



Nixa Utilities & Public Works

Nixa, Missouri
417.725.2352
www.nixa.com



MEMORANDUM

To: Mayor and City Council
Cc: Jimmy Liles, CA
From: Doug Colvin
Date: 11.06.2019
RE: Introduction of Ordinance for Wasson Place Sewer Improvements

This proposed ordinance would authorize the Mayor and City Administrator to sign two contracts with Kirk's Excavating to complete phases II and III of the above referenced improvements. Both projects were awarded to Kirk's Excavating at the October 28th meeting. The first phase of this project, a new 10" Force Main, was completed last year.

Phase II is to complete Wasson Lift Station upgrades including increased and redundant pumping capacity as well as controls and emergency backup generator to handle the added capacity in the amount of \$197,500.00. Phase III will be the installation of a new 10" gravity sewer main upstream of the lift station along Morning Glory Drive in the amount of \$171,145.00. Staff is pleased to receive good, competitive bids for this project and excited to finally make these much-needed improvements to this area.

The complete contracts have been reviewed by staff and the city attorney and the project is safely within the approved budget. Because the complete contract documents include all of the bid documents, construction specifications and related exhibits (159 and 115 pages respectively), I have reduced the attachments to only the relevant contract pages. I will have the complete information available at the meeting or can forward them on to any of you that desire a copy. Staff will bring this back at the November 25th meeting with a recommendation for Council's approval. Until then, staff is available to answer any questions and address any concerns you may have.

CONTRACT AGREEMENT

THIS AGREEMENT is dated as of the ____ day of _____ in the year 20____,

by and between THE CITY OF NIXA hereinafter called (Owner)

and KIRK'S EXCAVATION, INC. hereinafter called (Contractor)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereafter set forth agree as follows:

Article 1: WORK

CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows:

WASSON PLACE LIFT STATION IMPROVEMENTS FOR THE CITY OF NIXA, MISSOURI

Article 2: ENGINEER

The project has been designed by

SHAFFER & HINES, INC.

P.O. Box 493, Nixa, Missouri, 65714

who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

Article 3: CONTRACT TIME

3.1 1 Upon receipt of the Notice to Proceed the CONTRACTOR shall complete the work within 45 calendar days. The CONTRACTOR, at his discretion and for scheduling purposes, can request when the Notice to Proceed will be issued but it must be issued prior to April 15, 2020. The completion date will be based on the date of the Notice to Proceed but in no case will the completion date be later than June 1, 2020.

3.2 Liquidated Damages: OWNER AND CONTRACTOR recognize that time is of the essence of this Agreement, and that OWNER will suffer financial loss if the work is not substantially complete within the time specified in paragraph 3.1, above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding that actual loss suffered

CONTRACT AGREEMENT

by OWNER if the work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER One Hundred and Fifty dollars (\$150.00) for each day that expires after the time specified in paragraph 3.1 for substantial completion until the work is substantially complete.

Article 4: CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for performance of the work in accordance with the Contract Documents in current funds as follows:

One Hundred Ninety- Seven Thousand Five Hundred Dollars and No Cents (197,500.00)

Article 5: PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Application for Payment as recommended by ENGINEER, on or about the 1st day of each month during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values provided for in Article 14, Paragraph 1 of the General Conditions.

5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

90 % of the work completed.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price in accordance with Paragraph 8 of the General Conditions, less such amounts as ENGINEER shall determine in accordance with Article 14 Paragraph 7 of the General Conditions.

5.2 Final Payment: Upon final completion and acceptance of the work in accordance with Article 14, Paragraph 13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Article 14 Paragraph 13.

Article 6: INTEREST

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the project in accordance with Article 14, Paragraph 4 of the General Conditions.

CONTRACT AGREEMENT

Article 7: CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized himself with the nature and extent of Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.

7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.

7.3 CONTRACTOR made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as deemed necessary for the performance of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examination, investigations, tests reports or similar data are or will be required by CONTRACTOR for such purposes.

7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.

7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, error or discrepancies that he had discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 8: CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to the AGREEMENT, made a part hereof and consists of the following:

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The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to the AGREEMENT, made a part hereof and consists of the following:

8.1 This Agreement (page CA-1 - CA-5, inclusive).

8.2 Exhibits to this Agreement

CONTRACT AGREEMENT

Exhibit 1 – Affidavit of Compliance with Section 292.675 R.S.Mo., Et Seq.

Exhibit 2 – Affidavit of Compliance with Section 285.500 R.S.Mo., Et Seq.

Exhibit 3 – E-Verify Memorandum of Understanding

Exhibit 4 – Certificate of Liability

Exhibit 5 – Specification Booklet

8.3 Performance & Payment Bonds in the amount of 100 percent of the project cost (pages PEB-1 to PEB-3 and PAB-1 to PAB-3)

8.4 Supplementary Conditions (pages 1A-1 to 1A-12, inclusive).

8.5 Construction drawings bearing the title:

WASSON PLACE LIFT STATION IMPROVEMENTS FOR THE CITY OF NIXA, MISSOURI

8.6 Addenda numbers 1, inclusive.

8.7 Contractor's bid (pages BF-1 through BF-4 inclusive).

8.8 Any modifications, including Change Orders, duly delivered after execution of Agreement. There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Article 3 of the General Conditions.

8.9 General Conditions

Article 9: MISCELLANEOUS

9.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.2 CONTRACTOR shall retain all required records for three years after the latter of OWNER (grantee) making final payment or all other pending matters are closed.

9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal

CONTRACT AGREEMENT

representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

IN TESTIMONY WHEREOF, the Contractor has hereunto set his hand and seal, and the City of Nixa executes this contract by its Mayor.

THE CITY OF NIXA, MISSOURI

By: _____
Brian Steele, Mayor

CONTRACTOR

By: _____
Contractor

Approved as to form:

Tim Riker, City Attorney

CERTIFICATE OF FINANCIAL OFFICER

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

Donna Swatzell, Financial Officer

Company ID Number: 733221

Approved by:

Employer Kirks Excavation Inc	
Name (Please Type or Print) Daniel K Powell	Title
Signature Electronically Signed	Date 12/04/2013
Department of Homeland Security – Verification Division	
Name (Please Type or Print) USCIS Verification Division	Title
Signature Electronically Signed	Date 12/04/2013

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(\$171,145.00)**

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9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

IN TESTIMONY WHEREOF, the Contractor has hereunto set his hand and seal, and the City of Nixa executes this contract by its Mayor.

THE CITY OF NIXA, MISSOURI

By: _____
Brian Steele, Mayor

CONTRACTOR

By: _____
Contractor

Approved as to form:

Tim Riker, City Attorney

CERTIFICATE OF FINANCIAL OFFICER

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

Donna Swatzell, Financial Officer

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

STATE OF Arkansas)
COUNTY OF Carroll) ss.

Before me, the undersigned Notary Public, in and for the County of Carroll, State of Arkansas, personally appeared Lacey Powell (Name) who is D.P. (Title) of Kirk's Excavation Inc (Name of company), (a corporation), (a partnership), (a sole proprietorship), (a limited liability company), and is authorized to make this affidavit, and being duly sworn upon oath deposes and says as follows:

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

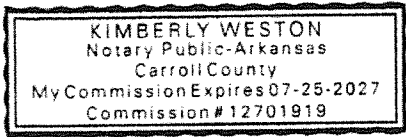
The terms used in this affidavit shall have the meaning set forth in Sections 292.675 R.S.Mo., et seq.

Lacey Powell
Signature
Name: Lacey Powell

Subscribed and sworn to before me this 31 day of October, 2019.

Kimberly Weston
Notary Public

My commission expires: 7/25/27



Company ID Number: 733221

Approved by:

Employer Kirks Excavation Inc	
Name (Please Type or Print) Daniel K Powell	Title
Signature Electronically Signed	Date 12/04/2013
Department of Homeland Security – Verification Division	
Name (Please Type or Print) USCIS Verification Division	Title
Signature Electronically Signed	Date 12/04/2013

BILL NO. 2019-***

ORDINANCE NO.

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA,
MISSOURI, AUTHORIZING AND DIRECTING THE MAYOR
AND CITY ADMINISTRATOR TO SIGN CONTRACTS WITH
KIRK'S EXCAVATION, INC. REGARDING THE WASSON
PLACE SEWERLINE AND LIFT STATION IMPROVEMENTS**

WHEREAS, ARTICLE II, Section 2.1 of the Home Rule Charter of the City of Nixa, Missouri provides the City of Nixa all powers of the General Assembly of the State of Missouri have authority to confer upon any City, provided such powers are consistent with the Constitution of the state of Missouri and are not limited or denied by the City of Nixa's Charter or by statute; and

WHEREAS, the City of Nixa has sought bids related to the improvements to the Wasson Place gravity sewer line and lift station; and

WHEREAS, Kirk's Excavation, Inc. submitted the lowest bids for both projects; and

WHEREAS, the City of Nixa wishes to move forward with the improvements; and

WHEREAS, the City of Nixa has awarded the contracts to Kirk's Excavation, Inc.; and

WHEREAS, proposed contracts related to the sewer line and lift station improvements are attached hereto and incorporated herein by reference;

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NIXA,
MISSOURI, AS FOLLOWS:**

Section I: That the Mayor and City Administrator are hereby authorized and directed to sign the contracts with Kirk's Excavation, Inc. with substantially the same terms as set forth in the contracts attached hereto and incorporated herein;

Section II: All ordinances or portions of ordinances in conflict with this ordinance are hereby repealed.

Section III: This ordinance shall be in full force and effect from and after the date of its passage.

**READ TWO (2) TIMES AND PASSED BY THE CITY COUNCIL OF NIXA, MISSOURI
THIS 25th DAY OF NOVEMBER 2019.**

PRESIDING OFFICER

ATTEST:

CITY CLERK

APPROVED THIS _____ DAY OF NOVEMBER 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

DRAFT