on May 22, 2011, the City has received over $200 million in various grant funds to spend over the next four years. The FY 2015 general fund budget is nearly $31 million. The adopted budget includes 585 FTE’s. The City has thirteen departments.

Due to cautious fiscal policies, the City has endured the recent recession with no cuts in services or personnel. However, the City anticipates that circumstances will make it more difficult to fund some operations in coming years, and is seeking a way to accurately identify program costs and to give the City tools to determine which programs it will offer in the future.

1.3 Requirements

1.3.1 Scope of Work Requirements

Below is a general outline of the anticipated scope of work. However, the final scope of work will be negotiated with the successful proposer.

The successful vendor will help the City evaluate services against each other and determine which services are best aligned with the City government's and the community's priorities. It will help the City Council, the City staff and the public learn how to value services and to divest themselves of lower-priority services. The successful vendor should also equip the City with the information/programs/tools necessary to address future challenges as they arise. This would include a method that can be used to evaluate new, future program offerings in comparison to existing services, and to combine services where most desirable.

The selected consultant will be expected to provide advisory, analytical and facilitation assistance in the establishment of the City's Priority Based Budgeting process. The selected Consultant shall work with at the direction of the City Manager. Services required of the selected Consultant may include, but not be limited to, the following:

A. Assist the City in diagnosing fiscal problems and treatment options.

B. Assist the City in defining goals for the organization.

C. Assist the City in prioritizing resource allocation for the most valuable programs and services.

D. Provide training and advisory assistance to City staff in creating and reviewing program scores.

E. Develop and support the peer review process to validate program scores, prior to the final update of the allocation tool. This may include participation of City Council and other external stakeholders, as well as City staff.

F. Assist with the calculation of departmental target budgets to ensure resource allocation starts with available revenues.

G. Provide training and coaching in the utilization of the allocation tool during the budget development process.

H. Be available for meetings as required.

I. Assist with the presentation of the first complete priority based budget to demonstrate how the program prioritization process was used to enhance decision-making. This would include at least one presentation to City Council.

J. Explore ideas with City staff and City Council for additional citizen engagement in future budget years.

1.4 Content Requirements

Each Proposal shall include the following:

The Proposal must detail how the Contractor will provide the Scope of Services required by this RFP and the cost of providing those services. Proposal costs submitted should reflect a three-year contract with the option for a one (1) year extension. Price guarantees should be included if applicable. Contractors are encouraged to present in their Proposals any alternate or creative means of providing any item specified in the Scope of Services, and the effect that would have on the proposed prices.

1.4.1 Company Profile

Provide the following information relative to your firm:

A. Firm name and business address, including telephone and facsimile numbers, and e-mail address.
B. Year established (include former firm names and year established). Identify the country and state in which the firm was incorporated or adopted.
C. Provide the Firm's type of ownership and, if applicable, parent company or subsidiaries. Include dates of any corporate mergers and/or acquisitions, including all present and former subsidiaries with dates of any and all restructuring since the founding date.
D. Clarify the business address and telephone number of the office(s) at which the work is to be accomplished (if different than item #A). Also include the name, address, and telephone number of the project manager, if different than item A.

1.4.2 Organizational Structure

Describe your firm's organizational structure and discuss how you anticipate organizing your project team for this engagement.

1.4.3 Key Staff Resumes

Provide a listing of key project team members who will be involved. Provide resumes for the project manager and other key managerial staff and technical information, which include work experience, education, and any work-related publications. The key people proposed for the project must actually participate. If, because of extenuating circumstances, a member must be replaced, the City must approve the new member.

1.4.4 Experience and Qualifications

Set forth your experience and qualifications as they relate to the proposed project in terms of technical scope, tasks involved, deliverable products, and other elements of the work as they relate to the evaluation criteria and all requirements of this RFP. The City seeks the following minimum qualifications:

A. Demonstrated expertise in priority based budgeting.
B. Relevant experience providing training and support to multiple local governments implementing priority based budgeting.

C. Relevant experience in facilitating a citizen engagement process.
D. Extensive knowledge and experience with local government, governmental finance and budget processes.
E. Strong written, verbal and interpersonal communication skills.
F. Resource capacity to complete tasks on time.
G. Experience in presenting findings in a public setting.

The Proposal should provide all information which the Contractor considers pertinent to its qualifications for performing the work called for by the RFP; including, but not limited to work detailed in 1.3.1.

1.4.5 References

Each Contractor must furnish a minimum of five (5) references. At least three (3) of the five (5) references should be from organizations of similar size and complexity as the City of Joplin. Each reference must identify and describe the project worked on, and specify the originating and final project manager for the party providing the reference. References may or may not be reviewed or contacted, at the sole discretion of the City.

1.4.6 Pending Claims

Each Contractor must describe any pending or ongoing administrative or judicial proceedings material to its business or finances, including, but not limited to litigation, consent orders, or agreements with state or federal regulatory agencies, and any claims, whether past, current, or pending, that involve work similar to the work sought by this RFP. The nature of any such claim or proceeding must be described, together with its current status, final disposition (if any), and the parties involved.

1.5 Administrative Requirements

1.5.1 RFP Schedule

The City anticipates that the following timetable will apply to this RFP. The dates following the April 17, 2015 RFP issue date are subject to change:

Activity	Date
RFP issued	April 17, 2015
Proposal Submission Deadline	June 1, 2015
Proposed Selection Date	July 1, 2015
Contract Discussions Conclude	August 1, 2015
Contract Effective Date-Council Approval	September 1, 2015

Any question, request for clarification, or request for additional information regarding this RFP should be submitted no later than May 15, 2015 via e-mail to sanselm@joplinmo.org, or in writing, to Sam Anselm (Attn: Priority Based Budgeting Services RFP), City of Joplin, 602 South Main, Joplin, MO 64801. No oral response by any employee or agent of the City shall be binding on the City or shall in any way be considered a commitment by the City. If a Contractor finds any inconsistency or ambiguity in the RFP, the Contractor is requested to contact the City Manager's Department, at the above address.

1.6 Proposal Selection and Evaluation

1.6.1 Proposal Evaluation Process

Proposals, which the City determines in its sole discretion, that are deemed responsive to this RFP, will be reviewed and evaluated by the City. The City reserves the right to request Contractors to make one or more presentations to the City at the City's offices at the Contractor's sole cost and expense, addressing Contractors' ability to achieve the objectives of this RFP. Proposals will be evaluated, in part, according to whether the Contractor meets the minimum qualification and submits a proposal complying with all of the requirements of this RFP.

Evaluation of vendor proposals will be based on the following criteria:

30%	Methodology - that the vendor will use to conduct work outlined in RFP and evidence of ability to perform the work described herein.
25%	Experience – previous experience performing related projects of complex nature, including, but not limited to, similar size and type of organization.
15%	References – will be based on references submitted as part of RFP, but can include clients not submitted.
25%	Cost of proposal
5%	Staff - capability and availability of professional staff to serve the City of Joplin in a competent and timely manner.

1.6.2 Responsibility for Costs

The Contractor shall be fully responsible for all costs associated with the development, preparation, transmittal, and submission of any Proposal or material submitted in response to this RFP. The City assumes no contractual or other obligations as a result of the issuance of this RFP, the preparation or submission of a Proposal by a Contractor, the evaluation of Proposals, or the selection of any Contractor for further negotiations.

1.7 Confidentiality/Public Disclosure

The successful Contractor shall treat all information obtained from the City, which is not generally available to the public as confidential and proprietary to the City. Successful Contractor shall exercise all reasonable precautions to prevent any information derived from such sources from being disclosed to any other person. Successful Contractor agrees to indemnify and hold harmless the City, its officials and employees, from and against all liability, demands, claims, suits, losses, damages, causes of action, fines and judgments (including attorney's fees) resulting from any use or disclosure of such confidential information by successful Contractor or any person acquiring such information, directly or indirectly, from successful Contractor.

By submission of a proposal, Contractors acknowledge and agree that the City, as a municipal corporation, is subject to state and local public disclosure laws and, as such, is legally obligated to disclose to the public documents, including proposals, to the extent required hereunder. Without limiting the foregoing sentence, the City's legal obligations shall not be limited or expanded in any way by a Contractor's assertion of confidentiality or proprietary data.

1.8 Contract Terms and Conditions

The City may condition award of the Contract on the Contractor's acceptance of the terms and conditions contained in the form of agreement attached hereto and made a part hereof as Exhibit A. Contractors may submit with its Proposal, written objections to the terms and conditions established in this RFP and/or agreement by identifying the specific section(s) and paragraph(s) objected to, stating the reason(s) for the objection and proposing alternative terms. Should Contractor object to any of the terms and conditions established in this RFP, including the form of agreement, the City reserves the right, in its sole discretion, to permit Contractor to rescind any or all such exceptions at any time prior to award of a contract. The City, in its sole discretion, may evaluate proposals according to whether the Contractor objects to terms and conditions and if Contractor does object, the number and type of objections. In no event shall the City's selection of a Contractor for further negotiations constitute acceptance of any objection or proposed alternative to the terms and conditions established in this RFP. The City reserves the right, however, to add, delete, revise, or negotiate terms and conditions different than those included in the RFP, if, in the sole judgment of the City, it is in the best interest of the City to do so.

2.0 FORMAT AND CONTENT OF PROPOSAL

2.1 Proposal Terms and Conditions

The following terms and conditions apply to submitting proposals in response to this Request for Proposal:

2.2 Interviews

The City reserves the right to conduct personal interviews or require presentations of any or all proposers prior to selection. The City will not be liable for any costs incurred by the proposer in connection with such interviews/presentations (i.e. travel, accommodations, etc.)

2.3 Request for Additional Information

The proposer shall furnish such additional information as the City of Joplin may reasonably require. This includes information which indicates financial resources as well as ability to provide and maintain the system and/or services. The City reserves the right to make investigations of the qualifications of the proposer as it deems appropriate.

2.4 Acceptance/Rejection/Modification to Proposals

The City reserves the right to negotiate modifications to proposals that it deems acceptable, reject any and all proposals, and to waive minor irregularities in the procedures.

2.5 Proposals Binding

All proposals submitted shall be binding for one hundred twenty (120) calendar days following the opening.

2.6 Proprietary Information

In accordance with Public Records Law, and except as may be provided by other applicable State and Federal law, all proposers should be aware that Requests for Proposals and the responses thereto are in the public domain. However, the proposers are requested to identify specifically any information contained in their proposals which they consider confidential and/or proprietary and which they believe to be exempt from disclosure, citing specifically the applicable exempting law.

All proposals received from proposers in response to this Request for Proposal will become the property of the City of Joplin and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the City.

2.7 Proposer's Certification

By submitting a proposal, the proposer certifies that the proposal has been fully read and understood. The proposer has full knowledge of the scope and nature and quality of work to be performed. The proposer further certifies that no employee of the City has any direct or indirect financial interest in any resultant contract, and that no gratuities will be offered or provided to the City of Joplin employees or their family members.

2.8 Non-exclusive Contract

The agreement resulting from this RFP shall be a non-exclusive contract, and the City reserves the right to purchase same or like services from other sources the City deems necessary and appropriate.

2.9 Exceptions

If the Offeror desires to take exception to any terms, conditions and requirements of the RFP, the Offeror must clearly state those exceptions on the Affidavit of Compliance. Exceptions taken by the Offeror may be considered in the evaluation of proposals.

2.10 Late proposals

Proposals received by the City after the time specified for receipt will not be considered. Proposers shall assume full responsibility for timely delivery of the proposals to the location designated for receipt of proposals. The City of Joplin is not responsible for the U.S. Mail or private couriers in regards to mail being delivered by the specified time so that a proposal can be considered. All proposals will be received at the time and place specified and made available for public inspection when an award decision is made.

2.11 Completeness

All information required by the Request for Proposal must be supplied to constitute a legitimate proposal. The City of Joplin reserves the right to use any and all information presented in any response to the Request for Proposal. Acceptance or rejection of the RFP does not affect this right.

2.12 Execution of Agreement

It is anticipated the City will make their selection of a firm by July 1, 2015. The successful proposer shall enter into a contract with the City for the performance of work awarded to him and shall simultaneously provide any required bonds, indemnities and insurance certificates by August 1, 2015. A copy of the sample agreement is attached. Failure to comply within the established deadline for submittal of required documents may be grounds for cancellation of the award.

3.0 SUBMISSION OF PROPOSALS

In order for the City to adequately compare proposals and evaluate them uniformly and objectively, all proposals shall be submitted in accordance with this format. The proposal should be prepared simply and economically, providing straight-forward and concise information as requested.

3.1 Submission Format

1. Title Page: The complete legal name, address, Federal ID number or Social Security number, permanent address and telephone number of the Offeror including the name of the person to contact for discussion of the proposal.
2. Table of Contents.
3. Letter of Transmittal - Limit to one (1) or two (2) printed pages.
4. Requirements – as listed in 1.3 thru 1.5 of the RFP.

3.2 Offer and Schedule of Professional Fees and Expenses

The undersigned has thoroughly examined the entire Request for Proposal (RFP), including all amendments thereto, hereby offers to furnish all services in accordance with the requirements of the Request for Proposal, as described in the proposal attached hereto and incorporated herein, as follows:

PROVIDE A COMPLETE BREAKDOWN OF COSTS.

Scope of Work Services: Complete the project set forth in the Scope of Work at the fees and as described in the Offeror.

Not to exceed $ _____

3.3 Proposal Due Date

Sealed proposals with one (1) original and five (5) complete copies will be received at the Finance Department no later than 10:00 a.m. June 1, 2015. Proposals will not be accepted after this time. Proposals shall be addressed as follows:

For Mail or Hand Delivery
CITY OF JOPLIN
SAM ANSELM
CITY MANAGER
602 SOUTH MAIN
JOPLIN, MO 64801
Submitted envelopes should be marked: "REQUEST FOR PROPOSAL NO. 2015-RFP-08: PRIORITY BASED BUDGETING SERVICES "

3.4 Proposal Evaluation Process

The steps and activities in the proposal process will include the following:

3.4.1 The City will review and evaluate all proposals submitted in response to this Request for Proposals (RFP). The City shall conduct a preliminary evaluation of all proposals on the basis of the information provided and other evaluation criteria as set forth in this Request for Proposals or as reasonably determined by the City.

3.4.2 The City will first review each proposal for compliance with the minimum qualifications and mandatory requirements of the RFP. Failure to comply with any mandatory requirements may disqualify a proposal.

3.4.3 Proposals will then be evaluated and rated in accordance with the evaluation criteria. A shortlist will be developed listing the highest ranked proposals.

3.4.4 The City will confer with all responsible proposers who have been short listed and may arrange, if necessary, for interviews/presentations by the short listed firms.

3.4.5 The City reserves the right to conduct pre-award discussions and/or pre-contract negotiations with any or all responsive and responsible proposers who submit proposals determined to be reasonably acceptable of being selected for award. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission of proposals and prior to award of a contract.

3.4.6 The City reserves the right to reject any and all proposals and to waive minor irregularities. The City further reserves the right to seek new proposals when such a procedure is reasonable and in the best interests of the City to do so.

EXHIBIT A

CONTRACT NO._____

ADDRESS & PHONE OF CITY
City Manager's Department
602 South Main
Joplin, MO
417-624-0820

NAME, ADDRESS & PHONE OF CONTRACTOR

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, 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 _____ hereinafter referred to as the "Consultant."

WITNESSETH:

WHEREAS, the City of Joplin desires to engage the Consultant to render certain services hereinafter described in Request For Proposal 2015-RFP-08 which Request For Proposal is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the Consultant submitted a proposal dated June 1, 2015 which proposal is attached hereto and incorporated herein as Exhibit B; and

WHEREAS, the Consultant 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 Consultant and the Consultant 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 Consultant 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 Consultant in Exhibit B. The term of the Agreement shall be for the period specified in Exhibit C.

3. The City agrees to pay the Consultant 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 Consultant.

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

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

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

8. **Assignment:** The Consultant 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 Consultant 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 Consultant under this contract which the City requests to be kept as confidential shall not be made available to any individual or organization by the Consultant 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 Consultant and processed through the Division of Purchases. Upon request by the City, the Consultant 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 Consultant 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 Consultant's Proposal and amendments thereto. However, the City reserves the right to clarify any Contractual relationship in writing with the concurrence of the Consultant, and such written clarification shall govern in case of conflict with the applicable requirements stated in the Request for Proposal or the Consultant's proposal. In all other matters not affected by the written clarification, if any, the Request For Proposal shall govern. The Consultant is cautioned that the proposal shall be subject to acceptance without further clarification.

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

13. The Consultant agrees and understands that the City of Joplin's Agreement to the Contract may be predicated, in part and among other considerations, on the utilization of the specific individual(s)

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

14. **General Independent Contractor Clause:** This agreement does not create an 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 Contributions Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue code, Missouri revenue and taxation laws, Missouri Workers' Compensation and unemployment insurance laws. The Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that is has a full opportunity to find other business, that is has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

15. The Consultant 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.

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

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

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

17. **Nondiscrimination:** The Consultant 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 Consultant or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

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

19. **Consultant's Responsibility for Subcontractors**: It is further agreed that Consultant 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. Consultant shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Consultant by all the terms herein set forth, insofar as applicable to the work of subcontractors and to give Consultant the same power regarding termination of any subcontract as the City may exercise over Consultant under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between any subcontractor and the City or between any subcontractors.

20. 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 Consultant 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

21. **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 there under (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.

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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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 Consultant at the address indicated on Affidavit of Compliance form. 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: _____
Samuel L. Anselm, City Manager

CONSULTANT

_____
Company Name

By: _____
Signature

Name: _____
Print or type

Title: _____

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney