



Issue: Budget Amendment for \$40,000 of ARPA funds to be allocated to non-profits, and an agreement with the Community Foundation of the Ozarks (CFO) to administer the funds

Date: February 3, 2022

Submitted By: Jimmy Liles, City Administrator

Background

In March of 2021, the American Rescue Plan Act was passed, which provided a direct payment of funds to the City of Nixa for local fiscal recovery. During discussions with City Council, it was decided that \$40,000 would be allocated from the first payment to non-profits as allowed by the U.S. Department of Treasury's interim final rule. To be eligible, the nonprofit would have to be exempt from Federal income taxation as described in section 501(c)(3) of the Internal Revenue Code. In an attempt to find the best way to allocate the funds to non-profits, I visited with the Nixa Community Foundation (NCF) about the possibility of their organization utilizing a grant process to help distribute the funds. The NCF board agreed they would be willing to administer a grant process to allocate the funds to other non-profits. To ensure the requirements of the U.S. Treasury's interim final rule are followed, the requirements for the grant awards were to be decided by the City of Nixa and be detailed in an agreement with the Community Foundations of the Ozarks. City Council passed a budget amendment in 2021 that would have funded the program, but to allow CFO additional time to research the terms and conditions of the agreement, the agreement was not brought to Council in 2021.

Analysis

The terms of the agreement have been agreed to by CFO and the agreement is now being brought before Council for consideration. The agreement specifies the Community Foundation will receive \$10,000 of the funds for administrating the process, and the remaining \$30,000 will be available for distribution to other non-profits through the grant process. Since the transfer of funds did not occur in 2021, we will now need a new budget amendment allowing the transfer of funds to occur in 2022. This will be the second reading of the ordinance before Council.

Recommendation

Staff is recommending the approval of the ordinance allowing the City of Nixa to enter into the agreement with CFO and amending the 2022 budget for \$40,000 of ARPA funds to be allocated to CFO and other non-profits as allowed by the U.S. Department of Treasury's interim final rule.

1 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**
2 **ADMINISTRATOR TO EXECUTE A CONTRACT WITH THE COMMUNITY**
3 **FOUNDATION OF THE OZARKS FOR THE ADMINISTRATION OF A GRANT**
4 **FUNDING PROGRAM AND AMENDING THE 2022 BUDGET TO APPROPRIATE**
5 **FUNDS FOR SUCH CONTRACT.**
6
7

8 **WHEREAS** City Council desires to contract with the Community Foundation of the
9 Ozarks to administer a grant program on behalf of the City, whereby \$40,000 of the
10 City’s American Rescue Plan Act funding allocation is provided to nonprofits to mitigate
11 the effects of COVID-19; and
12

13 **WHEREAS** Section 67.040 RSMo. provides that after a budget has been approved
14 no increase in the revenues or expenditures from any fund shall be made unless the
15 governing body adopts a measure setting forth the facts and reasons making the increase
16 necessary and authorizing the increase; and
17

18 **WHEREAS** Section 8.7 of the City Charter authorizes the City Council to amend
19 budgeted revenues and expenditures upon the request of the City Administrator; and
20

21 **WHEREAS** the City Administrator has requested a budget amendment in the
22 amount of \$40,000 and for the purposes contemplated by this Ordinance.
23

24 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
25 **NIXA, AS FOLLOWS, THAT:**
26

27 **SECTION 1:** City Council hereby authorizes the City Administrator to execute on
28 behalf of the City the “Grant Funding Agreement” which shall be in substantial
29 conformance with the document attached hereto and incorporated herein by this
30 reference as “Council Bill Exhibit A.” The City Administrator is further authorized and
31 empowered to do all things necessary or convenient to carry out the terms and intent of
32 this Resolution.
33

34 **SECTION 2:** The City of Nixa’s 2021 Annual Budget is hereby amended in the
35 accounts and the amounts as shown on “Council Bill Exhibit B,” which is attached hereto
36 and incorporated herein by this reference.
37

38 **SECTION 3:** City Council finds that the budget amendment enacted by this
39 Ordinance has been recommended by the City Administrator. The City Administrator is
40 directed to cause the appropriate accounting entries to be made in the books and records
41 of the City to reflect the budget amendment enacted by this Ordinance.
42

43 **SECTION 4:** This Resolution shall be in full force and effect from and after its final
44 passage by the City Council and after its approval by the Mayor, subject to the provisions
45 of section 3.11(g) of the City Charter.
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48 **ADOPTED BY THE CITY COUNCIL THIS 14TH DAY OF FEBRUARY 2022.**

49

50

51 ATTEST:

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53 _____

54 CITY CLERK

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57 **APPROVED BY THE MAYOR.**

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59

60 ATTEST:

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62 _____

63 CITY CLERK

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66 APPROVED AS TO FORM:

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68 _____

69 CITY ATTORNEY

PRESIDING OFFICER

MAYOR

DATE OF APPROVAL

GRANT FUNDING AGREEMENT

THIS GRANT FUNDING AGREEMENT (hereinafter “Agreement”) is entered into by and between the City of Nixa, Missouri, a constitutional charter city of the State of Missouri (hereinafter “City”), and the Community Foundation of the Ozarks, a 501(c)3 nonprofit organized under the laws of the State of Missouri (hereinafter “Contractor”).

WHEREAS the City has appropriated \$40,000.00 in American Rescue Plan Act (“ARPA”) funds to support nonprofits operating within the community; and

WHEREAS the City desires to contract with the Contractor for the provision of services related to administering a grant program whereby a portion of the appropriated \$40,000.00 is provided to nonprofits to mitigate the effects of COVID-19; and

WHEREAS the City and Contractor desire to formalize their agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. TERM. This Agreement shall be effective from the day of its final execution by both parties until December 31, 2022, subject to any amendments made by mutual agreement of the parties. If there are any remaining Grant Funds held by Contractor after December 31, 2022, those funds shall be returned to the City.

2. SCOPE OF SERVICES. The City agrees to engage Contractor to perform and undertake the following services:

Contractor shall, on behalf of City, administer a grant program in which funding shall be provided to local nonprofits so they may address negative impacts of the COVID-19 pandemic on the residents of the City of Nixa, Missouri. City shall provide \$30,000.00 of the City’s ARPA funds (herein “Grant Funds”) as funding for said program. Contractor shall distribute the Grant Funds to nonprofits which operate within the City of Nixa, Missouri, and in which the use of any awarded grant funding shall be primarily utilized to benefit or serve the residents of the City of Nixa, Missouri. Contractor shall have the sole responsibility of issuing grants using the Grant Funding and shall ensure that the Grant Funds are awarded in strict compliance with all applicable federal requirements, including the US Treasury’s Interim Final Rule, published on or about May 17, 2021, in addition to any amendments to said Rule. (hereinafter “Services”).

The City authorizes Contractor, and Contractor agrees to proceed with, providing said Services. The City may add to the Services. Contractor shall undertake such changed activities only upon the written direction of the City. All such changes shall be in written form and shall be accepted and countersigned by the Contractor.

3. CONSIDERATION FOR SERVICES. The City agrees to provide to Contractor \$10,000 of additional City ARPA funds (herein “Administrative Funds”) as consideration for the Contractor’s administration of the grant program contemplated herein and for Contractor’s satisfactory performance of this Agreement.

4. PERSONNEL. Contractor shall secure such personnel as are necessary to carry out the terms of this Agreement. All Services shall be performed by Contractor or under its direct supervision. All

personnel engaged in providing the Services shall be fully qualified and authorized under all applicable federal, state, and local law to perform such Services. Contractor shall perform all the Services under this Agreement through staff under the direction of Contractor's designated representative, who shall be responsible for the management, scheduling, planning and coordination of the performance of this Agreement, for communications between Contractor and the City, and for the overall fulfillment of all obligations of Contractor under this Agreement. For purposes of this Agreement, Contractor's designated representative is Ashley Silva, Director of Regional Engagement.

5. CITY'S REPRESENTATIVE. Unless specifically provided to the contrary herein, approvals of City may be given by the City Administrator, or their authorized designee, without the need of any further action of the City Council of City. The City Administrator, or their authorized designee, is the City's authorized representative for purposes of carrying out the terms of this Agreement. Amendments or modifications to the terms of this Agreement shall be approved by the City Council of City.

6. FURNISHING OF INFORMATION. All information, data, and reports as are existing, available, and reasonably necessary for the carrying out of the Services shall be provided to Contractor without charge. The City shall reasonably cooperate with Contractor in connection with Contractor's performance of this Agreement.

7. REPORTING AND RIGHT TO AUDIT. Contractor shall report to the City's Representative at least quarterly on the progress of the Services. Contractor shall keep accurate and sufficient reports and records detailing the administration of the Services contemplated herein. The City may examine, at its own expense, such reports and other records at Contractor's office, and Contractor agrees that it will produce such records whenever requested by the City. Any expense incurred by Contractor to prepare or make available such records shall be borne by Contractor.

8. NONDISCRIMINATION. Contractor agrees that, in the performance of this Agreement, that Contractor shall not discriminate on the grounds of or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include similar provisions in all subcontracts entered into to perform any part of this Agreement.

9. INDEPENDENT CONTRACTOR. Contractor is an independent contractor with respect to its performance of this Agreement. Nothing contained herein shall constitute or designate that Contractor or any of its agents or employees are agents or employees of the City. Contractor and its agents, employees, and subcontractors shall not be entitled to any of the benefits established for employees of the City nor shall they be covered by the Workers' Compensation Program for the City.

10. INDEMNIFICATION AND LIABILITY. The parties mutually agree to the following:

a. In no event shall the City be liable to Contractor for special, indirect, or consequential damages, whether or not caused by or resulting from City's negligence, arising out of or in any way connected with a breach of this Agreement. No claim or claims of any kind, either separately or in the aggregate, by Contractor against the City, and in any way arising out of or in any way connected with this Agreement, whether based on negligence or breach of contract.

b. Contractor shall defend, indemnify, and hold the City harmless from and against any and all claims, losses, and causes of action arising out of any claims or causes of action, including but not limited to personal injuries, death, or damage to property which are incurred by Contractor, or any third party arising out of or in any way connected with this Agreement.

c. Contractor assumes full responsibility for relations with subcontractors, and shall defend, indemnify and save harmless the City from and against, any and all liability, suits, claims, damages, costs (including attorneys' fees), losses, outlays, and expenses in any manner caused by, arising out of or connected with this Agreement, notwithstanding any possible negligence (whether sole, concurrent or otherwise) on the part of the City, its agents or employees.

11. ATTORNEY FEES. In the event of any litigation arising from breach of this Agreement, the City shall be entitled to recover from Contractor all reasonable costs incurred for such litigation, including staff time, court costs, attorney fees, and all other related expenses incurred in such litigation. The obligations of this Paragraph shall survive the termination of this Agreement.

12. JURISDICTION AND VENUE. The parties mutually agree that jurisdiction and venue for the purposes of any action resulting from this Agreement by the parties shall be in Christian County Missouri.

13. NOTICES. All notices required or permitted under this Agreement shall be in writing and provided to the following addresses via US regular mail:

a. To the City at:

Jimmy Liles
P.O. Box 395
Nixa, MO. 65714

b. To Contractor at:

Ashley Silva
PO Box 8960
Springfield, MO 65801

14. AFFIDAVIT FOR CONTRACTS OVER \$5,000. If this Agreement is subject or becomes subject to the provisions of sections 285.525 through 285.550 RSMo., then Contractor shall provide an acceptable notarized affidavit stating that Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with this Agreement, and that Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Contractor must provide documentation evidencing current enrollment in a federal work authorization program. Contractor expressly agrees that it is Contractor's obligation to ensure its compliance with this paragraph.

15. TERMINATION.

a. This Agreement may be terminated by the City, without cause, upon 14 days written notice to Contractor.

b. This Agreement may be terminated by the City, for breach by Contractor of any of the terms of this Agreement, upon 24-hour written notice.

c. In the event of termination, as described in this paragraph, Contractor shall return to the City any remaining Grant Funds which have not been awarded to qualified nonprofits and a pro-rated amount of the Administration Fee. This pro-rated amount shall be based on

the time the termination notice is provided to the other party and the remaining term of this Agreement. The City shall calculate the pro-rated refund amount and provide written notice of this amount to Contractor. Contractor shall thereby refund such calculated amount within 14-days of the date of City's notice. The obligations of this Paragraph shall survive the termination of this Agreement.

16. GOVERNING LAW. This Agreement shall be governed in all respects by the laws of the State of Missouri.

17. ENTIRE AGREEMENT. This Agreement, including any attachments or exhibits referenced herein, shall constitute the entire agreement of 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. In the event that the terms of this agreement conflict with the terms of any of the attachments or exhibits, then the terms of this agreement shall control over the terms contained in the attachments or exhibits.

IN WITNESS WHEREOF, the parties have set their hands on the day and year stated herein.

CITY OF NIXA

COMMUNITY FOUNDATION OF THE OZARKS

Jimmy Liles, City Administrator

Brian Fogle, President and CEO

Date: _____

Date: _____

ATTEST

ATTEST

Cindy Robbins, City Clerk

Signature

Date:

Printed name

APPROVED AS TO FORM

Title

Nick Woodman, City Attorney

Date: _____

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>
\$40,000	10	Transfers Out	10-111-5490000	Current
\$40,000	10	ARPA Transfers In	10-100-40111	Current
\$40,000	10	Grant Disbursement	10-100-5129000	Current

Explanation: To amend the current budget of the City of Nixa to appropriate funds for ARPA money for Non-Profit Organizations. Funds will be transferred out of the ARPA fund and into the Admin revenue budget where they will then be appropriated in the Grant Disbursement expense line.

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: _____

Total Budget Amendments by Department Year to Date:

Electric	
Water	
Wastewater	
General	
Police	
Street	
Park	
Planning & Development	_____
TOTAL	=====