

## MEMORANDUM OF UNDERSTANDING AND AGREEMENT

This memorandum of understanding and agreement (herein "MOU") is made on this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the RestoreSpiva LLC, a Missouri Limited Liability Company (hereinafter referred to as "RestoreSpiva"), the City of Joplin, a Missouri Municipal Corporation (hereinafter referred to as "City"), and the Community Foundation of the Ozarks, a Missouri Nonprofit Corporation (hereinafter referred to as "CFO"), collectively referred to as the "Parties."

WHEREAS, City owns Spiva Park (hereinafter referred to as "Park"), and City desires to enter into an agreement with RestoreSpiva under the terms and conditions described herein; and

WHEREAS, RestoreSpiva was formed by the Cragin Family (Mike Cragin, Christy Cragin, Scott Cragin and Gay Currence) for the purposes of renovating and upgrading the Park; and

WHEREAS, RestoreSpiva's purpose is "To conduct a capital campaign to restore the park to its place as a jewel of the city including renovation of masonry, plumbing, lighting and electrical work and to provide for future upgrades to the Park", and

WHEREAS, CFO will aid in the capital campaign of RestoreSpiva, and shall hold and distribute funds generated in the capital campaign for Park purposes, and

WHEREAS, for the reasons set forth herein, the Parties desire to set forth the material terms of their collaboration to renovate and upgrade the Park in this Memorandum of Understanding and Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RestoreSpiva, CFO and City agree as follows:

1. Responsibilities of RestoreSpiva.

- a. RestoreSpiva will conduct a capital campaign under the guidance and stewardship of CFO, which shall maintain and distribute funds in accordance with the instructions of RestoreSpiva. The capital campaign will have two separate funds: 1) primary fund for restoration; and 2) endowment fund earmarked for future upgrades.
- b. RestoreSpiva will determine the scope of work for Park restoration and upgrades funded through CFO, with City approval.

- c. RestoreSpiva will select the contractor(s) for the restoration and upgrades, with City approval.
- d. RestoreSpiva will earmark all funds from the endowment for specific Park upgrade needs.

2. Responsibilities of City.

- a. City will work in good faith with RestoreSpiva to sign off on approval of all restoration and upgrades funded through CFO. All proposed restoration and upgrades shall be consistent with customary building standards and adhere to the current historical aesthetics of the park.
- b. City will continue to bear primary responsibility for maintaining and operating the Park including landscaping, fountains, lighting, sculptures and surveillance.
- c. City will include RestoreSpiva in any community efforts addressing the issue of homelessness city-wide as well as how the issue impacts the Park in particular.
- d. City agrees that the endowment for upgrades of the Park is in addition to the City's budgeted funds for maintenance of the Park. It is not the City's intention to decrease future maintenance funding for the Park because of RestoreSpiva's potential to provide maintenance funds for the Park. All City budget items are subject to annual budget appropriation.

3. Insurance. All contractors that provide work on behalf of RestoreSpiva shall be licensed in the City of Joplin and shall carry liability insurance, issued by an insurance company authorized to do business in the State of Missouri, covering City, its agents, employees, and invitees, and naming City as an additional insured, in the amount of One Million Dollars (\$1,000,000.00) for Combined Single Limit for Personal Injury or Property Damage. Such insurance shall be evidenced by filing with the City an Insurance Certificate, naming City as an additional insured under such policy, and providing that such policy shall not be canceled without thirty (30) days written notice to City. RestoreSpiva and its contractors agree to indemnify and hold and save harmless the City from any and all damages, claims, and assessments of every type and character arising from all construction and related activities at or in any way related to the Park.

4. Nature of Relationship. RestoreSpiva and CFO shall perform as independent contractors and shall not hold themselves out to third parties as agents of City. RestoreSpiva and

CFO shall not be considered agents of City nor shall any of the employees, agents, officers, members, or other personnel of RestoreSpiva or CFO be considered sub-agents of City.

5. Termination. A party may terminate this Agreement by giving 120 days notice to the other party.

6. Notices. All notices, requests, and demands to or upon the parties of the MOU shall be deemed to have been given or made when delivered by hand or via certified mail addressed as follows or to other such addresses as may be hereafter designated in writing:

City: City of Joplin  
602 S. Main St.  
Joplin, MO 64801

RestoreSpiva LLC  
1421 Crestwood Dr.  
Joplin, MO 64801

Community Foundation of the Ozarks  
P.O. Box 8960  
Springfield, MO 65801

7. Amendments. This Agreement contains all of the agreements and conditions made between the parties and may only be modified by written agreement signed by all parties to this Agreement.

8. Assignment. This Agreement shall not be assignable by RestoreSpiva without the express written consent of City being first obtained.

9. Choice of Law. This Agreement has been made, and its validity, performance, and effect shall be determined, in accordance with the laws of the State of Missouri, and venue for litigation between the parties shall be solely and exclusively in the Circuit Court of Jasper County, Missouri, or the United States District Court for the Western District of Missouri.

10. Compliance with the Law. RestoreSpiva agrees to comply with all applicable laws in connection with the performance of this MOU.

11. Severability. The invalidity, illegality, or unenforceability of any provision of this MOU shall not affect the validity, legality, or enforceability of the other provisions of this MOU which shall remain effective.

**<The rest of this page is intentionally left blank. Signature page follows.>**

IN WITNESS WHEREOF, this Memorandum of Understanding has been executed and approved and is effective and operative as to each of the parties as herein provided.

**CITY OF JOPLIN, MISSOURI**

By: \_\_\_\_\_  
Nicholas Edwards, City Manager

ATTEST:

By: \_\_\_\_\_  
Holly Nagy, City Clerk

**RESTORESPIVA LLC**

By: \_\_\_\_\_  
Mike Cragin, Managing Member

By: \_\_\_\_\_  
Christy Cragin, Managing Member

By: \_\_\_\_\_  
Scott Cragin, Managing Member

By: \_\_\_\_\_  
Gay Currence, Managing Member

**COMMUNITY FOUNDATION OF THE OZARKS**

By: \_\_\_\_\_  
Brian Fogle, President