



JIMMY LILES
CITY ADMINISTRATOR
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Email: jliles@nixa.com

Date: 05/03/2021

To: Mayor Steele, City Council

From: Jimmy Liles, C.A.

Subject: Agreement and Budget Amendment for a Public Art Program Utilizing City Electric Boxes

At the next City Council meeting, Council will be presented with the second reading of Council Bill #2021-045. This bill would authorize me to execute the attached agreement with the Nixa Area Chamber of Commerce. This agreement would allow the Nixa Arts Council to provide artwork that could be placed on City owned electrical boxes as a wrap. The City of Nixa would be responsible for having the art printed and installed on the boxes.

The program will start on North Main Street where 5 boxes have been initially identified as potential boxes to be wrapped. These boxes are all located in commercial areas and can be easily seen from North Main Street. Preliminary cost estimates are approximately \$3500 to wrap these boxes.

To cover the cost of wrapping the boxes and to have funds available for replacement costs in case of vandalism, the bill includes a budget amendment for \$6000.

The program fits into the City's strategic plan under Fun and Unique Places and helps accomplish action plan # 4 "Implement a process for members of the public to beautify public spaces."

It is staff's recommendation to move forward with the agreement and budget amendment.

2
3 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING
4 THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT WITH THE NIXA
5 AREA CHAMBER OF COMMERCE REGARDING A PUBLIC ART PROGRAM
6 UTILIZING CITY ELECTRIC BOXES AND AMENDING THE 2021 ANNUAL BUDGET
7 TO FUND SAID PROGRAM.
8
9

10 WHEREAS, City staff, the Nixa Area Chamber of Commerce (“Chamber”), and
11 the Nixa Arts Council, have developed an agreement, attached hereto as “Council Bill
12 Exhibit A,” to allow the Chamber to provide artwork for placement on City owned
13 electrical boxes (“Program”); and
14

15 WHEREAS, said artwork will be placed on City owned electrical boxes as vinyl
16 wraps; and
17

18 WHEREAS, City Council desires to providing funding for this Program and
19 delegate to the City Administrator the authority to implement this Program.
20

21 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
22 NIXA, AS FOLLOWS, THAT:
23

24 SECTION 1: The City Administrator, or designee, is hereby authorized to
25 execute, on behalf of the City, the “Agreement to Permit the Display of Artwork on City
26 Electrical Boxes,” attached hereto and incorporated herein by this reference as “Council
27 Bill Exhibit A.” Said Agreement shall be in substantially similar form as the document
28 attached hereto as “Council Bill Exhibit A.” The City Administrator is further authorized
29 to do all things necessary or convenient to carry out the terms of this Ordinance and to
30 implement the Program provided that such actions are consistent with the terms and
31 intent of this Ordinance.
32

33 SECTION 2: The City of Nixa’s 2021 Annual Budget is hereby amended in the
34 accounts and the amounts as shown on “Council Bill Exhibit B,” which is attached
35 hereto and incorporated herein by this reference. City Council finds that the budget
36 amendment enacted by this Ordinance has been recommended by the City
37 Administrator. The City Administrator is directed to cause the appropriate accounting
38 entries to be made in the books and records of the City to reflect the budget amendment
39 enacted by this Ordinance.
40

41 SECTION 3: This Ordinance shall be in full force and effect from and after its
42 final passage by the City Council and after its approval by the Mayor, subject to the
43 provisions of section 3.11(g) of the City Charter.
44
45
46

47 **ADOPTED BY THE COUNCIL OF THE CITY OF NIXA THIS 10TH DAY OF MAY 2021.**

48

49

50 ATTEST:

51

52

53 _____
CITY CLERK

_____ PRESIDING OFFICER

54

55

56 **APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.**

57

58

59 ATTEST:

60

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62 _____
CITY CLERK

_____ MAYOR

63

64

65 APPROVED AS TO FORM:

66

67

68 _____
CITY ATTORNEY

69

**AGREEMENT TO PERMIT THE DISPLAY OF ARTWORK ON CITY ELECTRIC
BOXES**

This Agreement to Permit the Display of Artwork on City Electrical Boxes (“Agreement”) is made and entered into on this ____ day of ____, 20____, by and between the City of Nixa, Missouri (“City”), the Nixa Area Chamber of Commerce (“Chamber”).

WHEREAS, the City is interested in fostering appreciation of the arts, and believes it can provide an opportunity to display artwork in public while bringing attention to its downtown and other commercial areas; and

WHEREAS, the Chamber desires to partner with the City to foster an appreciation of the arts by developing opportunities for the display of art while supporting and promoting the City's downtown and commercial areas; and

WHEREAS, the City desires to Contract with Chamber to administer a program whereby the Chamber locates, on behalf of the City, artists who desire to display artwork on certain City owned electrical boxes located in and around the downtown and other commercial areas.

NOW, THEREFORE, in consideration of the following terms and conditions, the parties agree as follows:

1. **PURPOSE.** The City, for the purpose of fostering appreciation of the arts, bringing attention to its downtown and other commercial areas, and to provide an opportunity for the display of artwork in public, will permit the display of artwork by utilizing vinyl wraps, or other equivalent media, on certain City owned electrical boxes (“Program”). The Chamber shall be responsible for locating artists willing to produce or submit artwork for inclusion in the Program.
2. **LOCATION.** The City shall make available certain City owned electrical boxes for the public display of artwork. The particular boxes to be used as part of this Program shall be determined by the City, in its sole discretion. No electrical boxes located in residential areas shall be utilized as part of this Program.
3. **TERM.** This Agreement shall terminate one year from its execution. The City may, upon providing written notice to the Chamber, cancel and terminate this Agreement for any reason and at any time. The Program shall terminate upon the termination of this Agreement.
4. **CHAMBER’S OBLIGATIONS.**
 - a. The Chamber shall solicit artists to provide artwork for display on the electrical boxes identified for inclusion in this Program by the City. The Chamber shall prioritize selecting local artists for the Program.

- b. The Chamber shall notify artists submitting artwork as part of the Chamber's solicitation that they are required to execute an Artist's Agreement with the City, which shall be in substantially similar form as the document attached hereto as "Exhibit A." The Chamber shall require artists to submit a signed copy of Exhibit A as part of their submittal for inclusion in the Program for each piece of artwork submitted by the artist.
- c. Once the Chamber has selected artwork to be included in the Program, the Chamber shall provide the City with an accurate depiction of the artwork and the necessary digital files at a resolution that will enable the City to display the artwork via vinyl wraps or other equivalent media.

5. CITY'S OBLIGATIONS.

- a. The City shall have sole discretion to determine whether any artwork selected by the Chamber is to be displayed on any City electrical boxes. Nothing in this Agreement shall be construed as requiring the City to display any artwork submitted by the Chamber.
- b. The City shall have discretion to determine which artwork is placed on which electrical box.
- c. The City shall be responsible for all costs and logistics to print artwork selected by the City for display onto vinyl wraps, or other equivalent media.
- d. The City shall be responsible for installation of selected artwork.
- e. The City may choose to remove artwork or replace artwork placed on its electrical boxes at any time and without notice.

6. DISPLAY OF THE ARTWORK. No artwork shall be displayed on City owned electrical boxes unless the City has been provided with a properly executed Exhibit A. Artwork to be included in this Program shall be appropriate for public display in public places and shall therefore not portray nudity, hate speech or violence. Artwork shall not advertise or include logos, phrases or branding for any business, product, service or private interest. Artwork shall not incorporate imagery resembling traffic signals or signage or any content that may pose a distraction to drivers. The artist's signature may be discreetly incorporated into the artwork. The logo of the Chamber's Nixa Arts Council may also be discreetly incorporated onto the artwork.

7. INSURANCE AND LIABILITY. Without limiting any of the other obligations or liabilities of Chamber, Chamber shall secure and maintain at its own cost and expense, throughout the duration of this Agreement, Commercial General Liability Insurance, including coverage for Contractual Liability and Independent Contractor's Liability. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form

Basis” with limits of at Two Million Eight Hundred Four Thousand Forty-Six and no/100 Dollars (\$2,804,046.00); at least Four Hundred Twenty Thousand Six Hundred Six and no/100 Dollars (\$420,606.00) with respect to injuries and/or death of any one person in a single occurrence; at least One Million and 00/100 Dollars (\$1,000,000.00) for all claims to property arising out of a single occurrence; and at least One Hundred Thousand and 00/100 Dollars (\$100,000.00) to any one owner with respect to damages to property. Chamber 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, provided such damages are not a result, in whole or in part, of the intentional or negligent conduct of the City or any of its agents, before payment of any award, damages, costs, or attorney’s fees of Chamber, its employees, officers, or agents. Chamber agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured party for coverage under its products-completed operations hazard, if any, and said policy shall be primary and noncontributory.

The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City, which shall not be unreasonably withheld. It shall be the responsibility of Chamber to maintain the aforementioned insurance coverage at all times during the term of this Agreement. Failure of Chamber to maintain the aforementioned coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under this Agreement. 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 execution of this Agreement. 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. 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 Chamber, upon ten (10) days written notice, to execute a contract addendum whereby the Chamber agrees to provide 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 a certificate of insurance and shall take effect within the time set forth in the addendum.

8. INDEMNIFICATION. Chamber shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Chamber’s wrongful or negligent performance of this Agreement or the Program, including but not limited to damage to or destruction of the artwork, injury to the owner of the artwork, or any other damage resulting from the installation, location, maintenance, repair, replacement, or removal of the artwork regardless of the cause of said damage or destruction.

9. NOTICE. All notices, requests, demands, and other communications shall be in writing and shall be given upon delivery if personally delivered or mailed, by certified mail, return receipt requested, or by overnight service having record of receipt, or vial electronic communication to the addresses indicated below:

If to City to:

City of Nixa
Attn: City Administrator
P.O. Box 395
Nixa, MO 65714
Email: jliles@nixa.com (with CC to: nwoodman@nixa.com)

If to Chamber to:

Nixa Area Chamber of Commerce
106 W. Sherman Way, Ste 6
Nixa, MO 65714
Email: info@nixachamber.com

10. ENTIRE AGREEMENT. This Agreement, together with Exhibit A, attached hereto and incorporated herein, constitutes the entire agreement between the parties. Any amendments to this Agreement shall be made in writing and signed by all parties. The parties agree and expressly understand that this Agreement does not cover the sale of the artwork.

11. ASSIGNMENT. The parties shall not assign any interest in this Agreement.

12. APPLICABLE LAW AND VENUE. This Agreement shall be interpreted according to the laws of the State of Missouri. In the event of any dispute or controversy arising out of or relating to this Agreement, each party agrees that the Circuit Court of Christian County, Missouri, shall have exclusive jurisdiction and venue to determine all issues between them and that no cause of action, arising out of or relating to this Agreement, can be brought in any other venue.

13. SEVERABILITY. If any provision of this Agreement is determined to be invalid or unenforceable, that determination will not affect the other provisions of this Agreement, which will be construed in all respects as if the invalid or unenforceable provision was omitted.

14. COMPLIANCE WITH LAWS. Chamber agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder.

15. CITY'S AUTHORIZED REPRESENTATIVE. The City Administrator of City is designated as the City's authorized representative for purposes of this Agreement. The

City Administrator is charged by the City with carrying out the terms of this Agreement on behalf of the City and providing whatever approvals are required by the City herein. Unless specifically provided to the contrary herein, approvals of City herein may be given by the City Administrator, or their authorized designee, without the need of any further action of the City Council.

[Remainder of Page intentionally left blank, Signature Page to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year first written.

CITY OF NIXA, MISSOURI

NIXA AREA CHAMBER OF
COMMERCE

By: _____
Name: Jimmy Liles
Title: City Administrator

By: _____
Name: _____
Title: _____

ATTEST:

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

EXHIBITS:

Exhibit A – Artist’s Agreement (Including Attachment 1)
Attachment 1 – Description of Artwork

EXHIBIT A

Artist's Agreement

The City of Nixa ("City") has contracted with the Nixa Area Chamber of Commerce ("Chamber") to display artwork on certain City owned electrical boxes ("Program"). Part of the requirements of the Program is for artist whose artwork has been selected for the Program to execute this Artist's Agreement ("Agreement").

Artist (identified below), as consideration for the display of their artwork as part of the Program, hereby consents and agrees to the following:

1. The Artist is the owner of the artwork and has voluntarily submitted the artwork described on "Attachment 1," attached hereto and incorporated herein by reference, for inclusion in the Program. Artist commits to the artwork's inclusion in this Program and grants the City a, perpetual, world-wide, irrevocable, transferable, royalty-free right and license to use, reproduce, and distribute, in any form, the artwork for public display, community promotion, and non-commercial or educational purposes. The City will give credit to the Artist as the creator of the artwork. Artist grants to the City the sole right to move or dispose of the artwork, in whole or in part, for the remainder of the term of the Program and at any time after the term of the Program, as it deems necessary or desirable.
2. Artist affirmatively states and covenants that Artist has the right to display the artwork described on Attachment 1. Artist represents, warrants, and agrees that the artwork described on Attachment 1 does not breach any existing copyright or intellectual property rights.
3. Artist hereby warrants that they created the artwork and that they possess all legal rights in said artwork.
4. Artist hereby waives any rights they have pursuant to 17 U.S. Code § 106A in said artwork, including but not limited to, the outdoor placement of the artwork where the artwork may be exposed to the natural elements. Artist expressly understands that the artwork is to be displayed outdoors.
5. Artist shall defend, indemnify and save harmless the City, its officials, officers, employees, and agents against and from any and all actions, causes of actions, claims, demands, penalties, fines, damages, and loss, which the City may bear or become liable by reason or arising out of the artist's participation in this Program.
6. Artist shall not hold the City of Nixa liable in any manner for damage to the artwork during installation, removal, or maintenance performed by the City. Artist expressly waives any claims they may have or acquire against the City for damage to the artwork.

7. This Agreement shall be interpreted according to the laws of the State of Missouri. In the event of any dispute or controversy arising out of or relating to this Agreement, Artist agrees that the Circuit Court of Christian County, Missouri, shall have exclusive jurisdiction and venue and that no cause of action, arising out of or relating to this Agreement, can be brought in any other venue.

FOR ARTIST:

By: _____
Name: _____

WITNESS FOR ARTIST SIGNATURE:

By: _____
Name: _____

FOR CITY:

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

Attachment 1

Please provide a visual facsimile of the artwork to be submitted as part of this Program in the space provided below. This facsimile will be used to reproduce the artwork for inclusion in the Program.

City of Nixa, MO
Budget Amendment

<u>Budget Amendment Amount</u>	<u>Fund</u>	<u>G/L Description</u>	<u>G/L Line #</u>	<u>Revenue Source</u>
\$6,000	General	Community Betterment	11-175-5109500	Current

Explanation: To amend the current budget of the City of Nixa to appropriate funds for Electrical Box Wraps.

This proposed Budget Amendment has been approved and requested by the City Administrator, pursuant to City Charter section 8.7.

Jimmy Liles, City Administrator

Authorized by Passage of Ordinance No. _____

Date of Passage: _____