



**NIXA CITY COUNCIL  
Tentative Agenda  
February 14, 2022  
7:00 PM  
NIXA CITY HALL  
715 W. MT. VERNON**

*This meeting will be conducted at 715 W. Mt. Vernon. Individuals may view the meeting live on our YouTube channel: <https://www.youtube.com/c/CityofNixa>*

**Call to Order  
Roll Call  
Pledge of Allegiance**

**Proclamation:**

Ronald McDonald House Week February 14<sup>th</sup> - February 20<sup>th</sup>, 2022

**Visitors (Speaker Card Required; Comments Limited to 5 Minutes):**

None Scheduled

**Ordinances (First Reading and Public Hearing; Comments Limited to 5 Minutes; No Council Vote Anticipated):**

**Council Bill #2022-021** Annexing Approximately 5 Acres of Real Property Generally Located at 617 South Harrison Street; Zoning Said Property to the R-5 Zoning District; and Amending Chapter 2, Article II of the Nixa City Code

**Council Bill #2022-022** Granting Special Use Permit 22-001 to Authorize a Bar, with Restaurant, Use for the Neighborhood Commercial Zoned Property Located at 105 West Sherman Way, Suite 101

**Council Bill #2022-023** Granting Special Use Permit 22-002 to Authorize a Short-Term Residential Rental Use for the Single-Family Zoned Property Located at 605 South Bradford Avenue

**Council Bill #2022-024** Amending the 2022 Annual Budget to Appropriate Funds for the Purchase of a Floor Burnisher for the Parks Department

**Council Bill #2022-025** Authorizing the Mayor to Execute an Asset Purchase Agreement with Rex Deffenderfer Enterprises, Inc. for the Acquisition of a Certain Water System

**Council Bill #2022-026** Authorizing the Mayor to Execute an Asset Purchase Agreement with the Tuscany Hills Regional Sewer District, Inc. for the Acquisition of Certain Sewer and Water Systems

**Ordinances (Second Reading and Public Hearing; Comments Limited to 5 Minutes; Council Vote Anticipated):**

**Council Bill #2022-012** Amending Chapter 22, Article IV, Section 22-310 of the Nixa City Code to Establish New Rates for Electric Service

**Council Bill #2022-013** Authorizing the City Administrator to Execute a Contract with the Community Foundation of the Ozarks for the Administration of a Grant Funding Program and Amending the 2022 Budget to Appropriate Funds for Such Contract

**Resolutions: (Public Hearing; Comments Limited to 5 Minutes; Council Vote Anticipated):**

**Resolution #2022-021** Authorizing the City Administrator to Execute a Non-Disclosure Agreement with TFB Engineering, LLC.

**Resolution #2022-022** Authorizing the City Administrator to Execute a Contract with Rumfelt Tree Service for Vegetation Management Services

**Resolution #2022-023** Authorizing the City Administrator to Execute a Sponsorship Agreement with Land O'Frost

**Resolution #2022-024** Repealing Resolution #2022-017 and Authorizing the City Administrator to Execute a New Contract with Decker & DeGood, P.C.

**Resolution #2022-025** Authorizing the City Administrator to Execute a Contract with Arvest Bank for Purchasing Card Services

**Resolution #2022-026** Consenting to the Mayor's Appointment of Mark Hartsock to the Board of Adjustment

**Resolution #2022-027** Authorizing the City Administrator to Execute a Tower Attachment Agreement with Christian County Emergency Services

**Resolution #2022-028** Authorizing the City Administrator to Apply for and Accept Grant Funding Provided by the Missouri Department of Transportation for Certain Traffic Safety Programs

**Discussion Items:**

**New Business Item:**

Southwest Regional/Kelby Creek Lift Stations

**Mayor and Council Member Reports:**

**Closed Executive Session:**

The City Council is anticipated to conduct a closed session pursuant to sections 610.021(1), (3) & (13) RSMo. in which the Council will discuss legal actions, causes of action and confidential and privileged communications with their attorney. Additionally, the Council will discuss the hiring, firing, disciplining, or promoting of particular employees and personal information about the employees is to be discussed; and individually identifiable personnel records, performance ratings or records pertaining to the employee are to be discussed.

This closed session, records related thereto, and any votes taken by the Council shall be closed pursuant to section 610.021, particularly sections 610.021(1), (3) & (13).

**Adjournment:**

The Council shall stand adjourned at the end of the executive session.

**Council/ Staff Liaisons**

Jarad Giddens/Doug Colvin-Public Works	Darlene Graham/Joe Campbell-Police
Amy Hoogstraet/Matt Crouse-Park	Aron Peterson/Garrett Tyson-Planning/Development
Justin Orf/Cindy Robbins-Administration/Court & Drew Douglas-Communications	
Shawn Lucas/Jennifer Evans-Finance & Amanda Hunsucker	

**CITY OF NIXA  
OFFICE OF THE MAYOR  
STATE OF MISSOURI**

**PROCLAMATION**

**WHEREAS**, Springfield's two Ronald McDonald House Programs have provided a "home-away-from-home" and an invaluable source of hope and comfort for families of seriously ill and injured children who must travel far from home for medical treatment; and

**WHEREAS**, the two Ronald McDonald Houses, located in Springfield, Missouri, allow their guests to maintain close contact with their seriously ill children by providing a secure and supportive environment at no required cost; and

**WHEREAS**, the Ronald McDonald House near Cox South and the House at Mercy Kids have served the needs of 447 Christian County families, 109 of which are residents of Nixa, Missouri; and

**WHEREAS**, on Tuesday, January 25, 2022, 69 McDonald's Restaurants and various other locations, will begin showing their support by asking customers to "Share their Heart" by "adopting" a \$1, \$5, and \$20 to Ronald McDonald House Charities of the Ozarks through the Share a Heart Campaign; and

**WHEREAS**, the following generous contributors have provided sponsorship funding and underwritten the costs for the Share a Heart Campaign: McDonald's of the Ozarks; Great Southern Bank; Mid-Am Metal Forming; and KY3 Television; and

**WHEREAS**, McDonald's of Nixa is participant in the Share a Heart Campaign, which will continue through February 28, 2022,

**NOW, THEREFORE**, I, Brian Steele, Mayor of the City of Nixa, Missouri, do hereby proclaim February 14<sup>th</sup> through February 20<sup>th</sup>, 2022, as

**"Ronald McDonald House Week"**

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seal of the City of Nixa, this 14<sup>th</sup> day of February 2022.

Mayor

ATTEST:

City Clerk



**Issue:** **AN ORDINANCE OF THE NIXA CITY COUNCIL ANNEXING APPROXIMATELY 5 ACRES OF REAL PROPERTY GENERALLY LOCATED AT 617 SOUTH HARRISON STREET AND ZONING SAID PROPERTY TO THE R-5 ZONING DISTRICT.**

**Date:** February 14, 2022

**Submitted By:** Garrett Tyson, Director of Planning and Development

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## **Background**

The owners of approximately 5 acres located at 617 S Harrison St have submitted a voluntary petition for annexation to the City of Nixa and have requested zoning into the R-5 medium-density multi-family residential zoning district.

The subject property is compact and contiguous to the Nixa City Limits and can be provided with municipal services.

## **Analysis**

### Land Use

The subject property is presently unused and contains no buildings or structures. The general vicinity of the site contains a variety of land uses including single-family residential dwellings adjacent to the north, east, and south and commercial uses and vacant commercial-zoned land to the west and southwest.

The City's adopted land use plan (2003) indicates low-density residential land uses as being appropriate at this location.

### Transportation

The subject property is directly served by S Harrison St (local class thoroughfare), which terminates at the site. Traffic to/from the location will primarily flow to/from South Street (local) which will be primarily served by Massey Boulevard (expressway).

The anticipated trip generation from the proposed R-5 zoning can be supported by the existing transportation facilities at this scale. The applicant has previously inquired about whether Harrison Street would need to be extended through the site. Staff's determination is that such an extension would not be prudent under the circumstances as the costs of such extension (both immediate and long-term) would massively outweigh any benefits to the transportation network in the vicinity. An illustration of this situation is enclosed with this exhibit.





### Municipal Utilities (Water, Wastewater, Electric)

The subject property does not enjoy immediate access to municipal water, wastewater, or electric services. These utilities are located within the vicinity of the site but will need to be extended to the site by a developer or property owner. The utilities available to this location are of sufficient capacity to serve the land uses permitted within the proposed R-5 zoning district.

### Stormwater Management

The development of the site will be required to conform to the City's adopted stormwater management regulations. The site contains an apparent sinkhole (shown on map enclosed with this exhibit). The treatment of the sinkhole about development and stormwater management will need to conform to the city's regulations concerning development near karst topography. These regulations address both flooding and water quality concerns.

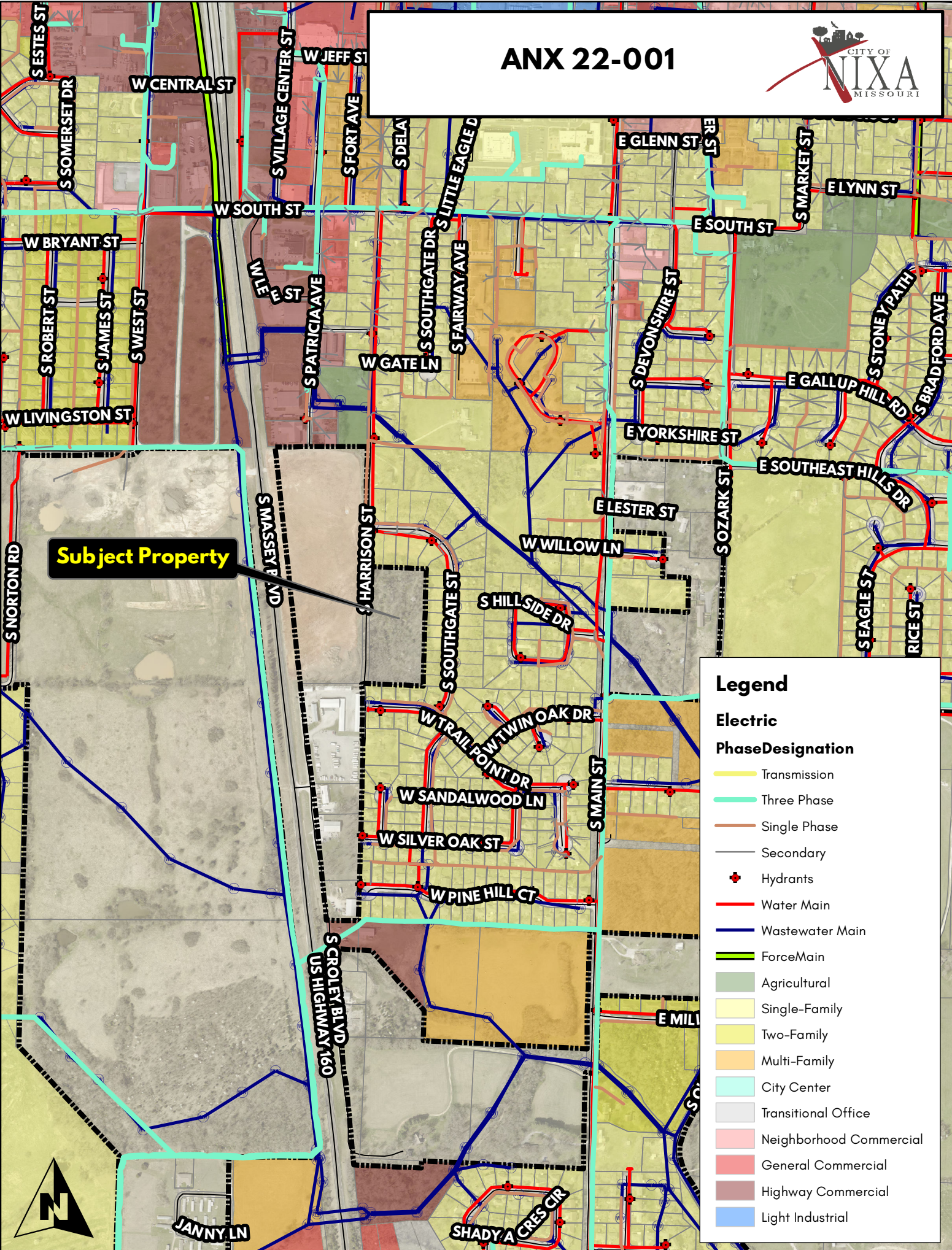
### Other Public Services

The proposed multi-family land use may add traffic and patronage to the City's jurisdiction, which will impact a variety of public services in proportion to these increases. Ideally, the impact of these additional patrons will produce economies sufficient to cover additional costs. The City's development regulations will require standards to be met to ensure sufficient access to the site for emergency response, rescue, and fire suppression.

### **Recommendation**

Staff recommends the approval of this annexation and zoning.

ANX 22-001



Legend

Electric

PhaseDesignation

- Transmission
- Three Phase
- Single Phase
- Secondary
- Hydrants
- Water Main
- Wastewater Main
- ForceMain

- Agricultural
- Single-Family
- Two-Family
- Multi-Family
- City Center
- Transitional Office
- Neighborhood Commercial
- General Commercial
- Highway Commercial
- Light Industrial



1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA ANNEXING  
2 APPROXIMATELY 5 ACRES OF REAL PROPERTY GENERALLY LOCATED AT 617  
3 SOUTH HARRISON STREET; ZONING SAID PROPERTY TO THE R-5 ZONING  
4 DISTRICT; AND AMENDING CHAPTER 2, ARTICLE II OF THE NIXA CITY CODE.  
5  
6

7 **WHEREAS** a verified petition requesting annexation into the City of Nixa has been  
8 submitted by the owners of all fee interests of record of the real property generally located  
9 at 617 South Harrison Street, said Annexation Petition ("Petition") is attached hereto as  
10 "Council Bill Exhibit A"; and  
11

12 **WHEREAS** the area requested to be annexed is more particularly described on  
13 "Council Bill Exhibit B"; and  
14

15 **WHEREAS** the Petition was received by the Director of Planning and Development  
16 more than fourteen but less than sixty days prior to any public hearing regarding the  
17 petition before the City Council; and  
18

19 **WHEREAS** notice of a public hearing before the City Council concerning the  
20 Petition was published at least seven days prior to the public hearing; and  
21

22 **WHEREAS** City Council finds and determines that the annexation requested by  
23 the Petition is reasonable and necessary to the proper development of the City, the City  
24 is able to furnish normal municipal services to the area annexed herein within a  
25 reasonable time after annexation, and the area annexed herein is contiguous and  
26 compact to the existing boundaries of the City; and  
27

28 **WHEREAS** additionally, an application has been filed for a zoning change of the  
29 property generally located at 617 South Harrison Street ("Application") and which is more  
30 specifically described on "Council Bill Exhibit B"; and  
31

32 **WHEREAS** the Application requests that the City Council rezone said property to  
33 the R-5 Zoning District; and  
34

35 **WHEREAS** the Planning and Zoning Commission held a public hearing on the  
36 Application at the Commission's February 7, 2022, meeting; and  
37

38 **WHEREAS** the Commission, after considering the Application, staff's  
39 recommendation, and after holding a public hearing, issued a recommendation of  
40 approval; and  
41

42 **WHEREAS** the City Council, now having considered the Application, staff's  
43 recommendation, and after providing an opportunity for public comment, now desires to  
44 annex and rezone the subject property and amend the City's official zoning map; and  
45

46       **WHEREAS** the City Council also desires to amend Chapter 2, Article II of the Nixa  
47 City Code, to assign said property to a City Council District.  
48

49       **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
50 **NIXA, AS FOLLOWS, THAT:**  
51

52       **SECTION 1:** City Council, after holding a public hearing on the matter, hereby  
53 determines that the annexation of the property described in the “Annexation Petition,”  
54 which is attached hereto as “Council Bill Exhibit A,” which is incorporated herein by this  
55 reference, is reasonable and necessary to the proper development of the City, that the  
56 City is able to furnish normal municipal services to the area to be annexed within a  
57 reasonable time after annexation, and that the area is contiguous and compact to the  
58 existing boundaries of the City.  
59

60       **SECTION 2:** Pursuant to the provisions of Section 71.012 RSMo., the property  
61 described in “Council Bill Exhibit B,” which is attached hereto and incorporated herein by  
62 this reference, is hereby annexed into the City of Nixa, Missouri. The boundaries of the  
63 City of Nixa are hereby altered to encompass the property described in “Council Bill  
64 Exhibit B.”  
65

66       **SECTION 3:** The City Clerk, or designee, is hereby directed to provide certified  
67 copies of this Ordinance to the Clerk of Christian County, the Assessor of Christian  
68 County, and the Missouri Director of Revenue. The City Clerk, or designee, is further  
69 authorized to perform any other administrative acts or provide any other documentation  
70 to any other entity or party, provided such actions are consistent with the intent of this  
71 Ordinance.  
72

73       **SECTION 4:** The property described on “Council Bill Exhibit B” is hereby zoned to  
74 the R-5 zoning district, and the regulations of said district, as established in the Nixa City  
75 Code, shall hereafter apply to said real property.  
76

77       **SECTION 5:** The Director of Planning and Development, pursuant to section 117-  
78 57 of the Nixa City Code, shall amend the City’s official zoning map, said map being  
79 established pursuant to section 117-56 of the Nixa City Code, to reflect the zoning action  
80 contemplated by this Ordinance.  
81

82       **SECTION 6:** Chapter 2, Article II of the Nixa City Code is hereby amended by  
83 repealing said Article in its entirety and adopting in lieu thereof a new Article II, which said  
84 Article shall read as follows:  
85

86 (Note: Language to be added is indicated by being underlined. Language to be removed  
87 is indicated by being ~~stricken~~.)  
88

89 Sec. 2-25. – City Council district boundaries established.  
90

The area embraced within the corporate limits of the city, as now or hereafter established, is hereby divided into three districts, the boundaries of which, as set forth in sections 2-26 through 2-28 of this Code, are hereby established.

Sec. 2-26. – City council district 1.

Nixa city council district 1 contains all that land within the corporate limits of the city of Nixa, on the effective date of Ordinance No. 2230 (November 12, 2021), on the date of this ordinance located north of Northview Road and North Street.

In addition to the foregoing area, city council district 1 shall include the following:

(Reserved)

Sec. 2-27. – City council district 2.

Nixa city council district 2 contains all that land within the corporate limits of the city of Nixa, on the effective date of Ordinance No. 2230 (November 12, 2021), on the date of this ordinance located within the area boundary described as follows:

Beginning at a point located at the intersection of the centerlines of Northview Road and Main Street; thence west along the centerline of Northview Road to the end of the existing city limits; thence south to the centerline of Mount Vernon Street; thence east along said centerline to its intersection with the centerline of Main Street; thence south along said centerline to the end of the existing city limits; thence east along the existing city limits in a counter-clockwise direction to the centerline of North Street; thence east along said centerline to its intersection with the centerline of Main Street; thence north along said centerline to the point of beginning.

In addition to the foregoing area, city council district 2 shall include the following:

(Reserved)

Sec. 2-28. – City council district 3.

Nixa city council district 3 contains all that land within the corporate limits of the city of Nixa, on the effective date of Ordinance No. 2230 (November 12, 2021), on the date of this ordinance located within the area described as follows:

Beginning at a point located at the intersection of the centerlines of Mount Vernon Street and Main Street; thence west along the centerline of Mount Vernon Street to its intersection with the centerline of Nicholas Road; thence west along the existing city limits in a counter-clockwise direction to the centerline of Main Street; thence north to the point of beginning.

In addition to the foregoing area, city council district 3 shall include the following:

(1) The area annexed by Ordinance No. [ ].

**SECTION 7:** The City Attorney when codifying the code changes made by Section 6 and once this Ordinance is in full force and effect is authorized to provide the Ordinance number assigned to this Ordinance in the blank space provided in Section 6, at or around Line 138.

**SECTION 8:** The City Attorney, when codifying the provisions of this Ordinance, is authorized to provide for different section numbers, subsection numbers, and different internal citation references than those provided herein when such section numbers, subsection numbers, or internal citation references are in error or are contrary to the intent of this Ordinance.

**SECTION 9:** Savings Clause. Nothing in this Ordinance shall be construed to affect any suit or proceeding now pending in any court or any rights acquired, or liability incurred nor any cause or causes of action occurred or existing, under any act or ordinance repealed hereby.

**SECTION 10:** Severability Clause. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

**SECTION 11:** This Ordinance shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**[Remainder of page intentionally left blank. Signatures follow on the next page.]**

183 **ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_ 2022.**

184

185 ATTEST:

186

187 \_\_\_\_\_

188 CITY CLERK

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190 **APPROVED BY THE MAYOR.**

191

192 ATTEST:

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194 \_\_\_\_\_

195 CITY CLERK

196

197 APPROVED AS TO FORM:

198

199 \_\_\_\_\_

200 CITY ATTORNEY

\_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DATE OF APPROVAL



PO Box 395, 715 W. Mt. Vernon, Nixa, MO 65714  
(Phone) 417-725-5850 (Fax) 417-724-5750

## ANNEXATION PETITION

I/We, the undersigned **617 S Harrison St LLC**

Owner(s) Name(s) typed or printed

hereinafter referred to as the Petitioner, petitions the City Council of the City of Nixa, Missouri, to annex the following described unincorporated area which is contiguous and compact to the existing corporate limits of the City of Nixa, Missouri:

**The parcel located at 617 S. Harrison St. with the Legal Description as follows:**

**The West Half of the Southwest Quarter of the Northwest Quarter of the Northwest Quarter of Section 24, Township 27, Range 22, containing 5 acres, more or less.**

**(as illustrated by metes, bounds and bearings indicated on attached survey)**

Petitioner states that he/she is the owner in fee of all interests in the said tract of real property and requests that the City Council hold a public hearing not fewer than fourteen (14) or more than one-hundred twenty (120) days after receipt of this Petition and that said hearing be held not fewer than seven (7) days after notice of the hearing is published in a newspaper of general circulation, qualified to publish legal matters. Further, should the City Council determine that the annexation reasonable and necessary to the property development of Nixa, Missouri has the ability to furnish normal municipal services to the area to be annexed within a reasonable time, Petitioner requests that said City Council thereafter annex the territory by ordinance without further action.





PO Box 395, 715 W. Mt. Vernon, Nixa, MO 65714  
(Phone) 417-725-5850 (Fax) 417-724-5750

Should written objection to the proposed annexation be filed with the City Council not later than fourteen (14) days after said public hearing, this Petitioner than requests the City Council thereafter to petition the Circuit Court of Christian County, Missouri, for a declaratory judgment as to the reasonableness of such annexation.

[Signature]  
Owner Signature

\_\_\_\_\_  
Owner Signature

STATE OF MISSOURI  
COUNTY OF CHRISTIAN

On this 10 day of January, 2022, before me personally appeared Justin Foos to me known to be the person described in and who executed the foregoing instrument and acknowledges that he executed the same as his free act and deed and that the facts stated therein are true to the best of his knowledge and belief.

In testimony whereof, I have hereunto set my hand and affixed my official seal the date and year first above written.

Christine Renae Ferguson  
Notary Public



My Commission Expires: Feb 13, 2024

Applicant Name 617 S Harrison St LLC  
Justin Foos - Managing Partner Phone: (303) 917-6532

Applicant Mailing Address: 1153 S Nicholas Rd.  
Nixa, MO 65714

Annexation and Zoning (R-5) of 617 South Harrison Street – Legal Description:

The West Half of the Southwest Quarter of the Northwest Quarter of the Northwest Quarter of Section 24, Township 27, Range 22, containing 5 acres, more or less.



**Issue:** **AN ORDINANCE OF THE NIXA CITY COUNCIL ISSUING A SPECIAL USE PERMIT TO AUTHORIZE A BAR (WITH RESTAURANT) IN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT AT 105 WEST SHERMAN WAY SUITE 101.**

**Date:** February 14, 2022

**Submitted By:** Garrett Tyson, Director of Planning and Development

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## **Background**

Jon Huff has applied for a special use permit to use 105 S Sherman Way Ste 101 as a Bar (with restaurant) in the Neighborhood Commercial zoning district.

This particular type of land use is not permitted by-right in the Neighborhood Commercial zoning district but is allowed upon issuance of a special use permit by the Nixa City Council.

## **Analysis**

The subject location is at the northwest corner of the intersection of N Main St (collector) and Sherman Way (local). The proposed land use is not anticipated to have an appreciable impact on traffic volume or municipal utility capacities.

The site is surrounded by a variety of land uses including high-density residential uses to the north and east and other commercial uses to the south and west. The specific location can be accurately characterized as a commercial shopping center served by a transportation network suitable to such land uses.

In approving special use permits, the Nixa City Code provides for the following considerations to be made:

1. Consistency with adopted City plans.
2. The proposal will not be detrimental to the public health, safety, or general welfare of the city.
3. The proposed use is properly located relative to the community, including infrastructure.
4. The size and shape of the property are compatible with the proposed use.
5. Public utilities are adequate to serve the proposed use.
6. The proposed use will not adversely affect nearby properties.

## **Recommendation**

Staff recommends the approval of this special use permit.



SUP 22-001



Subject Property

Legend

- Agricultural
- Single-Family
- Two-Family
- Multi-Family
- City Center
- Transitional Office
- Neighborhood Commercial
- General Commercial
- Highway Commercial
- Light Industrial

1 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA GRANTING SPECIAL**  
2 **USE PERMIT 22-001 TO AUTHORIZE A BAR, WITH RESTAURANT, USE FOR THE**  
3 **NEIGHBORHOOD COMMERCIAL ZONED PROPERTY LOCATED AT 105 WEST**  
4 **SHERMAN WAY, SUITE 101.**  
5 \_\_\_\_\_  
6

7 **WHEREAS** an application has been received requesting the issuance of a Special  
8 Use Permit authorizing a bar, with restaurant, use at the Neighborhood Commercial  
9 zoned property located at 105 West Sherman Way, Suite 101; and  
10

11 **WHEREAS** Special Use Permits may be granted pursuant to the provisions of  
12 Chapter 101, Article III of the Nixa City Code; and  
13

14 **WHEREAS** the Planning and Zoning Commission held a public hearing regarding  
15 the application at the Commission's February 7, 2022, regular meeting; and  
16

17 **WHEREAS** said Commission, after the public hearing, recommended approval of  
18 the application; and  
19

20 **WHEREAS** City Council finds that sufficient information has been presented to  
21 satisfy all applicable standards of the Nixa City Code for issuance of Special Use Permit  
22 22-001.  
23

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

27 **SECTION 1:** A Special Use Permit authorizing the bar, with restaurant, land use  
28 at the Neighborhood Commercial zoned property located at 105 West Sherman Way,  
29 Suite 101, referenced as Special Use Permit 22-001, is hereby granted. Special Use  
30 Permit 22-001 shall be governed by all applicable provisions of the Nixa City Code,  
31 including the provisions of Article III of Chapter 101. Any violations of the provision of this  
32 Ordinance, or the conditions contained herein, shall be grounds for revocation of Special  
33 Use Permit 22-001.  
34

35 **SECTION 2:** This Ordinance shall be in full force and effect from and after its final  
36 passage by the City Council and after its approval by the Mayor, subject to the provisions  
37 of section 3.11(g) of the City Charter.  
38

39  
40 **[Remainder of page intentionally left blank. Signatures follow on next page.]**  
41  
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47 **ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2022.**

48

49 ATTEST:

50

51 \_\_\_\_\_

52 CITY CLERK

53

54 **APPROVED BY THE MAYOR.**

55

56 ATTEST:

57

58 \_\_\_\_\_

59 CITY CLERK

60

61 APPROVED AS TO FORM:

62

63 \_\_\_\_\_

64 CITY ATTORNEY

\_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DATE OF APPROVAL



**Issue:** **AN ORDINANCE OF THE NIXA CITY COUNCIL ISSUING A SPECIAL USE PERMIT TO AUTHORIZE A SHORT-TERM RESIDENTIAL RENTAL AT 605 SOUTH BRADFORD AVENUE**

**Date:** February 14, 2022

**Submitted By:** Garrett Tyson, Director of Planning and Development

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## **Background**

The owner of the single-family residential dwelling located at 605 S Bradford Ave has applied for a special use permit to operate a short-term residential rental from this same dwelling.

A short-term residential rental is defined by the Nixa City Code as the renting of an entire dwelling, or any portion thereof, for a period of not more than 30 consecutive days, to overnight guests, where the owner is engaged in a contract for the rental of that specific dwelling or any portion thereof.

## **Analysis**

According to Section 117-102(c) of the Nixa City Code, short-term residential rentals may only be issued to a permanent resident for the principal residential structure on the subject property. According to Section 117-102(b), a permanent resident is a property owner or lessee who maintains a dwelling as a primary residence as documented by at least two of five documents including a motor vehicle registration, driver's license, voter registration, tax return, or utility bill. The applicant in this case has provided a tax return document and a Nixa utility bill as evidence of their status as a permanent resident at 605 S Bradford Ave.

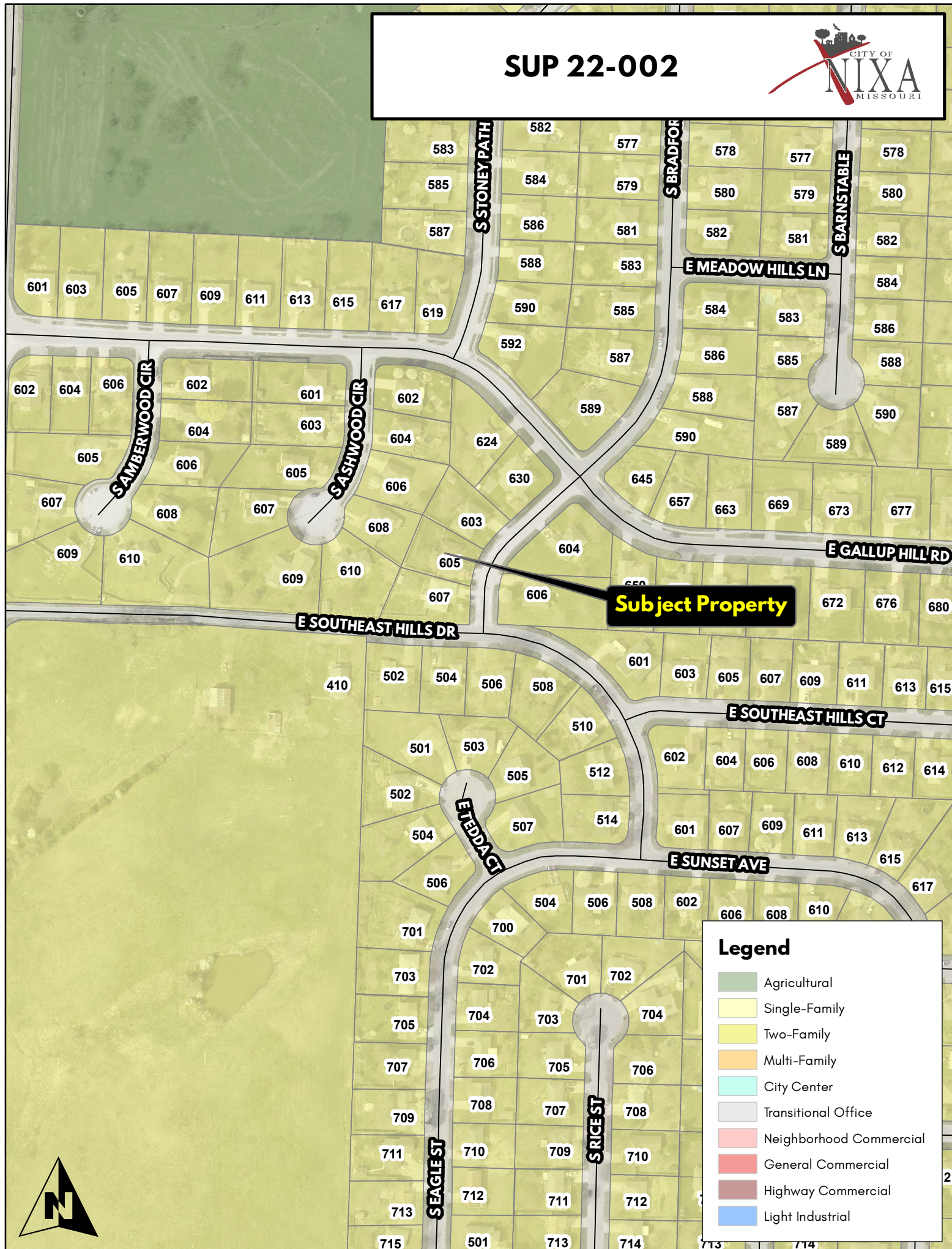
Other codified requirements include that the short-term residential rental must be at least 150 feet from another short-term residential rental and that the location is within either the R-1, R-3 or R-4 zoning districts. The property subject to this application is located within the R-1 district and is not located within 150 feet of another short-term residential rental.

## **Recommendation**

Staff recommends the approval of this special use permit.



SUP 22-002





**AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA GRANTING SPECIAL USE PERMIT 22-002 TO AUTHORIZE A SHORT-TERM RESIDENTIAL RENTAL USE FOR THE SINGLE-FAMILY ZONED PROPERTY LOCATED AT 605 SOUTH BRADFORD AVENUE.**

**WHEREAS** an application has been received requesting the issuance of a Special Use Permit authorizing a short-term residential rental use at the single-family zoned property located at 605 South Bradford Avenue; and

**WHEREAS** Special Use Permits may be granted pursuant to the provisions of Chapter 101, Article III of the Nixa City Code; and

**WHEREAS** Special Use Permits authorizing short-term residential rentals are additionally governed by the provisions of Section 117-102 of the Nixa City Code; and

**WHEREAS** the Planning and Zoning Commission held a public hearing regarding the application at the Commission's February 7, 2022, regular meeting; and

**WHEREAS** said Commission, after the public hearing, recommended approval of the application; and

**WHEREAS** City Council finds that sufficient information has been presented to satisfy all applicable standards of the Nixa City Code for issuance of Special Use Permit 22-002.

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

**SECTION 1:** A Special Use Permit authorizing the short-term residential rental land use at the single-family zoned property located at 605 South Bradford Avenue, referenced as Special Use Permit 22-002, is hereby granted. Special Use Permit 22-002 shall be governed by all applicable provisions of the Nixa City Code, including the provisions of Article III of Chapter 101 and Section 117-102. Any violations of the provision of this Ordinance, or the conditions contained herein, shall be grounds for revocation of Special Use Permit 22-002.

**SECTION 2:** This Ordinance shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**[Remainder of page intentionally left blank. Signatures follow on next page.]**

ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

APPROVED BY THE MAYOR.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
DATE OF APPROVAL



**Issue:** Floor Burnisher Budget Amendment

**Date:** February 1, 2022

**Submitted By:** Matt Crouse, Director of Parks and Recreation

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### Background

Through the 2022 budget process parks staff identified the need to replace a current (2002) floor burnisher that was nearing its effective lifespan. This old floor furnisher has now completely quit and is so old that its not work repairing.

### Analysis

Unfortunately, in the process of preparing the 2022 budget the burnisher that had been put into the operational budget, needed to be removed and placed in the capital budget and was then inadvertently left out on the approved 2022 budget. This piece of equipment helps keep our building clean as it polishes and shines the floors and helps remove scuffs and scratches. We have priced out a new floor burnisher and the low quote was \$7,500.

### Recommendation

Staff is requesting a budget amendment in the amount of \$7,500 to be added to the parks capital improvements for 2022 to replace the non-working floor burnisher to assist staff in keeping our facility clean and shiny for the community.

Thank you for you consideration and I would be happy to answer any questions you may have.

Respectfully,

Matt Crouse  
Director, Parks and Recreation

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING THE 2022 ANNUAL BUDGET TO APPROPRIATE FUNDS FOR THE PURCHASE OF A FLOOR BURNISHER FOR THE PARKS DEPARTMENT.**

**WHEREAS** the City's Parks Department has a piece of equipment, known as a floor burnisher, which has failed to the point that repair is no longer prudent; and

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

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

**WHEREAS** the City Administrator has requested a budget amendment in the amount of \$7,500.00 and for the purposes contemplated by this Ordinance; and

**WHEREAS** the City Council desires to amend the City's 2022 budget for the purposes identified herein.

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

**SECTION 1:** The City of Nixa's 2022 Annual Budget is hereby amended in the accounts and the amounts as shown on "Council Bill Exhibit A," which is attached hereto and incorporated herein by this reference.

**SECTION 2:** City Council finds that the budget amendment enacted by this Ordinance has been recommended by the City Administrator. The City Administrator is directed to cause the appropriate accounting entries to be made in the books and records of the City to reflect the budget amendment enacted by this Ordinance.

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

**ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_ 2022.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

**COUNCIL BILL NO. 2022-024**

**ORDINANCE NO.**\_\_\_\_\_

47 **APPROVED BY THE MAYOR.**

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49 ATTEST:

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51 \_\_\_\_\_

52 CITY CLERK

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54 APPROVED AS TO FORM:

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56 \_\_\_\_\_

57 CITY ATTORNEY

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DATE OF APPROVAL

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>
\$7,500	11	Capital - Equipment	11-400-5452000	Current

Explanation: To amend the current budget of the City of Nixa to appropriate funds for a Capital Project (Floor Burnisher) in the Park Department.

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

ARPA

General

Police

Street

Park

Planning &

Development

TOTAL

\_\_\_\_\_  
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## MEMORANDUM

**Issue:** **ASSET PURCHASE AGREEMENTS FOR RDE WATER COMPANY & TUSCANY HILLS WATER AND SEWER.**

**Date:** February 14, 2021

**Submitted By:** Travis Cossey/Doug Colvin/Jason Stutesmun

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### Background

At the October 25<sup>th</sup> council meeting, staff introduced the acquisition of the RDE Water Company and Tuscany Hills Water and Sewer systems. The city was initially contacted by the owners of the systems last year. After being approached, staff investigated the two privately owned systems and compiled information to present to council for their potential purchase. That due diligence provided the following information for consideration by council:

- Service Territories and System Schematics
- System Values & Purchase Prices
- Revenue Potential
- Operations and Investments
- Benefits to the City and Nixa Water Utility
- Initial Estimated O&M vs. Revenue

After presentation of this information and a recommendation from staff that we pursue the acquisition of the two systems, council directed staff to move forward with preparation of an Asset Purchase Agreement (APA) for their purchase. Utilizing the services of Healy Law Offices, the APA's were drafted and have been executed by the two parties.

### Analysis

The attached Ordinances and APAs contain the details of the acquisition including the purchase price, assets, property, and real estate connected with the two systems. As detailed in the APA for the RDE Water Company, the city will obtain ownership of the system for \$2,500,000. The purchase price includes the following:

- Two utility capacity wells with a total current production capacity of 870 gallons per minute (GPM).
- One 250,000-gallon ground storage tank with booster pumps and well located on two parcels totaling 29,055 SF.
- One 47,000-gallon standpipe tower and well located on a 7,500 SF parcel.

- Approximately 28.5 miles of 2" through 10" PVC water mains with 72 fire hydrants.
- 1,072 residential customers, 66 commercial customers and a single 4" master meter serving English Village.

The APA for the Tuscany Hills water and sewer system establishes a purchase price of \$500,000 which includes the following:

- One utility capacity well and 60,000-gallon standpipe located on a 10,434 SF parcel.
- Water line infrastructure consisting of 6" and 8" water mains serving 87 residential and 3 commercial customers.
- A Sand Filtration sewer treatment facility located on a 66,092 SF parcel.
- One lift station and 8" sewer mains serving 87 residential, 3 commercial customers and a church.

Based on staff's assessment, purchase of both the RDE water and Tuscany Hills water & sewer systems will provide a benefit to the city. The well and property assets allow for us to make planned improvements to our existing system at a lesser cost and shorter timeline while also enhancing both systems. These systems also have the ability to be expanded which will allow us to provide city services for future improvements to Eoff Park and provide additional benefits for future economic development opportunities that do not currently exist in north Nixa.

### Recommendation

Staff recommends approval of ordinance #2022-025 and #2022-026.



1 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE**  
2 **MAYOR TO EXECUTE AN ASSET PURCHASE AGREEMENT WITH REX**  
3 **DEFFENDERFER ENTERPRISES, INC. FOR THE ACQUISITION OF A CERTAIN**  
4 **WATER SYSTEM.**

5 \_\_\_\_\_  
6  
7 **WHEREAS** the City and the Rex Deffenderfer Enterprises, Inc. ("RDE") have been  
8 in negotiations regarding the City's acquisition of certain water infrastructure currently  
9 owned by RDE; and

10  
11 **WHEREAS** the negotiations have culminated in the Asset Purchase Agreement  
12 ("Agreement") which is attached hereto as "Council Bill Exhibit A": and

13  
14 **WHEREAS** the City Council finds that the acquisition contemplated herein will  
15 assist the City with planned improvements to the City's public infrastructure as well as  
16 positioning the City to provide planned future improvements; and

17  
18 **WHEREAS** the City Council desired to authorize the Mayor to execute the  
19 Agreement with Tuscany Hills, as provided for herein.

20  
21 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
22 **NIXA, AS FOLLOWS, THAT:**

23  
24 **SECTION 1:** The Mayor, or designee, is hereby authorized to execute the "Asset  
25 Purchase Agreement" ("Agreement") attached hereto, and incorporated herein by this  
26 reference, as "Council Bill Exhibit A," with the Rex Deffenderfer Enterprises, Inc. Said  
27 Agreement shall be in substantially similar form as the document attached hereto as  
28 "Council Bill Exhibit A." The Mayor and the officers of the City are hereby authorized to  
29 do all things necessary or convenient to carry out the terms and intent of this Ordinance.

30  
31 **SECTION 2:** This Ordinance shall be in full force and effect from and after its final  
32 passage by the City Council and after its approval by the Mayor, subject to the provisions  
33 of section 3.11(g) of the City Charter.

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36 **[Remainder of page intentionally left blank. Signatures follow on next page.]**  
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47 **ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022.**  
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50 ATTEST:  
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53 CITY CLERK  
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\_\_\_\_\_  
PRESIDING OFFICER

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56 **APPROVED BY THE MAYOR.**  
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59 ATTEST:  
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61 \_\_\_\_\_  
62 CITY CLERK  
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\_\_\_\_\_  
MAYOR

65 APPROVED AS TO FORM:  
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67 \_\_\_\_\_  
68 CITY ATTORNEY

\_\_\_\_\_  
DATE OF APPROVAL

# **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement ("Agreement"), dated and effective as of \_\_\_\_\_, 20\_\_ ("Effective Date"), is entered into by and between Rex Deffenderfer Enterprises, Inc., a for-profit business under the laws of Missouri, ("Seller"), and the City of Nixa, Missouri, a municipality organized under the laws of the State of Missouri ("Buyer"). Throughout this Agreement, Buyer and Seller are sometimes referred to each as a "Party" and collectively as the "Parties."

## **RECITALS**

WHEREAS, Seller has developed, and operates a regulated water system, in an area of Christian County, Missouri, to include the water system known as "RDE Water Company," some parts of which are situated on easements and real property owned by Seller, more particularly described and depicted in the documents attached hereto as **Exhibits "A" and "B"**, (herein after the "System"); and,

WHEREAS, Buyer is a political subdivision and a constitutional charter city organized and existing under the laws of the State of Missouri with all the requisite power necessary to enter into the transaction described hereinafter; and,

WHEREAS, Seller desires to sell all the assets, property, and real estate connected with the System; and,

WHEREAS, Buyer desires to purchase all of the assets, property, and real estate connected with the System; and,

NOW THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

## **ARTICLE I DEFINITIONS**

Section 1.01 **Definitions.** For purposes of this Agreement, the following terms shall have the respective meanings set forth below.

"Assets" means Seller's right, title, and interest in and to the System, the design and engineering of the System, and all of the properties, assets and rights comprising the System, whether tangible, intangible or personal and wherever located, except for the Excluded Assets, free and clear of any liens or encumbrances of any kind whatsoever, specifically including, without limitation, the following:

- A. The System as particularly described and depicted in **Exhibits “A” and “B”**
- B. The real estate listed, owned in fee simple by Seller on the Effective Date, together with any improvements erected thereon (“Fee Owned Real Property”) along with all interests in easements, rights of way, permits, and other Real Property Entitlements associated with the System (the “Real Property Entitlements,” together with the Fee Owned Real Property constitute the “Transferred Real Property”) generally described in **Exhibit “B”**, attached hereto;
- C. All of Seller’s water service facilities, equipment, lines, plant, pipes, valves, fire hydrants, manholes and appurtenances, along with all machinery, supplies, materials, fixtures (such as meters, tools, devices, mobile work equipment), supplies and other tangible items and personal property (“Plant and Equipment”) located in Christian County, Missouri, and used or held for use in connection with the System, along with any rights to the warranties and licenses received from manufacturers of the Plant and Equipment as generally described in **Exhibit “C”**, attached hereto;
- D. The following items intended to be used or consumed at the System in the Ordinary Course that are on hand at the System or owned as of the Closing; to include spare, replacement or other parts; tools, special tools, lubricants, chemicals, fluids, fuel oil, lubricating oils, supplies filters, fittings, connectors, seals, gaskets, hardware, wire and other similar materials; maintenance and shop supplies and other similar items of personal property in existence as of the Closing (“Inventory”), all as set forth in **Exhibit “D”**, attached hereto;
- E. All of Seller’s rights, title and interest in and to any franchise agreements, franchise rights, contracts, supply contracts, agreements, and customer deposits (“Contracts, Agreements and Customer Deposits”) pertaining to, allocatable to or arising out of the provision of water service in Christian County, Missouri as generally described in **Exhibit “E”**, attached hereto;
- F. All of Seller’s good will, and general intangibles including accounts receivable pertaining to the System, except accounts receivable accrued prior to the Closing of this sale; and
- G. Subject to the receipt of necessary consents and approvals, and to the extent transferrable under applicable law, rights under all Permits relating to the System; and

- H. To the extent legally transferrable, all unexpired third-party warranties, indemnities and guarantees in relation to any of the equipment, Inventory, and personal property described in this Definition of Assets; and
- I. All Intellectual Property, engineering plans, know-how, goodwill and similar to or related assets of Seller relating to the System and variations thereof; and
- J. All site plans, surveys, plans and specifications, engineering, electrical and mechanical plans and studies, landscape plans, appraisals, feasibility studies, environmental studies and other plans and studies of any kind if existing and in the possession or subject to the control of Seller relating to the Transferred Real Property and the System; and
- K. Original, or where not available, copies, of all books records, files, manuals, equipment maintenance files, production and reliability data, research and development files, correspondence with any Governmental Authority with respect to the System, sales material, and records (including price history, sales, terms and conditions of sales) and similar documentation related to the System and the Assets, but not including any entity books and records of the Seller ("Records"); and
- L. All other Assets set forth in the Exhibits attached hereto.

"Bill of Sale" means a certain Bill of Sale to be executed and delivered by Seller at Closing. The form of the Bill of Sale shall be in substantially similar form as the document attached hereto, and which is incorporated herein by this reference, as, **Exhibit "F"**.

"Business" means the business of providing water and ancillary services from the System, as managed and operated by Seller on the date hereof, and any business activities of Seller incidental to the foregoing.

"Closing Date" means the date on which the Closing occurs.

"Contract" means any written contract, lease, license, evidence of indebtedness, mortgage, indenture, purchase order, binding bid, letter of credit, security agreement or other written and legally binding arrangement.

"Due Diligence Information" means information provided or made available to Buyer or its representatives or agents, including, without limitation, any information, document, or material provided or made available, or statements made, to Buyer, its representatives and/or agents during site or office visits, in any management discussions or supplemental due diligence information provided to Buyer, its

representatives and/or agents, in connection with discussions with management or in any other form in expectation of the purchase.

“Fee Owned Real Property” means the real property listed on **Exhibit “B”** owned in fee simple by Seller on the Effective Date, together with any improvements erected thereon.

“General Warranty Deeds” means those certain General Warranty Deeds with respect to the Fee Owned Real Property to be executed and delivered by Seller at Closing. The form of the General Warranty Deeds shall be in substantially similar form as the document attached hereto, and which is incorporated herein by this reference, as **Exhibit “G”**.

“Governmental Authority” means any court, tribunal, arbitrator, authority, agency, commission, legislative body, official or other instrumentality of the United States or any state, county, city or other political subdivision or similar governing entity, and including any governmental, quasi-governmental or non-governmental body administering, regulating or having general oversight over water or water systems, including without limitation the Missouri Public Service Commission and the Missouri Department of Natural Resources.

“Law” or “Laws” means all laws, statutes, rules, regulations, charters, ordinances, and other pronouncements having the effect of law of any Governmental Authority.

“Ordinary Course” means the ordinary and normal course of Seller’s conduct of business consistent with past practice and operation of the System employed by Seller.

“Permits” means the material permits, licenses, franchises, variances, exceptions, orders and other authorizations, consents and approvals from Governmental Authorities which relate to the operation of the System or any Assets that are used or held by Seller in connection with the operation of the System, and the holder thereof.

“Real Property Entitlements” means the easements, rights of way, real property licenses and other Real Property Entitlements associated with the System or listed on **Exhibits “A” and “B.”**

“System” means the regulated water system operated by Seller in Christian County, Missouri, and includes the water system known as “RDE Water Company,” some parts of which are situated on easements and real property owned by Seller, and being more particularly described and depicted in the documents attached hereto as **Exhibits “A” and “B.”**

"Tax" or "Taxes" means any income, profits, franchise, withholding, ad valorem, personal property (tangible and intangible), real property, employment, payroll, sales and use, social security, disability, occupation, property, severance, excise, and other taxes (including any payments in lieu of taxes), including any interest, penalty, or addition thereto.

"Transaction Documents" means this Agreement and each of the other documents and instruments contemplated hereby, and which are to be delivered by Seller and Buyer at Closing.

"Transferred Real Property" means the Fee Owned Real Property and the Real Property Entitlements.

## **ARTICLE 2 PURCHASE AND SALE**

Section 2.01 **SALE OF ASSETS.** Pursuant to the terms set forth in this Agreement, for and in consideration of the receipt of the Purchase Price, as set forth below, and the covenants and promises hereinafter set forth, Seller agrees that on the date of the Closing, Seller shall sell, transfer, assign and deliver to Buyer all of Seller's then existing Assets, shown in **Exhibits "A," "B," "C," "D," and "E"** free and clear of all liens and encumbrances of any kind pertaining to the provision of water service and the System located in Christian County.

**A. EXCLUDED ASSETS.** Notwithstanding anything herein to the contrary, the Assets are only the properties and Assets transferred to Buyer under this Agreement. Without limiting the foregoing, the Assets do not include the properties and assets of Seller listed or described below ("Excluded Assets"):

1. Cash, bank accounts, certificates of deposit and other cash equivalents and advance payments, pre-paid expenses and deposits and refunds, including advances to suppliers, checks in transit and un-deposited checks;
2. All of Seller's accounts and notes receivable as of 11:59 pm on the Closing Date;
3. All of Seller's files and records related to the Excluded Assets or Excluded Liabilities;
4. All Claims for refund or credit of Taxes and other Governmental Authority charges of whatever nature to the extent attributable to the period prior to and including the Closing Date;

5. All rights to Claims, refunds or adjustments with respect to Excluded Assets, all other refunds or adjustments with respect to Excluded Assets, in either case relating to any proceeding before any Governmental Authority relating to the period prior to the Closing and all rights to insurance proceeds or other insurance recoveries (i) that relate to, or are reimbursement for, Seller's expenditures made prior to and including the Closing Date for which insurance proceeds are available or due to Seller or (ii) to the extent relating to Excluded Assets or Excluded Liabilities;
6. All rights to the current office space and furnishings of the Seller located at 1770 N. Deffer Dr., Nixa, Missouri; and
7. All rights and title to the 2011 Chevrolet Silverado half-ton truck possessed by Jeff Deffenderfer.

**B. ASSUMED LIABILITIES.** Subject to the terms and conditions hereof, at Closing, the Buyer shall assume the following Liabilities, and only the following Liabilities, of Seller (collectively, the "Assumed Liabilities"): All Liabilities arising after the Closing Date under the Assumed Contracts (if any); provided, that such obligations: (i) arise after the Closing Date; (ii) do not arise from or relate to any default or breach by Seller prior to the Closing Date of any provision of any of the Assumed Contracts (if any); (iii) do not arise from or relate to any event, circumstance or condition occurring or existing on or prior to the Closing Date that, with notice or lapse of time, would constitute or result in a breach of, or default under, any of the Assumed Contracts; (iv) do not involve any liability or resolution as a result of any law suits pending against or involving Seller as of the Closing Date; and (v) are ascertainable (in nature and amount) solely by reference to the express terms of the Assumed Contracts (if any).

**C. EXCLUDED LIABILITIES.** Notwithstanding anything to the contrary contained in this Agreement, and regardless of whether such liability is disclosed in this Agreement, in any of the Transaction Documents or on any Schedule or Exhibit hereto or thereto, Buyer will not assume, agree to pay, perform and discharge or in any way be responsible for any debts, liabilities and obligations, of Seller of any kind or nature whatsoever, arising out of, relating to, resulting from, or caused by any transaction, status, event, condition, occurrence or situation relating to, arising out of or in connection with the System, the Assets, or Seller existing, arising or occurring on or prior to the Closing Date other than the Assumed Liabilities (the "Excluded Liabilities"). Seller shall promptly pay and perform such Excluded Liabilities



when due. For any and all Excluded Assets not purchased, Buyer assumes no liability associated therewith.

## Section 2.02 **CONVEYANCES OF REAL PROPERTY.**

- A. The Real Property to be conveyed by Seller shall include all real property and facilities described in **Exhibits "A" and "B"** hereto and all interest of Seller in any water and other utility easements. The real estate shall be conveyed by General Warranty Deeds, in a form similar to **Exhibit "G"** and satisfactory to Buyer and shall vest marketable fee simple title in fact in the Buyer, subject to all matters of records not objected to by Buyer. Easements shall be assigned by written assignment in a form similar to **Exhibit "H"** and satisfactory to Buyer.
- B. At Buyer's expense, Buyer will obtain, at least thirty (30) days prior to closing, a Commitment to issue an Owner's Policy of Title Insurance to Buyer in the amount of the Purchase Price issued by a company authorized to issue title insurance in the state of Missouri, which policy shall insure the Seller's title to be marketable as the same is described and defined in Title Examination Standards of the Missouri Bar ("Title Standards").
  - 1. At least thirty (30) days prior to the Closing, Buyer shall have an ALTA Survey of the real property portion of the Assets prepared by a surveyor licensed in Missouri in a form reasonably acceptable to the Title Company and Seller at Buyer's expense.
  - 2. After delivery of said title insurance commitment and Buyer's completion of the examination and/or review of the commitment and other relevant title information, Buyer shall notify Seller, in writing, of any objections thereto (the Parties agreeing that any objection falling within the said Title Standards shall not constitute a valid objection so long as Seller furnishes customary affidavits or other papers as described in such standards in order for the title company to delete the same).
  - 3. If there is no notice of objection, then any exceptions in such Commitment or deficiencies in the title to the property noted on such Commitment shall be deemed waived and delivery of the deeds in compliance with the terms of the Commitment shall be deemed compliance with the terms of this Agreement.
  - 4. If notice of any objections to defects in the title, as defined above, shall be delivered to Seller, then Seller may have five (5) business days to correct the title, but shall have no obligation to do so, and Closing may be

postponed until such time, if necessary. If Seller elects not to, or cannot, correct such defects, then the Parties may negotiate, but if agreement cannot be obtained, Buyer, at Buyer's option, may waive such defects and proceed to close or may cancel the contract and all obligations hereunder shall be null and void.

### **Section 2.03 PURCHASE PRICE.**

- A. On the Closing Date, Buyer shall pay to Seller, or cause to be paid to Seller Two Million, Five Hundred Thousand (\$2,500,000.00) Dollars for the purchase of the Assets (the "Purchase Price"). The Purchase Price shall be paid in immediately available funds to one or more bank accounts to be specified by Seller to Buyer at least two (2) business days prior to the Closing Date.

### **Section 2.04 CLOSING.**

- A. The Closing of the sale shall take place at a mutually agreeable location no later than sixty (60) days after the effective date of any necessary regulatory authority approval, satisfaction of Seller's Representations and Warranties and Conditions Precedent set forth herein, and Buyer having obtained financing under terms acceptable to Buyer in Buyer's sole discretion, or at such other time as the parties hereto may mutually agree (the "Closing").
- B. At the Closing, Seller shall have delivered to Buyer such General Warranty Deeds, Bill of Sale, endorsements, assignments and other sufficient instruments of transfer and conveyance as shall be effective to vest in Buyer such title to the Assets to be sold as provided in this Agreement, and Buyer will deliver to Seller the Purchase Price.
- C. From time to time, at Buyer's request and expense, whether at or after the Closing and without further consideration, Seller shall execute and deliver such other instruments of conveyance and transfer and take such other action as Buyer may reasonably require to more effectively convey and transfer to Buyer any of the Assets to be sold hereunder and will assist Buyer in the collection or reduction of such instruments so as to facilitate Buyer's possession of such Assets.
- D. At Closing, Buyer will pay all title premiums, sales, transfer, and documentary taxes, if any, payable in connection with the sale, transfers, and deliveries to be made to Buyer hereunder.

- E. On the date of Closing, Buyer shall accept and assume ownership and title to the Assets to be conveyed hereunder and Buyer shall assume liability, and become responsible, for all obligations in connection with the Assets going forward.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

Section 3.01 **SELLER'S REPRESENTATIONS AND WARRANTIES.** The Seller represents and warrants as follows:

A. **ORGANIZATION AND STANDING OF SELLER.** Seller is a limited liability company organized, existing under the constitution and laws of the State of Missouri and registered to do business in the State of Missouri, and in good standing with the Missouri Secretary of State.

B. **ABSENCE OF CERTAIN CHANGES.** After Buyer's inspection and acceptance of the Assets, there shall not be:

1. Any material changes in the use of the Assets in connection with the business or operations of the System.
2. Any damage, destruction, or loss whether or not covered by insurance, materially and adversely affecting the Assets.

C. **TITLE TO PROPERTIES.**

1. Unless Seller has disclosed any information in writing to the Buyer to the contrary, Seller owns the Assets to be sold under this Agreement, in all cases, free and clear of all liens, mortgages, pledges, leases, options, rights of first refusal, conditional sales agreements, encumbrances or other charges, except liens for taxes not yet due or payable, easements or right of ways, streets, railways, pipelines, electric transmission and distribution lines, telephone lines, drainage rights and other similar rights or restrictions of record which do not, either individually or in the aggregate have a materially adverse effect on the value or utility of the Assets to be sold hereunder.
2. Buyer shall have until twenty (20) days prior to the Closing to determine:  
a) if Seller lacks an easement or other interest necessary for operation of the System or b) an easement is defective in title or interest conveyed. If it appears that Seller lacks a valid easement for any portion of the System,

or any easement identified suffers from a defect in title or interest conveyed, Buyer at its option and in its sole discretion may: a) cancel this Agreement, b) independently negotiate with the owner of the affected property toward acquisition of the pipelines or easements; c) notify Seller that Buyer will cancel the Agreement unless a necessary easement is acquired or a defect satisfactorily cured or remedied; and d) undertake any action, which in Buyer's sole and absolute discretion, would correct an easement or remedy the situation caused by a lack of an easement or proper land interest. Buyer's failure to cancel this Agreement, however, shall not relieve Seller from any of its duties of indemnification set forth in subsequent paragraphs herein, nor shall such failure be construed as Buyer's waiver of any such provisions.

3. Seller will provide a general Bill of Sale for all personal property of the Water System, **Exhibit "F"**, wherever located.

**D. AUTHORITY TO OPERATE.** The Assets, as described at Article 1 of this Agreement, constitute all of the Assets presently owned by the Seller pertaining to the System. To the best of Seller's knowledge, the System is being conducted, and as of the date of Closing, will be conducted in full compliance with requirements of all regulatory bodies exercising jurisdiction with regard to rates and conditions of service, and with local building and zoning codes.

**E. LITIGATION.**

1. There is no litigation or proceeding pending, or to the knowledge of Seller threatened, against or relating to Seller, the Assets, or the System, nor does Seller know, or have reasonable grounds to know, of any basis for any such action, or of any governmental investigation relative to Seller, the Assets, or the System.
2. There are no outstanding judicial orders or judgments to which Seller is subject or by which Seller or the System or any Assets are bound.
3. No petition or notice has been presented, no order has been made for the bankruptcy, liquidation, winding-up or dissolution of Seller. No receiver, trustee, custodian, or similar fiduciary has been appointed over the whole or any part of Seller, the Assets, or the income of Seller. The Seller does not have any plan or intention of filing, making, or obtaining any such petition, notice, order, or resolution or of seeking the appointment of a receiver, trustee, custodian or similar fiduciary.

- F. **INSURANCE.** On the date of this Agreement, Seller, its business and properties, are insured. Seller has provided Buyer accurate and complete copies of the insurance policies, or the binders related to such policies. Seller has not failed to give, in a timely manner, any material notice required under any of the insurance policies to preserve its rights thereunder with respect to the Transferred Real Property and all other material assets of the System.
- G. **NO VIOLATION OR BREACH.** The performance of this Agreement by Seller, including any preconditions or surviving warranties or representations, is not in violation of any laws, statutes, local ordinances, state or federal regulations, court orders or administrative order or rule, nor is such performance in violation of any loan documents, conditions, or restrictions in effect for financing, whether secured or unsecured.
- H. **AS IS CONDITION.** Buyer is relying solely upon Buyer's inspection as to the condition of the Assets. Except as set forth below, Seller is not making, has not made, and expressly disclaims any representations or warranties, express or implied, with respect to any aspect, feature or condition of the Assets, including without limitation, the existence of hazardous waste, the suitability of the Assets for Buyer's intended use or any representation or warrant, express or implied, as to the personal property, including without limitation, any warranty of merchantability or fitness for a particular purpose.
- I. **BROKERS.** Seller has no liability or obligation to pay fees or commissions to any broker, finder, or agent with respect to the purchase for which Buyer could become liable or obligated.

Section 3.02 **BUYER'S REPRESENTATIONS AND WARRANTIES.** Buyer represents and warrants as follows:

- A. **ORGANIZATION AND STANDING OF BUYER.** Buyer is a political subdivision and a constitutional charter city organized and existing under the constitution and laws of the State of Missouri and has the requisite power to purchase the Assets which are to be sold pursuant to the terms of this Agreement.
- B. **AUTHORITY.** The execution and delivery of this Agreement by Buyer and the purchase of the Assets as contemplated hereby have been duly authorized by Buyer, and all necessary action on the part of Buyer has been taken to authorize the execution and delivery of this Agreement and to consummate the sale contemplated hereby.
- C. **LITIGATION.**

1. There are no claims pending or, to Buyer's knowledge, threatened in writing, or any investigations ongoing or, to Buyer's knowledge, threatened in writing against Buyer before any Governmental Authority or any arbitrator that would have an adverse effect on Buyer's ability to perform its obligations hereunder.
  2. Buyer is not subject to any judgment, decree, injunction, rule or order of any Governmental Authority or any arbitrator that prohibits the consummation of the purchase or that would adversely affect Buyer's ability to perform its obligations hereunder.
- D. **BROKERS.** Buyer has no liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the purchase for which Seller could become liable or obligated.
- E. **LIABILITIES.** All liabilities or obligations of Seller, whether accrued, absolute, contingent, or otherwise pertaining to or arising out from the Assets are liabilities and obligations of the Seller and shall become the obligations of Buyer after the date of Closing.
- F. **RELEASE.** After the Closing, Buyer, to the fullest extent permitted by applicable law, hereby releases and forever discharges Seller from any and all claims, demands, proceedings, causes of action, orders, judgments, obligations, contracts, agreements, and liabilities whatsoever, both at law and in equity ("Claims"), which may hereafter arise as a result of or on account of, any of the easements conveyed herein being without legal description and not being recorded. For avoidance of doubt, Buyer accepts any liabilities or obligations that may arise from or are related to the any of the conveyed easements lacking legal descriptions or not being recorded with the Recorder of Deeds.

#### **ARTICLE 4 CONDITIONS PRECEDENT**

Section 4.01 **CONDITIONS TO THE OBLIGATIONS OF EACH PARTY.** The obligations of the Parties to proceed with the Closing are subject to the satisfaction prior to the Closing Date of all of the following conditions, any one or more of which may be waived in writing, in whole or in part, as to a Party by such Party.

- A. No permanent judgment, injunction, order or decree of a court or other Governmental Authority of competent jurisdiction shall be in effect which has the effect of making the purchase illegal or otherwise restraining or prohibiting

the consummation of the purchase (each Party agreeing to use its commercially reasonable efforts, including appeals to higher courts, to have any judgment, injunction, order or decree lifted); and

- B. All other Seller approvals and all Buyer approvals shall have been obtained.

Section 4.02 **CONDITIONS PRECEDENT FOR BUYER TO CLOSE.** All obligations of Buyer under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions:

**A. REGULATORY APPROVAL.**

1. The Public Service Commission ("PSC") and the Missouri Department of Natural Resources ("DNR") shall have, if necessary, authorized or approved the sale, transfer or disposition of the Assets to Buyer from Seller, the proposed financing, and any schedule of compliance for proposed utility improvement projects for regulatory compliance deemed necessary by Buyer, each in form and substance (including without limitation with respect to the terms and conditions contained in such approval) acceptable to Buyer in Buyer's sole and absolute discretion.
2. The sale shall also be subject to approval by the City Council of Nixa, Missouri.

- B. REPRESENTATIONS AND WARRANTIES TRUE AT CLOSING.** Seller's representations and warranties contained in this Agreement shall be true at the time of Closing as though such representations and warranties were made at such time.

- C. PERFORMANCE.** Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at the Closing; including the payment of all taxes and assessments, or portions thereof, attributable to periods prior to or ending on the date of Closing, to include any PSC assessments, if any.

**D. INSPECTIONS.**

1. Completion of Buyer's examination, testing and inspection of the Assets and the securing of any and all licenses, permits or governmental approvals Buyer deems necessary for Buyer's proposed uses of the Assets, the results thereof to be satisfactory to Buyer, in its sole discretion.

2. For purposes of this Agreement, this period from the date this Agreement is fully executed by both Parties to the date that is twenty (20) days prior to the Closing, shall be referred to herein as the "Inspection Period."
  3. During the Inspection Period, Buyer, its employees, agents and contractors, shall have the right to enter onto any property owned by Seller that is related to the operation of the System, as it deems necessary or desirable, on reasonable prior notice to Seller to perform and complete architectural, environmental, engineering and/or other surveys, studies, inspections and tests on the Assets to review zoning laws and applicable building codes; to obtain all necessary city, county, and state zoning approval, site plan or subdivision approvals, licenses and permits to authorize the uses of the Assets as intended by Buyer.
- E. **NO CASUALTY.** The Assets shall not have been adversely affected in any material way as a result of any strike, lockout, accident or other casualty or act of God or the public enemy, or any judicial, administrative, or governmental proceedings.
- F. **FINANCING.** Buyer shall have obtained financing on terms acceptable to Buyer, in its sole and absolute judgment, to enable it to pay the Purchase Price.
- G. **BUYER'S RIGHT TO TERMINATE.** If Buyer determines, in its sole and absolute discretion, that any of the aforementioned conditions have not been met, Buyer shall have the right to terminate this Agreement at any time prior to Closing upon written notice to Seller.

Section 4.03 **CONDITIONS PRECEDENT FOR SELLER TO CLOSE.** All obligations of Seller under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions.

- A. **REPRESENTATIONS AND WARRANTIES TRUE AT CLOSING.** Buyer's representations and warranties contained in this Agreement shall be true at the time of Closing as though such representations and warranties were made at such time.
- B. **PERFORMANCE.** Buyer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing.



## **ARTICLE 5 COVENANTS**

### **Section 5.01 ACCESS OF BUYER.**

- A. **ACCESS.** During the Interim Period, Seller shall provide Buyer and its Representatives with reasonable access during normal business hours to the System and the office of Seller in such a manner so as not to unreasonably interfere with the business or operations of Seller; provided, however, that Seller shall have the right to:
1. Have a representative present for any communication with employees of Seller or its contractors; and
  2. Impose reasonable restrictions and requirements for safety or operational purposes.
- B. **SAMPLES.** Neither Buyer nor its representatives shall collect or analyze any environmental samples (including building materials, surface and ground water, and surface and subsurface soils) without the prior written authorization of Seller, which shall not be unreasonably withheld, conditioned, or delayed.
- C. **CONFIDENTIAL.** Notwithstanding the foregoing, Seller shall not be required to provide any information or allow any inspection which it reasonably believes it may not provide to Buyer or allow by reasonable applicable law, which constitutes or allows access to information protected by attorney/client privilege, or which Seller is required to keep confidential or prevent access to by reason of contract, agreement or understanding with third parties if Seller has used commercially reasonable efforts to obtain the consent of such third party to such inspection or disclosure.
- D. **LIMITATION.** Notwithstanding anything to the contrary contained herein, Buyer shall not be permitted to contact any of Seller's vendors, customers or suppliers, issuers of Seller's permits and any other counterparties to Seller's contracts, during the interim period without receiving prior written authorization from Seller (which shall not be unreasonably withheld, conditioned, or delayed), with respect to the System or the purchase. At Buyer's request Seller shall use commercially reasonable efforts to arrange meetings with Seller's material contract counterparties.

## **Section 5.02 CONDUCT OF THE BUSINESS PENDING THE CLOSING.**

- A. During the interim period, Seller shall use commercially reasonable efforts to operate and maintain the System in the Ordinary Course in accordance with good industry practices and in material compliance with all applicable laws.
- B. Without limiting the foregoing, except as otherwise contemplated by this Agreement or as consented to by Buyer, Seller will not, during the interim period:
  - 1. Sell, transfer, convey or otherwise dispose of any material Assets outside the Ordinary Course of business;
  - 2. Merge or consolidate with any other person or entity or otherwise fail to maintain its existence;
  - 3. Liquidate, dissolve, reorganize or otherwise wind up its business or operations;
  - 4. Make any material change in the levels of inventory maintained at the System for the applicable time and year, except for such changes as are consistent with good industry practices;
  - 5. Agree or commit to do any of the foregoing.
- C. Notwithstanding Sections 5.02 A or B, or any other provision herein, Seller may take commercially reasonable actions with respect to emergency situations or to comply with applicable law, current contracts and/or the Real Property Entitlements.
- D. Notwithstanding Sections 5.02 A or B, or any other provision herein, Seller may negotiate amendments to certain contracts or Real Property Entitlements for the purpose of effecting the transaction contemplated by this Agreement.
- E. Seller shall use its commercially reasonable efforts to assist Buyer in preparing any documents necessary to acquire financing for Buyer's obligations under this Agreement. Seller shall use commercially reasonable efforts to cause any party to a contract to grant Buyer permission for disclosure to the public of any information necessary for the Buyer's compliance with federal securities laws related to the issuance of any financing obligations, or to comply with reasonable requests from any underwriters, prospective lenders or rating agencies.

### Section 5.03 **TAX MATTERS.**

A. **COOPERATION ON TAX MATTERS.** Seller and Buyer shall cooperate fully with each other and make available or cause to be made available to each other for consultation, inspection and copying (at such other Party's expense) in a timely fashion such personnel, Tax data, relevant Tax Return or portions thereof and filings, files, books, records, documents, financial, technical and operating data, computer records and other information as may be reasonably required i) for the preparation by such other Party of any Tax returns or ii) in connection with any Tax audit or proceeding including one Party to the extent such Tax audit or proceeding relates to or arises from the transaction contemplated by this Agreement.

Section 5.04 **EXPENSES AND FEES.** Except as expressly provided otherwise herein, all costs and expenses incurred in connection with this Agreement and the purchase shall be paid by the Party incurring such costs and expenses.

Section 5.05 **AGREEMENT TO COOPERATE.** Subject to the terms and conditions of this Agreement and applicable law, each Party shall use its commercially reasonable efforts to take or cause to be taken, all action and do or cause to be done, all things necessary, proper or advisable to obtain as promptly as reasonably practicable all necessary or appropriate waivers, consents, approvals or authorizations of Governmental Authorities and third parties and to satisfy all other conditions required in order to consummate the purchase (and, in such case, to proceed with the consummation of the purchase as expeditiously as possible). Each Party shall deliver to the other Party copies of such waivers, consents, approvals or authorizations promptly after they are obtained, and shall keep the other Party generally apprised of the status of efforts being made to obtain such waivers, consents, approvals and authorizations.

Section 5.06 **CASUALTY LOSS.** Notwithstanding any provision hereof to the contrary, if, before the Closing Date, all or any portion of the Assets is condemned or taken by eminent domain or damaged or destroyed by fire or other casualty, Seller shall notify Buyer promptly in writing of such fact, and if such condemnation, taking, damage or destruction has or would reasonably be expected to result in a material adverse effect that cannot be cured before Closing, either Seller or Buyer may terminate this Agreement.

Section 5.07 **FINANCING.** Prior to the Closing, Buyer shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to arrange financing on terms and conditions acceptable to Buyer in its sole judgment, to enable it to pay the Purchase Price, including using its commercially reasonable efforts to satisfy on a timely basis, to the extent within its control, all terms and conditions applicable to Buyer to obtaining

such financing and to enter into definitive agreements with respect thereto. Buyer shall keep Seller reasonably informed of such financing efforts.

## **ARTICLE 6 TERMINATION**

Section 6.01 **TERMINATION.** This Agreement may be terminated, and the consummation of the purchase may be abandoned at any time prior to the Closing;

A. By mutual written consent of Buyer and Seller;

B. By either Buyer or Seller;

1. If the Closing has not occurred on or before the date that is one hundred eighty (180) days following the date of this Agreement (the "Termination Date"); provided, however, that the right to terminate this Agreement pursuant to this Section 6.01.B.1 shall not be available to any Party whose breach of any provision of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by the Termination Date;
2. If any court of competent jurisdiction in the United States or other United States Governmental Authority shall have issued a final order, decree or ruling or taken any other final action restraining, enjoining or otherwise prohibiting the consummation of the purchase and such order, decree, ruling or other action is or shall have become final and non-appealable; provided, however, that the Party seeking to terminate this Agreement pursuant to this Section 6.01.B.2 shall have used commercially reasonable efforts to prevent the entry of and to remove such order, decree, ruling or final action; or
3. Pursuant to and in accordance with Sections 2.02.B (Title Insurance) or 5.06 (Casualty Loss);

C. By Buyer:

1. If there has been a material breach by Seller of any representation, warranty, covenant, or agreement contained in this Agreement or if a material adverse event has occurred and is continuing, which was not caused by Buyer's breach of any provision of this Agreement and which cannot be cured prior to the Termination Date; or

2. If there is any insolvency, bankruptcy, reorganization, or other similar proceedings affecting Seller.

**D. By Seller:**

1. If there has been a material breach by Buyer of any representation, warranty, covenant, or agreement contained in this Agreement which was not caused by Seller's breach of any provision of this Agreement and which cannot be cured prior to the Termination Date; or
2. If there is insolvency, bankruptcy, reorganization, or other similar proceeding affecting Buyer.

**ARTICLE 7  
MISCELLANEOUS**

**Section 7.01 NOTICES.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally to, or by nationally recognized overnight courier service, or mailed by registered or certified mail (return receipt requested) if and when received by, or sent via email if and when received by, the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

**A. If to Buyer, to:**

City of Nixa, Missouri  
1111 W. Kathryn  
Nixa, Missouri 65714  
Email: dcolvin@nixa.com  
Attention: Doug Colvin

**With a copy to:**

Healy Law Offices, LLC  
3010 E. Battlefield, Suite A  
Springfield, MO 65084  
Email: penny@healylawoffices.com  
Attention: Penny Speake

If to Seller, to:

Rex Deffenderfer Enterprises, Inc.  
1770 N. DEFFER DR. STE 4  
Nixa, Mo  
65714  
Email: RDEWATERCO@GMAIL.COM  
Attention: JEFF DEFFENDERFER

With a copy to:

303 FIGUS RD  
CLEVER, MO  
65631-6768  
Email: \_\_\_\_\_  
Attention: LAVADA COTTRILL

Section 7.02 **BENEFIT AND ASSIGNMENT.** All the terms of this Agreement shall be binding upon, and inure to the benefit of, and be enforceable by, the respective legal representatives of Seller, its successors and assigns, and the successors and assigns of Buyer. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of Buyer and Seller, said approval not to be unreasonably withheld.

Section 7.03. **GOVERNING LAW AND JURISDICTION.**

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, applicable to agreements made and to be performed entirely within such State, without regard to the conflict of laws principles thereof.
- B. Any disputes or claims arising out of or in connection with this Agreement and the transactions contemplated or documents required hereby shall be submitted to the exclusive jurisdiction of the Circuit Court of Christian County, Missouri, located in Ozark, Missouri, and the appropriate appellate court therefrom.
  - 1. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any dispute arising out of or relating to this Agreement

or the purchase brought in such court or any defense of inconvenient forum for the maintenance of such dispute.

2. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.
3. This consent to jurisdiction is being given solely for purposes of this Agreement and the transactions contemplated hereunder, and is not intended to, and shall not, confer consent to jurisdiction with respect to any other dispute in which a Party to this Agreement may become involved.
4. Each of the Parties hereto hereby consent to process being served by any Party to this Agreement in any suit, action, or proceeding by the mailing of a copy thereof in the manner specified by the provisions of this Article 5.01.

#### Section 7.04 **COUNTERPARTS AND ELECTRONIC TRANSACTIONS.**

**A. COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

1. Signed counterparts of this Agreement may be delivered by email and by scanned pdf image; provided, that each Party uses commercially reasonable efforts to deliver to the other Party original signed counterparts as soon as possible thereafter.

**B. ELECTRONIC TRANSACTIONS.** The transactions described in this Agreement may be conducted, and documents related to the purchase, including this Agreement, may be sent, received, executed, and stored, by electronic means or transmissions.

1. Copies, telecopies, electronic files, and other reproductions of original executed documents (or documents executed by electronic means or transmissions) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 7.05 **AMENDMENTS.** This Agreement may not be amended, waived or modified except by an instrument in writing signed on behalf of Buyer and Seller.

Section 7.06 **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warrant not set forth herein has been made or relied upon by any Party. Neither this Agreement nor any provision hereof is intended to confer upon any person other than the Parties hereto any rights or remedies hereunder.

Section 7.07 **SEVERABILITY.** If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of applicable law, or public policy, then such term or provision shall be severed from the remaining terms and provisions of this Agreement, and such remaining terms and provisions shall nevertheless remain in full force and effect.

Section 7.08 **SOVEREIGN TORT IMMUNITY.** Nothing herein shall be construed as a waiver by Buyer of the sovereign tort immunity granted to Buyer under Missouri law.

Section 7.09 **CONSTRUCTION.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 7.10 **INCORPORATION OF EXHIBITS.** The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

Section 7.11 **DEFAULT AND ATTORNEYS' FEES.** If either Party shall default in their performance under this Agreement, which default results in the expenditure of attorneys' fees to enforce the terms of this Agreement or to recover damages for breach of this contract, then each party shall bear and pay their own respective attorneys' fees and costs.

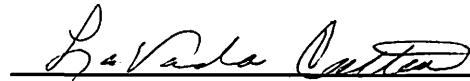
*[Remainder of page intentionally left blank. Signature page to follow.]*



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized representatives as of the day and year first above written.

**SELLER:**

Rex Deffenderfer Enterprises, Inc.



By: Levada Cottrill,  
President and Owner of Rex Deffenderfer  
Enterprises, Inc., owner of RDE Water  
Company

**BUYER:**

City of Nixa, Missouri



By: Brian Steele,  
City of Nixa Mayor

## **EXHIBIT A**

### **System General Map (PSC Tariff Map & Tariff Legal Description)**

See pages 25 and 26 of this Asset Purchase Agreement.

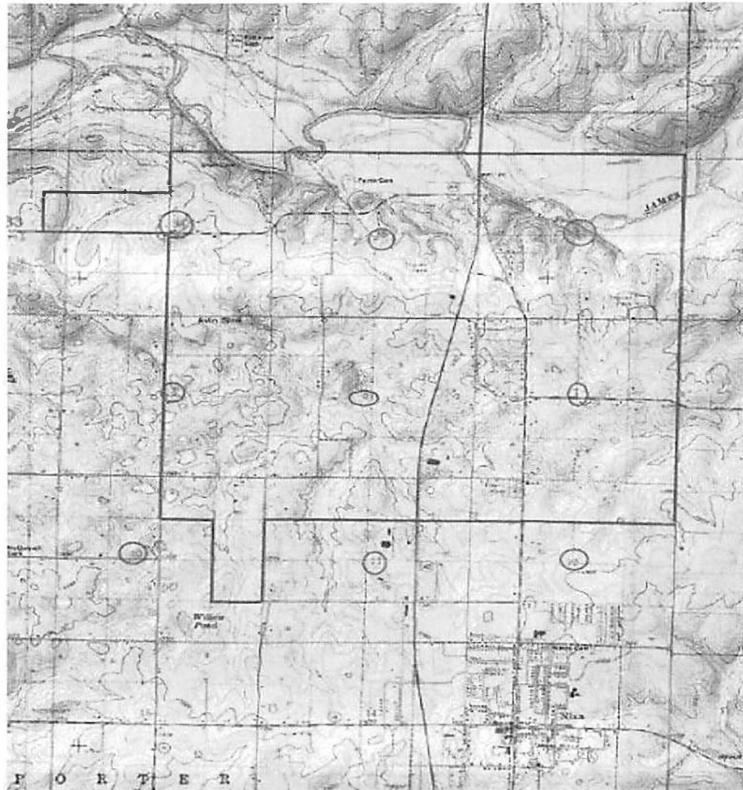
P.S.C. MO No. 2  
Cancelling P.S.C. MO No. 1

Original Sheet No. 2

Name of Utility: Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company  
Service Area: English Village Park (formerly known as Chalet City South), Meadow View  
Subdivision and Meadow View 1<sup>st</sup> Addition, located in Christian County, Missouri.

Rules and Regulations Governing Rendering of  
Water Service

Map of Service Area



\* Indicates new rate or text  
+ Indicates change

Issue Date: April 12, 2016  
Month/Day/Year

Effective Date: November 26, 2016  
Month/Day/Year

FILED  
Missouri Public  
Service Commission  
WR-2016-0267; YV-2017-0058

ISSUED BY Jim Deffenderfer, General Manager 1770 N Deffer Dr., Suite #4, Nixa, MO 65714  
Name and Title of Issuing Officer Mailing Address

Name of Utility: Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company  
Service Area: English Village Park (formerly known as Chalet City South), Meadow View  
Subdivision and Meadow View 1<sup>st</sup> Addition, located in Christian County, Missouri.

Rules and Regulations Governing Rendering of Water Service	
<p style="text-align: center;"><u>Legal Description of Service Area</u></p> <p>The E ½ of the SE ¼ of the NE ¼ of Section 33, the S ½ of the NW ¼ of Section 34, the E ½ of Section 34, all of Section 35 and Section 36 T 28 N, R 22 W. The E ½ of Section 3, all of Section 2, and Section 1, the N ¼ of Section 12, the N ¼ of Section 11, the N ½ of the NE ¼ of Section 10, the SE ¼ of the NE ¼ of Section 10, and the NE ¼ of the SE ¼ of Section 10 T 27 N, R 22 W. All in Christian County, Missouri.</p> <p>* Indicates new rate or text + Indicates change</p>	

Issue Date: April 12, 2016  
Month /Day/Year

Effective Date: November 26, 2016  
Month /Day/Year

FILED  
Missouri Public  
Service Commission  
WR-2016-0267; YW-2017-0058

ISSUED BY Jim Deffenderfer, General Manager 1770 N Deffer Dr., Suite #4, Nixa, MO 65714  
Name and Title of Issuing Officer Mailing Address

**EXHIBIT B**  
**Legal Description of Fee Owned Real Property**

The following described lots, tracts or parcels of land, lying, being and situated in the County of Christian, State of Missouri, (Fee Owned Real Property) to-wit:

All of Lot Thirty-Three of Meadow View First Addition, a Sub-Division in Christian County, Missouri; and

All of Lots Three (3) and Four (4) in Kinder Industrial Park, a Subdivision in Christian County, Missouri. (County Tax Parcel Number: 10-0.1-12-002-002-000 (a Portion of)).

**Real Property Entitlements**  
**(Rights via Agreements, Contracts, Misc.)**

All interests in easements, rights of way, permits and other real property entitlements associated with the Water System (Real Property Entitlements). See attached Survey Map marked **Attachment to Exhibit B** which shows the Fee Owned Real Property along with the Real Property Entitlements, all of which together shall constitute the Transferred Real Property.

**EXHIBIT C**  
**Plant and Equipment**

All of Seller's water service facilities, equipment, lines, plant, pipes, valves, fire hydrants, manholes and appurtenances, along with all machinery, supplies, materials, fixtures (such as meters, tools, devices, mobile work equipment), supplies and other tangible items and personal property located in Christian County, Missouri, and used or held for use in connection with the System, along with any rights to the warranties and licenses received from manufacturers of the Plant and Equipment

## EXHIBIT D

### RDE Inventory

#### Mains

<u>Item</u>	<u>Qty</u>	<u>Cost</u>	<u>Total</u>
6" Gate Valve	1	\$ 432.00	\$ 432.00
2" Gate Valve	1	\$ 305.78	\$ 305.78
4" brass hinged saddle x 2"-self tapping	2	\$ 98.18	\$ 196.36
6" brass hinged saddle x 2"-self tapping	0	\$ 126.00	\$ -
8" brass hinged saddle x 2"-self tapping	3	\$ 144.00	\$ 432.00
4" Repair Clamp	5	\$ 149.25	\$ 746.26
6" Repair Clamp- Winwater	0	\$ 158.87	\$ -
6" Repair Clamp- 6"x12"	0	\$ 90.29	\$ -
6" Repair Clamp- 6"x15"	0	\$ 106.65	\$ -
8" Repair Clamp	3	\$ 142.60	\$ 427.80
Tracer Wire in feet	240	\$ 0.20	\$ 48.00
2" SDR-21 PVC pipe in feet	0	\$ 0.60	\$ -
6" SDR-21 PVC pipe in feet	7	\$ 3.80	\$ 26.60
8" SDR-21 PVC pipe in feet	10	\$ 5.20	\$ 52.00
2" IPS Main x 1" IPS PE comp OL PVC	9	\$ 58.48	\$ 526.32
6" IPS Main x 1" IPS PE comp OL PVC	3	\$ 65.14	\$ 195.42
2" IPS Main x 2" IPS PE comp OL PVC	1	\$ 100.83	\$ 100.83
6" IPS Main x 2" IPS PE comp OL PVC	2	\$ 126.97	\$ 253.94
2" Flush Valve	1	\$ 500.00	\$ 500.00
2" x 6" Red Brass Nipple	4	\$ 21.32	\$ 85.29
6" mega lugs	4	\$ 28.00	\$ 112.00
8" mega lugs	1	\$ 35.00	\$ 35.00
6" PVC Coupling	0	\$ 11.37	\$ -
5-1/4 V.O. Clow Med Traffic Repair Kit	0	\$ 145.26	\$ -
3/4" x 6" Sch 80 Nipple	0	\$ -	\$ -
4" 125/150 FFRR 1/8" FLG Kit	1	\$ 15.60	\$ 15.60

#### Mechanical Joints

6" 22.5°	4	\$ 95.83	\$ 383.32
4" 22.5°	2	\$ 67.63	\$ 135.25
6" 90°	1	\$ 114.52	\$ 114.52
4" Tee	1	\$ 108.20	\$ 108.20
6" Tee	2	\$ 168.17	\$ 336.34
4" Straight	1	\$ 73.49	\$ 73.49
6" Straight	0	\$ 97.63	\$ -

#### Hydrants

#2 Post Hydrant Repair Kit	1	\$ 49.76	\$ 49.76
		\$ -	\$ -
Sub total		\$	\$ 5,642.33

#### Meters



<u>Item</u>	<u>Qty</u>	<u>Cost</u>	<u>Total</u>
5/8" Meter	23	\$ 48.42	\$ 1,113.66
5/8" Loops	14	\$ 82.72	\$ 1,158.12
3/4" Sch 80 90° elbow	1	\$ 1.32	\$ 1.32
3/4" MIP x 1" comp brass union	14	\$ 29.42	\$ 411.85
1" MIP x 1" comp brass union	4	\$ 30.74	\$ 122.97
5/8" shut off- brass	7	\$ 24.00	\$ 168.00
1" Meters	2	\$ 156.02	\$ 312.04
1" Loops	1	\$ 228.78	\$ 228.78
2" Meters	2	\$ 367.77	\$ 735.54
2" MIP x 2" comp brass union	3	\$ 58.48	\$ 175.44
2" MIF x 2" comp brass union	0	\$ -	\$ -
Plastic Meter Pit	2	\$ 89.46	\$ 178.92
Plastic Meter Pit Ext.	0	\$ 50.66	\$ -
C-104 18" Meter Cover (Meter rings & lids)	6	\$ 37.55	\$ 225.31
C-109 18" Flat Meter Lid	0	\$ 32.95	\$ -
17-204wx Low Rise Resetter	5	\$ 79.01	\$ 395.05
18-207wx 5/8x3/4 Horz Resetter	6	\$ 73.11	\$ 438.66
5/8x 3/4x 12 18212wx Resetter	1	\$ 76.47	\$ 76.47
4753-44 1" x 3/4" PVC comp x MIP	69	\$ 24.84	\$ 1,714.13
2" Brass Scrd Cap	2	\$ 10.30	\$ 20.59
4753-44 1" PVC comp x MIP	4	\$ 25.96	\$ 103.86
4753-44 2" MIP X COMP -PVC	98	\$ 65.72	\$ 6,440.65
24" meter lids	0	\$ 54.00	\$ -
J 288 Meter Locking Device	2	\$ 23.13	\$ 46.27
2" Brass Coupling			\$ -
PVCDWV coupling	6	\$ 12.11	\$ 72.64
3/4" PVC repair coupling			
W-2210 Complete	5	\$ 30.58	\$ 152.90
40-N 3/4 Union Nut	36	\$ 3.50	\$ 125.88
20D3 Dual Purpose Coupling	36	\$ 3.50	\$ 125.88
20-G3 3/4 Dual Purpose Washer	36	\$ 0.20	\$ 7.36
18-G2 5/8 x 3/4 Rubber Meter Gsk	100	\$ 0.30	\$ 30.13
6101 3/4 FIP X FIP Curb Stop	1	\$ 41.84	\$ 41.84
		<b>Sub total</b>	<b>\$ 14,624.27</b>

## Service

<u>Item</u>	<u>Qty</u>	<u>Cost</u>	<u>Total</u>
1" couplings- Sch 80	0	\$ 2.27	\$ -
1" couplings- Sch 40	0	\$ -	\$ -
1" Tee Sch 80	30	\$ 3.00	\$ 90.00
1" slip x 3/4" FIP Sch 80 bushing	25	\$ 1.55	\$ 38.75
1" spig x 3/4" slip Sch 80 bushing	20	\$ 1.44	\$ 28.84
1" Sch 80 90° elbow	4	\$ 2.49	\$ 9.97
1" Sch 80 45° elbow	0	\$ 2.01	\$ -
1" Sch 80 90° st. elbow	38	\$ 2.08	\$ 79.04

2" Tee Sch 80	0	\$ 11.30	\$ -
2" Sch 80 90° elbow	0	\$ 2.27	\$ -
2" Sch 80 45° elbow	8	\$ 2.18	\$ 17.44
2" x 1" Sch 80 Bushing	0	\$ 4.00	\$ -
2" couplings- Sch 80	8	\$ 3.55	\$ 28.41
1" sch 40 PVC pipe in feet	9	\$ 0.42	\$ 3.78
2" sch 40 PVC pipe in feet	116	\$ 0.57	\$ 66.12
110-10 1" PVC comp coupling	0	\$ 4.05	\$ -
110-20 2" PVC comp coupling	0	\$ 8.20	\$ -
W-2615-6 6" Mushroom Valve Box & lid	7	\$ 28.51	\$ 199.60
74754-44 2" Coupling PVC X FIP (brass)	6	\$ 121.12	\$ 726.69
		\$ -	\$ -
			\$ -
		Sub total	\$ 1,288.63

### **Well & Distribution Equipment**

<u>Item</u>	<u>Qty</u>	<u>Cost</u>	<u>Total</u>
Complete CSM-11	1	\$ 1,677.22	\$ 1,677.22
Rebuilt Jacuzzi Pump Motor	1	\$ 1,450.50	\$ 1,450.50
			\$ -
			\$ -
		Sub total	\$ 3,127.72
Total Inventory			\$ 24,682.95

**EXHIBIT E**  
**Contracts, Agreements and Customer Deposits**

Excluding any easements or right of way agreements, Buyer is not assuming any contracts or agreements RDE Water Company currently has with any third parties.

Prior to closing, Buyer will provide Seller a current list of customers along with a current list of deposits being held by RDE Water Company. At Closing Seller will deliver to Buyer a check in the amount of the current deposits being held by RDE Water Company.



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## MEMORANDUM

**Issue:** **ASSET PURCHASE AGREEMENTS FOR RDE WATER COMPANY & TUSCANY HILLS WATER AND SEWER.**

**Date:** February 14, 2021

**Submitted By:** Travis Cossey/Doug Colvin/Jason Stutesmun

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### Background

At the October 25<sup>th</sup> council meeting, staff introduced the acquisition of the RDE Water Company and Tuscany Hills Water and Sewer systems. The city was initially contacted by the owners of the systems last year. After being approached, staff investigated the two privately owned systems and compiled information to present to council for their potential purchase. That due diligence provided the following information for consideration by council:

- Service Territories and System Schematics
- System Values & Purchase Prices
- Revenue Potential
- Operations and Investments
- Benefits to the City and Nixa Water Utility
- Initial Estimated O&M vs. Revenue

After presentation of this information and a recommendation from staff that we pursue the acquisition of the two systems, council directed staff to move forward with preparation of an Asset Purchase Agreement (APA) for their purchase. Utilizing the services of Healy Law Offices, the APA's were drafted and have been executed by the two parties.

### Analysis

The attached Ordinances and APAs contain the details of the acquisition including the purchase price, assets, property, and real estate connected with the two systems. As detailed in the APA for the RDE Water Company, the city will obtain ownership of the system for \$2,500,000. The purchase price includes the following:

- Two utility capacity wells with a total current production capacity of 870 gallons per minute (GPM).
- One 250,000-gallon ground storage tank with booster pumps and well located on two parcels totaling 29,055 SF.
- One 47,000-gallon standpipe tower and well located on a 7,500 SF parcel.

- Approximately 28.5 miles of 2" through 10" PVC water mains with 72 fire hydrants.
- 1,072 residential customers, 66 commercial customers and a single 4" master meter serving English Village.

The APA for the Tuscany Hills water and sewer system establishes a purchase price of \$500,000 which includes the following:

- One utility capacity well and 60,000-gallon standpipe located on a 10,434 SF parcel.
- Water line infrastructure consisting of 6" and 8" water mains serving 87 residential and 3 commercial customers.
- A Sand Filtration sewer treatment facility located on a 66,092 SF parcel.
- One lift station and 8" sewer mains serving 87 residential, 3 commercial customers and a church.

Based on staff's assessment, purchase of both the RDE water and Tuscany Hills water & sewer systems will provide a benefit to the city. The well and property assets allow for us to make planned improvements to our existing system at a lesser cost and shorter timeline while also enhancing both systems. These systems also have the ability to be expanded which will allow us to provide city services for future improvements to Eoff Park and provide additional benefits for future economic development opportunities that do not currently exist in north Nixa.

### Recommendation

Staff recommends approval of ordinance #2022-025 and #2022-026.

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE MAYOR TO EXECUTE AN ASSET PURCHASE AGREEMENT WITH THE TUSCANY HILLS REGIONAL SEWER DISTRICT, INC. FOR THE ACQUISITION OF CERTAIN SEWER AND WATER SYSTEMS.**

**WHEREAS** the City and the Tuscany Hills Regional Sewer District, Inc. ("Tuscany Hills") have been in negotiations regarding the City's acquisition of certain sewer and water infrastructure currently owned by Tuscany Hills; and

**WHEREAS** the negotiations have culminated in the Asset Purchase Agreement ("Agreement") which is attached hereto as "Council Bill Exhibit A": and

**WHEREAS** the City Council finds that the acquisition contemplated herein will assist the City with planned improvements to the City's public infrastructure as well as positioning the City to provide planned future improvements; and

**WHEREAS** the City Council desired to authorize the Mayor to execute the Agreement with Tuscany Hills, as provided for herein.

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

**SECTION 1:** The Mayor, or designee, is hereby authorized to execute the "Asset Purchase Agreement" ("Agreement") attached hereto, and incorporated herein by this reference, as "Council Bill Exhibit A," with the Tuscany Hills Regional Sewer District, Inc. Said Agreement shall be in substantially similar form as the document attached hereto as "Council Bill Exhibit A." The Mayor and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Ordinance.

**SECTION 2:** This Ordinance shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**[Remainder of page intentionally left blank. Signatures follow on next page.]**

47 **ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022.**  
48  
49

50 **ATTEST:**  
51

52 \_\_\_\_\_  
53 CITY CLERK  
54

\_\_\_\_\_  
PRESIDING OFFICER

55  
56 **APPROVED BY THE MAYOR.**  
57

58  
59 **ATTEST:**  
60

61 \_\_\_\_\_  
62 CITY CLERK  
63  
64

\_\_\_\_\_  
MAYOR

65 **APPROVED AS TO FORM:**  
66  
67

\_\_\_\_\_  
DATE OF APPROVAL

68 \_\_\_\_\_  
CITY ATTORNEY



## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (“Agreement”), dated and effective as of \_\_\_\_\_, 20\_\_ (“Effective Date”), is entered into by and between Brent Johnson and Stacie Johnson, owners of Tuscany Hills Regional Sewer District, Inc. (“Tuscany Hills”) and CTW Waterworks Regional Not for Profit Water Company, Inc., (“CTW Waterworks”) both not for profit businesses under the laws of Missouri, (“Sellers”), and the City of Nixa, Missouri, a municipality organized under the laws of the State of Missouri (“Buyer”). Throughout this Agreement, Buyer and Sellers are sometimes referred to each as a “Party” and collectively as the “Parties.”

### **RECITALS**

WHEREAS, Sellers operate a sewer system and a water system, in an area of Christian County, Missouri, to include the sewer system known as “Tuscany Hills Regional Sewer District, Inc.,” and the water system known as “CTW Waterworks Regional Not for Profit Water Company, Inc.,” some parts of which are situated on easements and real property owned by Sellers, more particularly described and depicted in the documents attached hereto as **Exhibits “A” and “B”**, (herein after the “Systems”); and,

WHEREAS, Buyer is a political subdivision and a constitutional charter city organized and existing under the laws of the State of Missouri with all the requisite power necessary to enter into the transaction described hereinafter; and,

WHEREAS, Sellers desire to sell all the assets, property, and real estate connected with the Systems; and,

WHEREAS, Buyer desires to purchase all of the assets, property, and real estate connected with the Systems; and,

NOW THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sellers and Buyer agree as follows:

### **ARTICLE I DEFINITIONS**

Section 1.01 **Definitions.** For purposes of this Agreement, the following terms shall have the respective meanings set forth below.

“Assets” means Sellers’ right, title, and interest in and to the Systems, the design and engineering of the Systems, and all of the properties, assets and rights comprising the Systems, whether tangible, intangible or personal and wherever located, except for the Excluded Assets, free and clear of any liens or encumbrances of any kind whatsoever, specifically including, without limitation, the following:

- A. The Systems as particularly described and depicted in **Exhibits “A,” “B,” and “C.”**
- B. The real estate listed, owned in fee simple by Sellers on the Effective Date, together with any improvements erected thereon (“Fee Owned Real Property”) along with all interests in easements, rights of way, permits, and other Real Property Entitlements associated with the Systems (the “Real Property Entitlements,” together with the Fee Owned Real Property constitute the “Transferred Real Property”) generally described in **Exhibit “C,”** attached hereto;
- C. All of Sellers’ water and sewer services facilities, equipment, lines, plants, pipes, valves, fire hydrants, manholes, filtration system, centrifuges, vacuums, and appurtenances, along with all machinery, supplies, materials, fixtures (such as meters, tools, devices, mobile work equipment), supplies and other tangible items and personal property (“Plants and Equipment”) located in Christian County, Missouri, and used or held for use in connection with the Systems, along with any rights to the warranties and licenses received from manufacturers of the Plants and Equipment as generally described in **Exhibit “D”**, attached hereto;
- D. The following items intended to be used or consumed at the Systems in the Ordinary Course that are on hand at the Systems or owned as of the Closing; to include spare, replacement or other parts; tools, special tools, lubricants, chemicals, fluids, fuel oil, lubricating oils, supplies filters, fittings, connectors, seals, gaskets, hardware, wire and other similar materials; maintenance and shop supplies and other similar items of personal property in existence as of the Closing (“Inventory”), all as set forth in **Exhibit “E”**, attached hereto;
- E. All of Sellers’ rights, title and interest in and to any franchise agreements, franchise rights, contracts, supply contracts, agreements, and customer deposits (“Contracts, Agreements and Customer Deposits”) pertaining to, allocatable to or arising out of the provision of water and/or sewer service in Christian County, Missouri as generally described in **Exhibit “F”**, attached hereto;

- F. All of Sellers' good will, and general intangibles including accounts receivable pertaining to the Systems, except accounts receivable accrued prior to the Closing of this sale; and
- G. Subject to the receipt of necessary consents and approvals, and to the extent transferrable under applicable law, rights under all Permits relating to the Systems; and
- H. To the extent legally transferrable, all unexpired third-party warranties, indemnities and guarantees in relation to any of the equipment, Inventory, and personal property described in this Definition of Assets; and
- I. All Intellectual Property, engineering plans, know-how, goodwill and similar to or related assets of Sellers relating to the Systems and variations thereof; and
- J. All site plans, surveys, plans and specifications, engineering, electrical and mechanical plans and studies, landscape plans, appraisals, feasibility studies, environmental studies and other plans and studies of any kind if existing and in the possession or subject to the control of Sellers relating to the Transferred Real Property and the Systems; and
- K. Original, or where not available, copies, of all books records, files, manuals, equipment maintenance files, production and reliability data, research and development files, correspondence with any Governmental Authority with respect to the Systems, sales material, and records (including price history, sales, terms and conditions of sales) and similar documentation related to the Systems and the Assets, but not including any entity books and records of the Sellers ("Records"); and
- L. All other Assets set forth in the Exhibits attached hereto.

"Bills of Sale" means certain Bills of Sale to be executed and delivered by Sellers at Closing. The form of the Bills of Sale shall be in substantially similar form as the documents attached hereto, and which are incorporated herein by this reference, as, **Exhibit "G"**.

"Businesses" means the businesses of providing water, sewer, and ancillary services from the Systems, as managed and operated by Sellers on the date hereof, and any business activities of Sellers incidental to the foregoing.

"Closing Date" means the date on which the Closing occurs.

“Contract” means any written contract, lease, license, evidence of indebtedness, mortgage, indenture, purchase order, binding bid, letter of credit, security agreement or other written and legally binding arrangement.

“Due Diligence Information” means information provided or made available to Buyer or its representatives or agents, including, without limitation, any information, document, or material provided or made available, or statements made, to Buyer, its representatives and/or agents during site or office visits, in any management discussions or supplemental due diligence information provided to Buyer, its representatives and/or agents, in connection with discussions with management or in any other form in expectation of the purchases.

“Fee Owned Real Property” means the real property listed on **Exhibit “C”** owned in fee simple by Sellers on the Effective Date, together with any improvements erected thereon.

“General Warranty Deeds” means those certain General Warranty Deeds with respect to the Fee Owned Real Property to be executed and delivered by Sellers at Closing. The form of the General Warranty Deeds shall be in substantially similar form as the document attached hereto, and which is incorporated herein by this reference, as **Exhibit “H”**.

“Governmental Authority” means any court, tribunal, arbitrator, authority, agency, commission, legislative body, official or other instrumentality of the United States or any state, county, city or other political subdivision or similar governing entity, and including any governmental, quasi-governmental or non-governmental body administering, regulating or having general oversight over water or water systems, including without limitation the Missouri Public Service Commission and the Missouri Department of Natural Resources.

“Law” or “Laws” means all laws, statutes, rules, regulations, charters, ordinances, and other pronouncements having the effect of law of any Governmental Authority.

“Ordinary Course” means the ordinary and normal course of Sellers’ conduct of business consistent with past practice and operation of the Systems employed by Sellers.

“Permits” means the material permits, licenses, franchises, variances, exceptions, orders and other authorizations, consents and approvals from Governmental Authorities which relate to the operation of the Systems or any Assets that are used or held by Sellers in connection with the operation of the Systems, and the holder thereof.

“Real Property Entitlements” means the easements, rights of way, real property licenses and other Real Property Entitlements associated with the Systems or listed on **Exhibits “A” and “B.”**

“Systems” means the regulated water system and regulated sewer system operated by Sellers in Christian County, Missouri, and includes the water system known as “CTW Waterworks” and the sewer system known as “Tuscany Hills” some parts of which are situated on easements and real property owned by Sellers, and being more particularly described and depicted in the documents attached hereto as **Exhibits “A” and “B.”**

“Tax” or “Taxes” means any income, profits, franchise, withholding, ad valorem, personal property (tangible and intangible), real property, employment, payroll, sales and use, social security, disability, occupation, property, severance, excise, and other taxes (including any payments in lieu of taxes), including any interest, penalty, or addition thereto.

“Transaction Documents” means this Agreement and each of the other documents and instruments contemplated hereby, and which are to be delivered by Sellers and Buyer at Closing.

“Transferred Real Property” means the Fee Owned Real Property and the Real Property Entitlements.

## **ARTICLE 2 PURCHASE AND SALE**

Section 2.01 **SALE OF ASSETS.** Pursuant to the terms set forth in this Agreement, for and in consideration of the receipt of the Purchase Price, as set forth below, and the covenants and promises hereinafter set forth, Sellers agree that on the date of the Closing, Sellers shall sell, transfer, assign and deliver to Buyer all of Sellers’ then existing Assets, shown in **Exhibits “A,” “B,” “C,” “D,” “E,” and “F”** free and clear of all liens and encumbrances of any kind pertaining to the provision of water and sewer services and the Systems located in Christian County.

A. **EXCLUDED ASSETS.** Notwithstanding anything herein to the contrary, the Assets are only the properties and Assets transferred to Buyer under this Agreement. Without limiting the foregoing, the Assets do not include the properties and assets of Sellers listed or described below (“Excluded Assets”):

1. Cash, bank accounts, certificates of deposit and other cash equivalents and advance payments, pre-paid expenses and deposits and refunds,

including advances to suppliers, checks in transit and un-deposited checks;

2. All of Sellers' accounts and notes receivable as of 11:59 pm on the Closing Date;
3. All of Sellers' files and records related to the Excluded Assets or Excluded Liabilities;
4. All Claims for refund or credit of Taxes and other Governmental Authority charges of whatever nature to the extent attributable to the period prior to and including the Closing Date;
5. All rights to Claims, refunds or adjustments with respect to Excluded Assets, all other refunds or adjustments with respect to Excluded Assets, in either case relating to any proceeding before any Governmental Authority relating to the period prior to the Closing and all rights to insurance proceeds or other insurance recoveries (i) that relate to, or are reimbursement for, Sellers' expenditures made prior to and including the Closing Date for which insurance proceeds are available or due to Sellers or (ii) to the extent relating to Excluded Assets or Excluded Liabilities;
6. All rights to the current office space and furnishings of the Sellers located at 3008 East Cherry Street, Springfield, Missouri; and

**B. ASSUMED LIABILITIES.** Subject to the terms and conditions hereof, at Closing, the Buyer shall assume the following Liabilities, and only the following Liabilities, of Sellers (collectively, the "Assumed Liabilities"): All Liabilities arising after the Closing Date under the Assumed Contracts (if any); provided, that such obligations: (i) arise after the Closing Date; (ii) do not arise from or relate to any default or breach by Sellers prior to the Closing Date of any provision of any of the Assumed Contracts (if any); (iii) do not arise from or relate to any event, circumstance or condition occurring or existing on or prior to the Closing Date that, with notice or lapse of time, would constitute or result in a breach of, or default under, any of the Assumed Contracts; (iv) do not involve any liability or resolution as a result of any law suits pending against or involving Sellers as of the Closing Date; and (v) are ascertainable (in nature and amount) solely by reference to the express terms of the Assumed Contracts (if any).

**C. EXCLUDED LIABILITIES.** Notwithstanding anything to the contrary contained in this Agreement, and regardless of whether such liability is disclosed in this Agreement, in any of the Transaction Documents or on any



Schedule or Exhibit hereto or thereto, Buyer will not assume, agree to pay, perform and discharge or in any way be responsible for any debts, liabilities and obligations, of Sellers of any kind or nature whatsoever, arising out of, relating to, resulting from, or caused by any transaction, status, event, condition, occurrence or situation relating to, arising out of or in connection with the Systems or the Assets of Sellers existing, arising or occurring on or prior to the Closing Date other than the Assumed Liabilities (the "Excluded Liabilities"). Sellers shall promptly pay and perform such Excluded Liabilities when due. For any and all Excluded Assets not purchased, Buyer assumes no liability associated therewith.

## Section 2.02 **CONVEYANCES OF REAL PROPERTY.**

- A. The Real Property to be conveyed by Sellers shall include all real property and facilities described in **Exhibits "A," "B," and "C,"** hereto and all interest of Sellers in any water, sewer, and other utility easements. The real estate shall be conveyed by General Warranty Deeds, in a form similar to **Exhibit "H"** and satisfactory to Buyer and shall vest marketable fee simple title in fact in the Buyer, subject to all matters of records not objected to by Buyer. Easements shall be assigned by written assignment in a form similar to **Exhibit "I"** and satisfactory to Buyer.
- B. At Buyer's expense, Buyer will obtain, at least thirty (30) days prior to closing, a Commitment to issue an Owner's Policy of Title Insurance to Buyer in the amount of the Purchase Price issued by a company authorized to issue title insurance in the state of Missouri, which policy shall insure the Sellers' titles to be marketable as the same is described and defined in Title Examination Standards of the Missouri Bar ("Title Standards").
  - 1. At least thirty (30) days prior to the Closing, Buyer shall have an ALTA Survey of the real property portion of the Assets prepared by a surveyor licensed in Missouri in a form reasonably acceptable to the Title Company and Sellers at Buyer's expense.
  - 2. After delivery of said title insurance commitment and Buyer's completion of the examination and/or review of the commitment and other relevant title information, Buyer shall notify Sellers, in writing, of any objections thereto (the Parties agreeing that any objection falling within the said Title Standards shall not constitute a valid objection so long as Sellers furnish customary affidavits or other papers as described in such standards in order for the title company to delete the same).

3. If there is no notice of objection, then any exceptions in such Commitment or deficiencies in the title to the property noted on such Commitment shall be deemed waived and delivery of the deeds in compliance with the terms of the Commitment shall be deemed compliance with the terms of this Agreement.
4. If notice of any objections to defects in the titles, as defined above, shall be delivered to Sellers, then Sellers may have five (5) business days to correct the titles, but shall have no obligation to do so, and Closing may be postponed until such time, if necessary. If Sellers elect not to, or cannot, correct such defects, then the Parties may negotiate, but if agreement cannot be obtained, Buyer, at Buyer's option, may waive such defects and proceed to close or may cancel the contract and all obligations hereunder shall be null and void.

#### **Section 2.03 PURCHASE PRICE.**

- A. On the Closing Date, Buyer shall pay to Sellers, or cause to be paid to Sellers Five Hundred Thousand (\$500,000.00) Dollars for the purchase of the Assets (the "Purchase Price"). The Purchase Price shall be paid in immediately available funds to one or more bank accounts to be specified by Sellers to Buyer at least two (2) business days prior to the Closing Date.

#### **Section 2.04 CLOSING.**

- A. The Closing of the sale shall take place at a mutually agreeable location no later than sixty (60) days after the effective date of any necessary regulatory authority approval, satisfaction of Sellers' Representations and Warranties and Conditions Precedent set forth herein, and Buyer having obtained financing under terms acceptable to Buyer in Buyer's sole discretion, or at such other time as the parties hereto may mutually agree (the "Closing").
- B. At the Closing, Sellers shall have delivered to Buyer such General Warranty Deeds, Bills of Sale, endorsements, assignments and other sufficient instruments of transfer and conveyance as shall be effective to vest in Buyer such titles to the Assets to be sold as provided in this Agreement, and Buyer will deliver to Sellers the Purchase Price.
- C. From time to time, at Buyer's request and expense, whether at or after the Closing and without further consideration, Sellers shall execute and deliver such other instruments of conveyance and transfer and take such other action as Buyer may reasonably require to more effectively convey and transfer to Buyer any of the Assets to be sold hereunder and will assist Buyer in the



collection or reduction of such instruments so as to facilitate Buyer's possession of such Assets.

- D. At Closing, Buyer will pay all title premiums, sales, transfer, and documentary taxes, if any, payable in connection with the sale, transfers, and deliveries to be made to Buyer hereunder.
- E. On the date of Closing, Buyer shall accept and assume ownership and titles to the Assets to be conveyed hereunder and Buyer shall assume liability, and become responsible, for all obligations in connection with the Assets going forward.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

Section 3.01 **SELLERS' REPRESENTATIONS AND WARRANTIES.** The Sellers represent and warrant as follows:

- A. **ORGANIZATION AND STANDING OF SELLERS.** Sellers own two not for profit companies organized, existing under the constitution and laws of the State of Missouri and registered to do business in the State of Missouri, and in good standing with the Missouri Secretary of State.
- B. **ABSENCE OF CERTAIN CHANGES.** After Buyer's inspection and acceptance of the Assets, there shall not be:
  - 1. Any material changes in the use of the Assets in connection with the business or operations of the Systems.
  - 2. Any damage, destruction, or loss whether or not covered by insurance, materially and adversely affecting the Assets.
- C. **TITLE TO PROPERTIES.**
  - 1. Unless Sellers have disclosed any information in writing to the Buyer to the contrary, Sellers own the Assets to be sold under this Agreement, in all cases, free and clear of all liens, mortgages, pledges, leases, options, rights of first refusal, conditional sales agreements, encumbrances or other charges, except liens for taxes not yet due or payable, easements or right of ways, streets, railways, pipelines, electric transmission and distribution lines, telephone lines, drainage rights and other similar rights or restrictions of record which do not, either individually or in the

aggregate have a materially adverse effect on the value or utility of the Assets to be sold hereunder.

2. Buyer shall have until twenty (20) days prior to the Closing to determine:  
a) if Sellers lack an easement or other interest necessary for operation of the Systems or b) an easement is defective in title or interest conveyed. If it appears that Sellers lack a valid easement for any portion of the Systems, or any easement identified suffers from a defect in title or interest conveyed, Buyer at its option and in its sole discretion may: a) cancel this Agreement, b) independently negotiate with the owner of the affected property toward acquisition of the pipelines or easements; c) notify Sellers that Buyer will cancel the Agreement unless a necessary easement is acquired or a defect satisfactorily cured or remedied; and d) undertake any action, which in Buyer's sole and absolute discretion, would correct an easement or remedy the situation caused by a lack of an easement or proper land interest. Buyer's failure to cancel this Agreement, however, shall not relieve Sellers from any of their duties of indemnification set forth in subsequent paragraphs herein, nor shall such failure be construed as Buyer's waiver of any such provisions.
3. Sellers will provide general Bills of Sale for all personal property of the water system and sewer system, **Exhibit "G"**, wherever located.

**D. AUTHORITY TO OPERATE.** The Assets, as described at Article 1 of this Agreement, constitute all of the Assets presently owned by the Sellers pertaining to the Systems. To the best of Sellers' knowledge, the Systems are being conducted, and as of the date of Closing, will be conducted in full compliance with requirements of all regulatory bodies exercising jurisdiction with regard to rates and conditions of service, and with local building and zoning codes.

**E. LITIGATION.**

1. There is no litigation or proceeding pending, or to the knowledge of Sellers threatened, against or relating to Sellers, the Assets, or the Systems, nor do Sellers know, or have reasonable grounds to know, of any basis for any such action, or of any governmental investigation relative to Sellers, the Assets, or the Systems.
2. There are no outstanding judicial orders or judgments to which Sellers are subject or by which Sellers or the Systems or any Assets are bound.

3. No petition or notice has been presented, no order has been made for the bankruptcy, liquidation, winding-up or dissolution of Sellers. No receiver, trustee, custodian, or similar fiduciary has been appointed over the whole or any part of Sellers, the Assets, or the income of Sellers. The Sellers do not have any plan or intention of filing, making, or obtaining any such petition, notice, order, or resolution or of seeking the appointment of a receiver, trustee, custodian or similar fiduciary.
- F. **INSURANCE.** On the date of this Agreement, Sellers, their businesses and properties, are insured. Sellers have provided Buyer accurate and complete copies of the insurance policies, or the binders related to such policies. Sellers have not failed to give, in a timely manner, any material notice required under any of the insurance policies to preserve its rights thereunder with respect to the Transferred Real Properties and all other material assets of the Systems.
- G. **NO VIOLATION OR BREACH.** The performance of this Agreement by Sellers, including any preconditions or surviving warranties or representations, is not in violation of any laws, statutes, local ordinances, state or federal regulations, court orders or administrative order or rule, nor is such performance in violation of any loan documents, conditions, or restrictions in effect for financing, whether secured or unsecured.
- H. **AS IS CONDITION.** Buyer is relying solely upon Buyer's inspection as to the condition of the Assets. Except as set forth below, Sellers are not making, have not made, and expressly disclaim any representations or warranties, express or implied, with respect to any aspect, feature or condition of the Assets, including without limitation, the existence of hazardous waste, the suitability of the Assets for Buyer's intended use or any representation or warranty, express or implied, as to the personal property, including without limitation, any warranty of merchantability or fitness for a particular purpose.
- I. **BROKERS.** Sellers have no liability or obligation to pay fees or commissions to any broker, finder, or agent with respect to the purchase for which Buyer could become liable or obligated.

Section 3.02 **BUYER'S REPRESENTATIONS AND WARRANTIES.** Buyer represents and warrants as follows:

- A. **ORGANIZATION AND STANDING OF BUYER.** Buyer is a political subdivision and a constitutional charter city organized and existing under the constitution and laws of the State of Missouri and has the requisite power to

purchase the Assets which are to be sold pursuant to the terms of this Agreement.

B. **AUTHORITY.** The execution and delivery of this Agreement by Buyer and the purchase of the Assets as contemplated hereby have been duly authorized by Buyer, and all necessary action on the part of Buyer has been taken to authorize the execution and delivery of this Agreement and to consummate the sale contemplated hereby.

C. **LITIGATION.**

1. There are no claims pending or, to Buyer's knowledge, threatened in writing, or any investigations ongoing or, to Buyer's knowledge, threatened in writing against Buyer before any Governmental Authority or any arbitrator that would have an adverse effect on Buyer's ability to perform its obligations hereunder.
2. Buyer is not subject to any judgment, decree, injunction, rule or order of any Governmental Authority or any arbitrator that prohibits the consummation of the purchase or that would adversely affect Buyer's ability to perform its obligations hereunder.

D. **BROKERS.** Buyer has no liability or obligation to pay fees or commissions to any broker, finder, or agent with respect to the purchase for which Sellers could become liable or obligated.

E. **LIABILITIES.** All liabilities or obligations of Sellers, whether accrued, absolute, contingent, or otherwise pertaining to or arising out from the Assets are liabilities and obligations of the Sellers and shall become the obligations of Buyer after the date of Closing.

## **ARTICLE 4 CONDITIONS PRECEDENT**

Section 4.01 **CONDITIONS TO THE OBLIGATIONS OF EACH PARTY.** The obligations of the Parties to proceed with the Closing are subject to the satisfaction prior to the Closing Date of all of the following conditions, any one or more of which may be waived in writing, in whole or in part, as to a Party by such Party.

- A. No permanent judgment, injunction, order or decree of a court or other Governmental Authority of competent jurisdiction shall be in effect which has the effect of making the purchase illegal or otherwise restraining or prohibiting

the consummation of the purchase (each Party agreeing to use its commercially reasonable efforts, including appeals to higher courts, to have any judgment, injunction, order, or decree lifted); and

- B. All other Sellers approvals and all Buyer approvals shall have been obtained.

Section 4.02 **CONDITIONS PRECEDENT FOR BUYER TO CLOSE.** All obligations of Buyer under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions:

**A. REGULATORY APPROVAL.**

1. Sellers shall have procured approvals from all necessary regulatory bodies for the sale, transfer or disposition of the Assets to Buyer, the proposed financing, and any schedule of compliance for proposed utility improvement projects for regulatory compliance deemed necessary by such regulatory bodies, each in form and substance (including without limitation with respect to the terms and conditions contained in such approval) acceptable to Buyer in Buyer's sole and absolute discretion.
2. The sale shall also be subject to approval by the City Council of Nixa, Missouri.

- B. REPRESENTATIONS AND WARRANTIES TRUE AT CLOSING.** Sellers' representations and warranties contained in this Agreement shall be true at the time of Closing as though such representations and warranties were made at such time.

- C. PERFORMANCE.** Sellers shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Sellers prior to or at the Closing; including the payment of all taxes and assessments, or portions thereof, attributable to periods prior to or ending on the date of Closing, to include any PSC assessments, if any.

**D. INSPECTIONS.**

1. Completion of Buyer's examination, testing and inspection of the Assets and the securing of any and all licenses, permits, or governmental approvals Buyer deems necessary for Buyer's proposed uses of the Assets, the results thereof to be satisfactory to Buyer, in its sole discretion.

2. For purposes of this Agreement, this period from the date this Agreement is fully executed by both Parties to the date that is twenty (20) days prior to the Closing, shall be referred to herein as the "Inspection Period."
  3. During the Inspection Period, Buyer, its employees, agents and contractors, shall have the right to enter onto any property owned by Sellers that is related to the operation of the Systems, as it deems necessary or desirable, on reasonable prior notice to Sellers to perform and complete architectural, environmental, engineering and/or other surveys, studies, inspections and tests on the Assets to review zoning laws and applicable building codes; to obtain all necessary city, county, and state zoning approval, site plan or subdivision approvals, licenses and permits to authorize the uses of the Assets as intended by Buyer.
- E. **NO CASUALTY.** The Assets shall not have been adversely affected in any material way as a result of any strike, lockout, accident or other casualty or act of God or the public enemy, or any judicial, administrative, or governmental proceedings.
- F. **FINANCING.** Buyer shall have obtained financing on terms acceptable to Buyer, in its sole and absolute judgment, to enable it to pay the Purchase Price.
- G. **BUYER'S RIGHT TO TERMINATE.** If Buyer determines, in its sole and absolute discretion, that any of the aforementioned conditions have not been met, Buyer shall have the right to terminate this Agreement at any time prior to Closing upon written notice to Sellers.

Section 4.03 **CONDITIONS PRECEDENT FOR SELLERS TO CLOSE.** All obligations of Sellers under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions.

- A. **REPRESENTATIONS AND WARRANTIES TRUE AT CLOSING.** Buyer's representations and warranties contained in this Agreement shall be true at the time of Closing as though such representations and warranties were made at such time.
- B. **PERFORMANCE.** Buyer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing.



## **ARTICLE 5 COVENANTS**

### **Section 5.01 ACCESS OF BUYER.**

- A. **ACCESS.** During the Interim Period, Sellers shall provide Buyer and its Representatives with reasonable access during normal business hours to the Systems and the office of Sellers in such a manner so as not to unreasonably interfere with the businesses or operations of Sellers; provided, however, that Sellers shall have the right to:
1. Have a representative present for any communication with employees of Sellers or its contractors; and
  2. Impose reasonable restrictions and requirements for safety or operational purposes.
- B. **SAMPLES.** Neither Buyer nor its representatives shall collect or analyze any environmental samples (including building materials, surface and ground water, and surface and subsurface soils) without the prior written authorization of Sellers, which shall not be unreasonably withheld, conditioned, or delayed.
- C. **CONFIDENTIAL.** Notwithstanding the foregoing, Sellers shall not be required to provide any information or allow any inspection which it reasonably believes it may not provide to Buyer or allow by reasonable applicable law, which constitutes or allows access to information protected by attorney/client privilege, or which Sellers are required to keep confidential or prevent access to by reason of contract, agreement or understanding with third parties if Sellers have used commercially reasonable efforts to obtain the consent of such third party to such inspection or disclosure.
- D. **LIMITATION.** Notwithstanding anything to the contrary contained herein, Buyer shall not be permitted to contact any of Sellers' vendors, customers or suppliers, issuers of Sellers' permits and any other counterparties to Sellers' contracts, during the interim period without receiving prior written authorization from Sellers (which shall not be unreasonably withheld, conditioned, or delayed), with respect to the Systems or the purchase. At Buyer's request Sellers shall use commercially reasonable efforts to arrange meetings with Sellers' material contract counterparties.

## Section 5.02 **CONDUCT OF THE BUSINESSES PENDING THE CLOSING.**

- A. During the interim period, Sellers shall use commercially reasonable efforts to operate and maintain the Systems in the Ordinary Course in accordance with good industry practices and in material compliance with all applicable laws.
- B. Without limiting the foregoing, except as otherwise contemplated by this Agreement or as consented to by Buyer, Sellers will not, during the interim period:
  - 1. Sell, transfer, convey or otherwise dispose of any material Assets outside the Ordinary Course of business;
  - 2. Merge or consolidate with any other person or entity or otherwise fail to maintain its existence;
  - 3. Liquidate, dissolve, reorganize or otherwise wind up its businesses or operations;
  - 4. Make any material change in the levels of inventory maintained at the Systems for the applicable time and year, except for such changes as are consistent with good industry practices;
  - 5. Agree or commit to do any of the foregoing.
- C. Notwithstanding Sections 5.02 A or B, or any other provision herein, Sellers may take commercially reasonable actions with respect to emergency situations or to comply with applicable law, current contracts and/or the Real Property Entitlements.
- D. Notwithstanding Sections 5.02 A or B, or any other provision herein, Sellers may negotiate amendments to certain contracts or Real Property Entitlements for the purpose of effecting the transaction contemplated by this Agreement.
- E. Sellers shall use commercially reasonable efforts to assist Buyer in preparing any documents necessary to acquire financing for Buyer's obligations under this Agreement. Sellers shall use commercially reasonable efforts to cause any party to a contract to grant Buyer permission for disclosure to the public of any information necessary for the Buyer's compliance with federal securities laws related to the issuance of any financing obligations, or to comply with reasonable requests from any underwriters, prospective lenders, or rating agencies.



### Section 5.03 **TAX MATTERS.**

A. **COOPERATION ON TAX MATTERS.** Sellers and Buyer shall cooperate fully with each other and make available or cause to be made available to each other for consultation, inspection and copying (at such other Party's expense) in a timely fashion such personnel, Tax data, relevant Tax Return or portions thereof and filings, files, books, records, documents, financial, technical and operating data, computer records and other information as may be reasonably required i) for the preparation by such other Party of any Tax returns or ii) in connection with any Tax audit or proceeding including one Party to the extent such Tax audit or proceeding relates to or arises from the transaction contemplated by this Agreement.

Section 5.04 **EXPENSES AND FEES.** Except as expressly provided otherwise herein, all costs and expenses incurred in connection with this Agreement and the purchase shall be paid by the Party incurring such costs and expenses.

Section 5.05 **AGREEMENT TO COOPERATE.** Subject to the terms and conditions of this Agreement and applicable law, each Party shall use commercially reasonable efforts to take or cause to be taken, all action and do or cause to be done, all things necessary, proper or advisable to obtain as promptly as reasonably practicable all necessary or appropriate waivers, consents, approvals or authorizations of Governmental Authorities and third parties and to satisfy all other conditions required in order to consummate the purchase (and, in such case, to proceed with the consummation of the purchase as expeditiously as possible). Each Party shall deliver to the other Party copies of such waivers, consents, approvals, or authorizations promptly after they are obtained, and shall keep the other Party generally apprised of the status of efforts being made to obtain such waivers, consents, approvals, and authorizations.

Section 5.06 **CASUALTY LOSS.** Notwithstanding any provision hereof to the contrary, if, before the Closing Date, all or any portion of the Assets is condemned or taken by eminent domain or damaged or destroyed by fire or other casualty, Sellers shall notify Buyer promptly in writing of such fact, and if such condemnation, taking, damage or destruction has or would reasonably be expected to result in a material adverse effect that cannot be cured before Closing, either Sellers or Buyer may terminate this Agreement.

Section 5.07 **FINANCING.** Prior to the Closing, Buyer shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to arrange financing on terms and conditions acceptable to Buyer in its sole judgment, to enable it to pay the Purchase Price, including using its commercially reasonable efforts to satisfy on a timely basis, to the extent within its control, all terms and conditions applicable to Buyer to obtaining

such financing and to enter into definitive agreements with respect thereto. Buyer shall keep Sellers reasonably informed of such financing efforts.

## **ARTICLE 6 TERMINATION**

Section 6.01 **TERMINATION.** This Agreement may be terminated, and the consummation of the purchase may be abandoned at any time prior to the Closing;

A. By mutual written consent of Buyer and Sellers;

B. By either Buyer or Sellers;

1. If the Closing has not occurred on or before the date that is one hundred eighty (180) days following the date of this Agreement (the "Termination Date"); provided, however, that the right to terminate this Agreement pursuant to this Section 6.01.B.1 shall not be available to any Party whose breach of any provision of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by the Termination Date;
2. If any court of competent jurisdiction in the United States or other United States Governmental Authority shall have issued a final order, decree or ruling or taken any other final action restraining, enjoining or otherwise prohibiting the consummation of the purchase and such order, decree, ruling or other action is or shall have become final and non-appealable; provided, however, that the Party seeking to terminate this Agreement pursuant to this Section 6.01.B.2 shall have used commercially reasonable efforts to prevent the entry of and to remove such order, decree, ruling or final action; or
3. Pursuant to and in accordance with Sections 2.02.B (Title Insurance) or 5.06 (Casualty Loss).

C. By Buyer:

1. If there has been a material breach by Sellers of any representation, warranty, covenant, or agreement contained in this Agreement or if a material adverse event has occurred and is continuing, which was not caused by Buyer's breach of any provision of this Agreement and which cannot be cured prior to the Termination Date; or
2. If there is any insolvency, bankruptcy, reorganization, or other similar proceedings affecting Sellers.

D. By Sellers:

1. If there has been a material breach by Buyer of any representation, warranty, covenant, or agreement contained in this Agreement which was not caused by Sellers' breach of any provision of this Agreement and which cannot be cured prior to the Termination Date; or
2. If there is insolvency, bankruptcy, reorganization, or other similar proceeding affecting Buyer.

**ARTICLE 7  
MISCELLANEOUS**

Section 7.01 **NOTICES.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally to, or by nationally recognized overnight courier service, or mailed by registered or certified mail (return receipt requested) if and when received by, or sent via email if and when received by, the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

A. If to Buyer, to:

City of Nixa, Missouri  
1111 W. Kathryn  
Nixa, Missouri 65714  
Email: dcolvin@nixa.com  
Attention: Doug Colvin

With a copy to:

Healy Law Offices, LLC  
3010 E. Battlefield, Suite A  
Springfield, MO 65084  
Email: penny@healylawoffices.com  
Attention: Penny Speake

If to Sellers, to:

Brent Johnson  
3008 E. Cherry Street  
Springfield, MO 65802  
Email: bjohnson@excelsdigroup.com

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_  
Attention: \_\_\_\_\_

Section 7.02 **BENEFIT AND ASSIGNMENT.** All the terms of this Agreement shall be binding upon, and inure to the benefit of, and be enforceable by, the respective legal representatives of Sellers, its successors and assigns, and the successors and assigns of Buyer. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of Buyer and Sellers, said approval not to be unreasonably withheld.

Section 7.03. **GOVERNING LAW AND JURISDICTION.**

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, applicable to agreements made and to be performed entirely within such State, without regard to the conflict of laws principles thereof.
- B. Any disputes or claims arising out of or in connection with this Agreement and the transactions contemplated or documents required hereby shall be submitted to the exclusive jurisdiction of the Circuit Court of Christian County, Missouri, located in Ozark, Missouri, and the appropriate appellate court therefrom.
  - 1. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any dispute arising out of or relating to this Agreement or the purchase brought in such court or any defense of inconvenient forum for the maintenance of such dispute.

2. Each of the Parties hereto agree that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.
3. This consent to jurisdiction is being given solely for purposes of this Agreement and the transactions contemplated hereunder, and is not intended to, and shall not, confer consent to jurisdiction with respect to any other dispute in which a Party to this Agreement may become involved.
4. Each of the Parties hereto hereby consent to process being served by any Party to this Agreement in any suit, action, or proceeding by the mailing of a copy thereof in the manner specified by the provisions of this Article 7.01.

#### Section 7.04 **COUNTERPARTS AND ELECTRONIC TRANSACTIONS.**

- A. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.
1. Signed counterparts of this Agreement may be delivered by email and by scanned pdf image; provided, that each Party uses commercially reasonable efforts to deliver to the other Party original signed counterparts as soon as possible thereafter.
- B. **ELECTRONIC TRANSACTIONS.** The transactions described in this Agreement may be conducted, and documents related to the purchase, including this Agreement, may be sent, received, executed, and stored, by electronic means or transmissions.
1. Copies, telecopies, electronic files, and other reproductions of original executed documents (or documents executed by electronic means or transmissions) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

Section 7.05 **AMENDMENTS.** This Agreement may not be amended, waived, or modified except by an instrument in writing signed on behalf of Buyer and Sellers.

Section 7.06 **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warrant not set forth herein has been made or relied upon by any Party. Neither this Agreement nor any provision hereof is intended to confer upon any person other than the Parties hereto any rights or remedies hereunder.

Section 7.07 **SEVERABILITY.** If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of applicable law, or public policy, then such term or provision shall be severed from the remaining terms and provisions of this Agreement, and such remaining terms and provisions shall nevertheless remain in full force and effect.

Section 7.08 **SOVEREIGN TORT IMMUNITY.** Nothing herein shall be construed as a waiver by Buyer of the sovereign tort immunity granted to Buyer under Missouri law.

Section 7.09 **CONSTRUCTION.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.


Section 7.10 **INCORPORATION OF EXHIBITS.** The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

Section 7.11 **DEFAULT AND ATTORNEYS' FEES.** If either Party shall default in their performance under this Agreement, which default results in the expenditure of attorneys' fees to enforce the terms of this Agreement or to recover damages for breach of this contract, then each party shall bear and pay their own respective attorneys' fees and costs.

*[Remainder of page intentionally left blank. Signature page to follow.]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized representatives as of the day and year first above written.

**SELLERS:**

  
By: Brent Johnson  
By: Stacie Johnson

**BUYER:**

City of Nixa, Missouri

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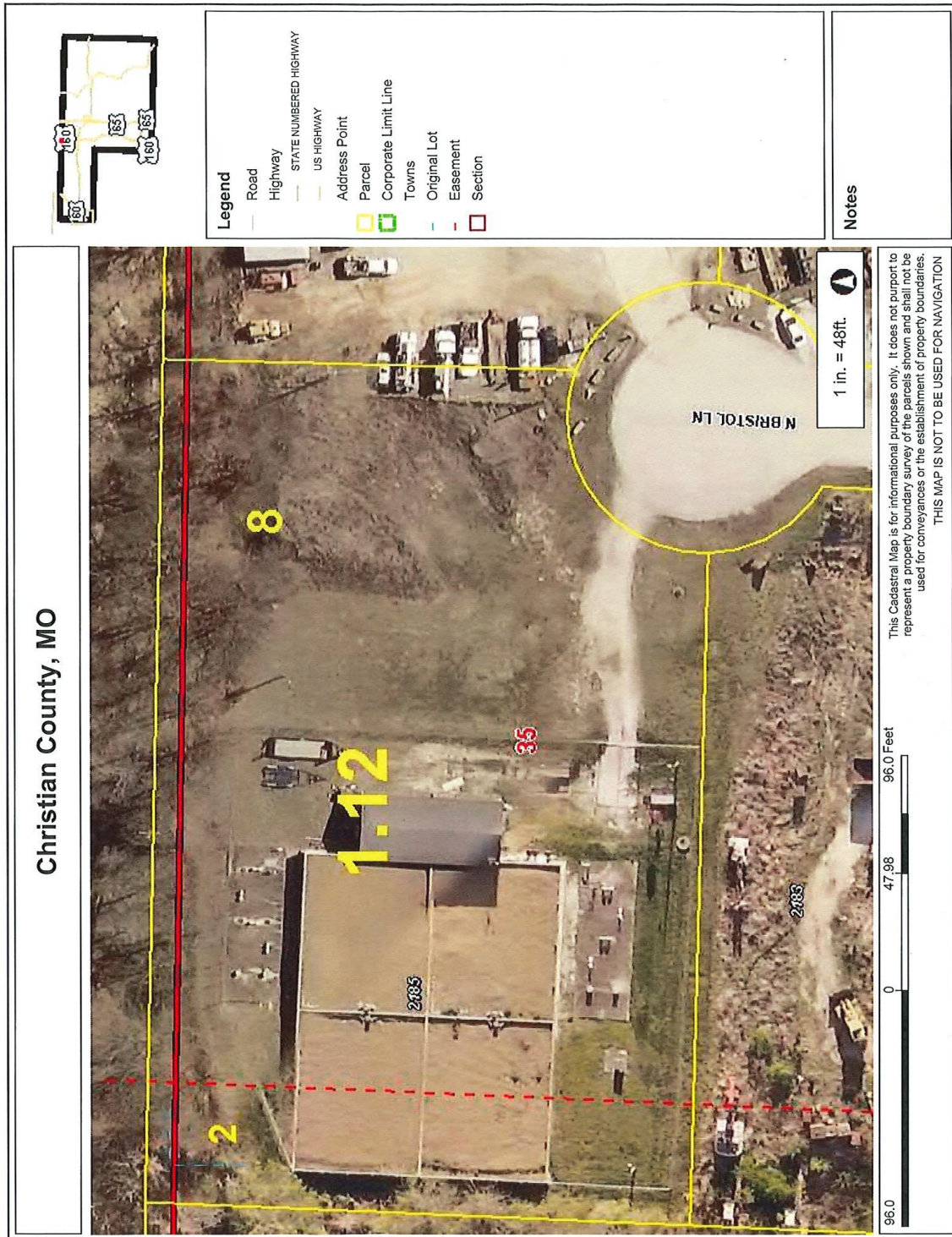
By: Brian Steele,  
City of Nixa Mayor

## **EXHIBIT A**

**Tuscany Hills Regional Sewer District System Map  
(As detailed in Article 1 herein and depicted in Plat Exhibit A-1)**



# EXHIBIT A-1



## **EXHIBIT B**

**CTW Waterworks Regional Not for Profit Water Company, Inc. Description  
(As detailed in Article 1 herein and depicted in Plats  
Phase 1 (Exhibit B-1) and Phase 2 (Exhibit B-2))**







## EXHIBIT B-2

24" x 36"

OTC SURVEY DESCRIPTION:  
BOOK 157, PAGE 537 AND BOOK 103, PAGE 127 AND 900A, 361, PAGE 304

[illegible]

COLLECTOR'S STATEMENT  
 1. WILLIAM J. WILSON ON THIS 12th DAY OF March, 1934, THAT ALL DEBTS  
 DUE TO SAID N. 552 0-0-30 HAVE BEEN PAID.  
5-17-35 0-0-30 1935  
Ed. F. Finkbeiner 100 5-25-35 0-0-30

CONSIDERATION OF AWARDING AND DEDICATION: The Society's primary goal is to honor individuals who have made significant contributions to the field of environmental health. The award is given to individuals who have demonstrated exceptional leadership, innovation, and dedication to the advancement of the field. The award is given to individuals who have made significant contributions to the field of environmental health. The award is given to individuals who have demonstrated exceptional leadership, innovation, and dedication to the advancement of the field.

3-15-05

"THE SECONDARY CRITIC"

County of Madison  
State of Wisconsin  
I, JAMES MADISON, Recorder of Madison County, Wisconsin, do hereby certify that the within instrument, of writing was on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, A.D., at \_\_\_\_\_ O'Clock, \_\_\_\_\_ P.M. my files for record and a record in the records of my office in Book \_\_\_\_\_ and Page \_\_\_\_\_ IN TESTIMONY WHEREOF I have hereunto set my hand and the seal of said County, Madison, Wis. at \_\_\_\_\_  
\_\_\_\_\_ State \_\_\_\_\_ 1943

RECEIVED King William 1000. ~~1000~~ 1000. 1000.



**GORDON & ASSOCIATES**  
the Double P™ Inc.  
Registered Land Surveyors  
Subsidiaries Engineers

1730 E. Mayfield Rd. Suite H, Springfield, MO 65804  
Phone: (417) 933-4700 Fax: (417) 933-8948



DATE PREPARED: 5/5/05

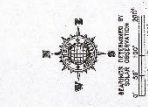
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INDEXED BY CHRISTIAN COUNTY

100

FINAL PLAT  
**TUSCANY HILLS, PHASE 2**  
A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI  
BEING PART OF SECTION 46, TOWNSHIP 22 NORTH, RANGE 23 WEST

OWNER / DEVELOPER  
VILLA PROPERTIES LLC  
1905 USSEY - MEMBER PARTNER  
P.O. BOX 81  
CZARK, MO 63721



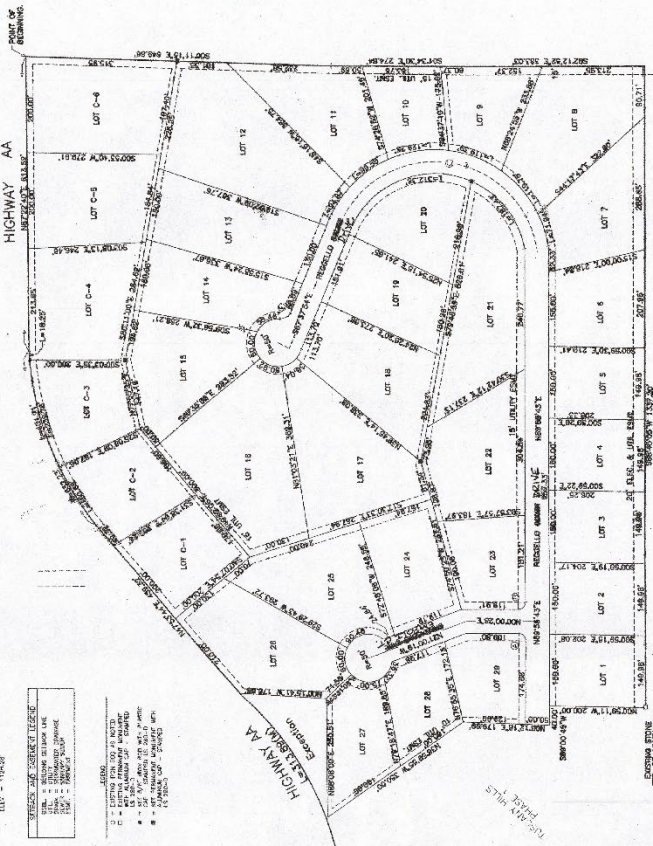
PAGE STATISTICS
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TOTAL LOTS..... 25
LARGEST LOT..... 1.5-2.0 AC.
SMALLEST LOT..... 0.18
AVERAGE LOT..... 1.32
ADJACENT TO HIGHWAY..... NO
ADJACENT TO RAILROAD..... NO
ADJACENT TO WATER..... NO
ADJACENT TO AIRPORT..... NO
ADJACENT TO INDUSTRIAL..... NO
ADJACENT TO COMMERCIAL..... YES
ADJACENT TO RESIDENTIAL..... YES
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SIN OF EXTING HANDLE  
CITY OF CORVALLIS PUBLIC WORKS  
TEL: - 124.28

SYMBOLS AND ABBREVIATIONS

**ITEMS**

- C - CASTING FOR TOO AB NOTED
- E - EXISTING PERMANENT MONITORING
- F - FILL WITH ALUMINUM CAP - STAMP  
LS 186, U
- G - SET 3/4" DOWNS WITH A PLATE
- H - SET STATIONED LS 280-D
- I - SET STATIONED MONITORING



A BUREAU CERTIFICATE OF APPROVAL  
ON THIS PLAY DOES NOT CONSTITUTE  
ACCEPTANCE OR APPROVAL OF ANY  
PLAYS BY CHRISTIAN COUNTY

100-443886-100  
GORDON - RUS 4 1789

INDEXED BY CHRISTIAN COUNTY

100

**EXHIBIT C**  
**Legal Description of Fee Owned Real Property**

The following described lots, tracts or parcels of land, lying, being and situated in the County of Christian, State of Missouri, (Fee Owned Real Property) to-wit:

1. ALL OF LOT NINETEEN (19) OF THE REPLAT OF LOTS 19, 20, 34, 35, 36, 37, 62, 63 AND 64, AND A PORTION OF THE COMMON AREA "A" OF TUSCANY HILLS, A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK H PAGE 394, RECORDER OF DEEDS, CHRISTIAN COUNTY, MISSOURI.

and

2. ALL OF LOT EIGHT (8) OF FOX HOLLOW INDUSTRIAL CENTER, A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI ACCORDING TO THE PLAT RECORDED IN PLAT BOOK G PAGE 322, RECORDER OF DEEDS, CHRISTIAN COUNTY, MISSOURI.

**Real Property Entitlements**  
**(Rights via Agreements, Contracts, Misc.)**

All interests in easements, rights of way, permits and other real property entitlements associated with the Systems (Real Property Entitlements). See attached Survey Map which shows the Fee Owned Real Property along with the Real Property Entitlements, all of which together shall constitute the Transferred Real Property.

**EXHIBIT D**  
**Plants and Equipment**

All of Sellers' water and sewer services facilities, equipment, lines, plant, pipes, valves, fire hydrants, manholes and appurtenances, along with all machinery, supplies, materials, fixtures (such as meters, tools, devices, mobile work equipment), supplies and other tangible items and personal property located in Christian County, Missouri, and used or held for use in connection with the System, along with any rights to the warranties and licenses received from manufacturers of the Plants and Equipment

**EXHIBIT E**  
**Inventory**

NONE.

**EXHIBIT F**  
**Contracts, Agreements and Customer Deposits**

Excluding any easements or right of way agreements, Buyer is not assuming any contracts or agreements Tuscan Hills or CTW Waterworks currently have with any third parties.

Prior to closing, Sellers will provide Buyer a current list of customers along with a current list of deposits being held by Tuscan Hills and CTW Waterworks. At Closing Sellers will deliver to Buyer a check in the amount of the current deposits being held by Tuscan Hills and CTW Waterworks.



**EXHIBIT G**  
**Form of Bills of Sale**

**BILL OF SALE FOR SEWER SYSTEM**

This BILL OF SALE, effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, is made by and between Brent Johnson and Stacie Johnson owners of Tuscany Hills Regional Sewer District, Inc., a not for profit business organized and existing under the laws of Missouri, ("Sellers") and the City of Nixa, Missouri, a political subdivision and a constitutional charter city organized and existing under the laws of the State of Missouri ("Buyer").

**WHEREAS**, Buyer and Sellers are parties to a certain Asset Purchase Agreement for the sale of Tuscany Hills Regional Sewer District, Inc., dated \_\_\_\_\_, 20\_\_, (the "APA"), which contemplates the sale of certain Fee Owned Real Property and Real Property Entitlements, which comprise the Transferred Real Property of Sellers to Buyer, and which by this reference is incorporated herein;

**NOW, THEREFORE**, Sellers, for the consideration set forth in the Asset Purchase Agreement, the receipt and sufficiency of which is hereby acknowledged, do hereby sell, assign, convey, transfer, and deliver to Buyer all of Seller's right, title, and interest in and to the Transferred Real Property (as such term is defined in the APA), free and clear of any and all liens and encumbrances.

**TO HAVE AND TO HOLD** the Transferred Real Property, with all of the rights and appurtenances thereto belonging, unto Buyer, its successors and assigns, to itself and for its own use and behalf forever.

**AND**, for the consideration aforesaid, Sellers have covenanted and by this Bill of Sale do covenant with Buyer that Sellers will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, transfers, assignments and conveyances, and assurances, for the better assuring, conveying and confirming unto Buyer, the entire right, title and interest in the Transferred Real Property hereby sold, transferred, assigned and conveyed as Buyer shall reasonably require.

This Bill of Sale and the covenants and agreements herein contained shall inure to the benefit of Buyer, its successors and assigns, and shall be binding upon Sellers, their successors and assigns.

This Bill of Sale is executed and delivered by Sellers pursuant to the APA, and is subject to the covenants, representations and warranties made therein.

**SELLERS:**

**BUYER:**

City of Nixa, Missouri

---

By: Brent Johnson

---

By: Brian Steele,  
City of Nixa Mayor

---

By: Stacie Johnson

# **BILL OF SALE FOR WATER SYSTEM**

This BILL OF SALE, effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, is made by and between Brent Johnson and Stacie Johnson owners of CTW Waterworks Regional Not for Profit Water Company, Inc. a not for profit business organized and existing under the laws of Missouri, ("Sellers") and the City of Nixa, Missouri, a political subdivision and a constitutional charter city organized and existing under the laws of the State of Missouri ("Buyer").

**WHEREAS**, Buyer and Sellers are parties to a certain Asset Purchase Agreement for the sale of CTW Waterworks Regional Not for Profit Water Company, Inc., dated \_\_\_\_\_, 20\_\_, (the "APA"), which contemplates the sale of certain Fee Owned Real Property and Real Property Entitlements, which comprise the Transferred Real Property of Sellers to Buyer, and which by this reference is incorporated herein;

**NOW, THEREFORE**, Sellers, for the consideration set forth in the Asset Purchase Agreement, the receipt and sufficiency of which is hereby acknowledged, do hereby sell, assign, convey, transfer, and deliver to Buyer all of Seller's right, title, and interest in and to the Transferred Real Property (as such term is defined in the APA), free and clear of any and all liens and encumbrances.

**TO HAVE AND TO HOLD** the Transferred Real Property, with all of the rights and appurtenances thereto belonging, unto Buyer, its successors, and assigns, to itself and for its own use and behalf forever.

**AND**, for the consideration aforesaid, Sellers have covenanted and by this Bill of Sale do covenant with Buyer that Sellers will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, transfers, assignments and conveyances, and assurances, for the better assuring, conveying and confirming unto Buyer, the entire right, title and interest in the Transferred Real Property hereby sold, transferred, assigned and conveyed as Buyer shall reasonably require.

This Bill of Sale and the covenants and agreements herein contained shall inure to the benefit of Buyer, its successors and assigns, and shall be binding upon Sellers, their successors and assigns.

This Bill of Sale is executed and delivered by Sellers pursuant to the APA, and is subject to the covenants, representations and warranties made therein.

**SELLERS:**

**BUYER:**

City of Nixa, Missouri

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By: Brent Johnson

---

By: Brian Steele,  
City of Nixa Mayor

---

By: Stacie Johnson

**EXHIBIT H**  
**Forms for General Warranty Deeds for Fee Owned Real Property**

**RECORDER OF DEEDS OFFICE:**

**PREPARED BY:**

**AFTER RECORDING RETURN TO:**

City of Nixa, Missouri  
Attn: Nicholas Woodman, City Attorney  
715 W. Mt. Vernon St.  
Nixa, MO 65714

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**GENERAL WARRANTY DEED**

***THIS DEED***, dated \_\_\_\_\_, is made by and entered into by and between Brent Johnson and Stacie Johnson, owners of Tuscan Hills Regional Sewer District, Inc., the "Grantors," located in the County of Christian, and the City of Nixa, Missouri, the "Grantee," whose address is 715 West Mt. Vernon Street, in the County of Christian, and the City of Nixa, Missouri.

***WITNESS***, that the Grantors, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant, bargain, sell, convey, and confirm unto the Grantee and the Grantee's assigns forever, all the real property, together with any improvements thereon, along with the associated easements and rights of way located in Christian County and in the State of Missouri, herein described as follows:

Full legal description:

ALL OF LOT EIGHT (8) OF FOX HOLLOW INDUSTRIAL CENTER, A  
SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI ACCORDING TO THE

PLAT RECORDED IN PLAT BOOK G PAGE 322, RECORDER OF DEEDS,  
CHRISTIAN COUNTY, MISSOURI.

**SUBJECT TO** current taxes and other assessments, reservations in patents and all easements, rights of way, conditions, restrictions, obligations, and liabilities as may appear of record, if any.

**HEREBY** releasing and waiving all rights under and by virtue of the laws of the State of Missouri.

**TO HAVE AND TO HOLD** the said premises for the aforesaid tract or parcel of land, with all and singular rights, members, and appurtenances thereof, to the same being, belonging, or anywise appertaining, to the only proper use, and benefit of the said Grantee, forever, in fee simple.

And the Grantors covenant with the Grantee, that the Grantors have done nothing to impair such title as Grantors received, and Grantors will warrant and defend the title against the lawful claims of all persons claiming by, under, or through Grantors.

**IN WITNESS WHEREOF**, the Grantors have executed this deed on the date set forth above.

**GRANTORS**

By:

\_\_\_\_\_  
(Grantor Signature)

\_\_\_\_\_  
(Grantor Signature)

Address:

**GRANTEE**

By: Brian Steele,  
City of Nixa Mayor

\_\_\_\_\_  
(Grantee Signature)

Corporate Acknowledgement

**State of Missouri**

**ss.**

**County of Christian**

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by Brent Johnson and Stacie Johnson, the owners of Tuscany Hills Regional Sewer District, Inc., "Grantors" personally appearing before me and known to be the person described in and who executed the foregoing instrument and acknowledge that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at \_\_\_\_\_, in \_\_\_\_\_, Missouri the day and year first above written.

Witness my hand and official seal.

\_\_\_\_\_  
(Notary Public Signature)

Notary Commission Expires:

Municipal Acknowledgement

**State of Missouri**

**ss.**

**County of Christian**

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by Brian Steele, Mayor of the city of Nixa, Missouri, "Grantee" personally appearing before me and known to be the person described in and who executed the foregoing instrument and acknowledge that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at \_\_\_\_\_, in \_\_\_\_\_, Missouri the day and year first above written.

Witness my hand and official seal.

\_\_\_\_\_  
(Notary Public Signature)  
Notary Commission Expires:



**RECORDER OF DEEDS OFFICE:**

**PREPARED BY:**

**AFTER RECORDING RETURN TO:**

City of Nixa, Missouri  
Attn: Nicholas Woodman, City Attorney  
715 W. Mt. Vernon St.  
Nixa, MO 65714

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**GENERAL WARRANTY DEED**

***THIS DEED***, dated \_\_\_\_\_, is made by and entered into by and between Brent Johnson and Stacie Johnson, owners of CTW Waterworks Regional Not for Profit Water Company, Inc., the “Grantors,” located in the County of Christian, and the City of Nixa, Missouri, the “Grantee,” whose address is 715 West Mt. Vernon Street, in the County of Christian, and the City of Nixa, Missouri.

***WITNESS***, that the Grantors, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant, bargain, sell, convey, and confirm unto the Grantee and the Grantee’s assigns forever, all the real property, together with any improvements thereon, along with the associated easements and rights of way located in Christian County and in the State of Missouri, herein described as follows:

Full legal description:

ALL OF LOT NINETEEN (19) OF THE REPLAT OF LOTS 19, 20, 34, 35, 36, 37, 62, 63 AND 64, AND A PORTION OF THE COMMON AREA "A" OF TUSCANY HILLS, A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK H PAGE 394, RECORDER OF DEEDS, CHRISTIAN COUNTY, MISSOURI.

**SUBJECT TO** current taxes and other assessments, reservations in patents and all easements, rights of way, conditions, restrictions, obligations, and liabilities as may appear of record, if any.

**HEREBY** releasing and waiving all rights under and by virtue of the laws of the State of Missouri.

**TO HAVE AND TO HOLD** the said premises for the aforesaid tract or parcel of land, with all and singular rights, members, and appurtenances thereof, to the same being, belonging, or anywise appertaining, to the only proper use, and benefit of the said Grantee, forever, in fee simple.

And the Grantors covenant with the Grantee, that the Grantors have done nothing to impair such title as Grantors received, and Grantors will warrant and defend the title against the lawful claims of all persons claiming by, under, or through Grantors.

**IN WITNESS WHEREOF**, the Grantors have executed this deed on the date set forth above.

**GRANTORS**

By: Brent Johnson, and  
Stacie Johnson

**GRANTEE**

By: Brian Steele,  
City of Nixa Mayor

\_\_\_\_\_  
(Grantor Signature)

\_\_\_\_\_  
(Grantee Signature)

\_\_\_\_\_  
(Grantor Signature)

Address:

Corporate Acknowledgement

**State of Missouri**

**ss.**

**County of Christian**

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by Brent Johnson and Stacie Johnson, the owners of CTW Waterworks Regional Not for Profit Water Company, Inc. "Grantors" personally appearing before me and known to be the person described in and who executed the foregoing instrument and acknowledge that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at \_\_\_\_\_, in \_\_\_\_\_, Missouri the day and year first above written.

Witness my hand and official seal.

\_\_\_\_\_  
(Notary Public Signature)

Notary Commission Expires:

Municipal Acknowledgement

**State of Missouri**

**ss.**

**County of Christian**

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by Brian Steele, Mayor of the city of Nixa, Missouri, "Grantee" personally appearing before me and known to be the person described in and who executed the foregoing instrument and acknowledge that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at \_\_\_\_\_, in \_\_\_\_\_, Missouri the day and year first above written.

Witness my hand and official seal.

\_\_\_\_\_  
(Notary Public Signature)  
Notary Commission Expires:

**EXHIBIT I**  
**Easement Assignments**

**PREPARED BY:**

Penny M. Speake  
Healy Law Offices, LLC  
3010 E. Battlefield, Suite A  
Springfield, MO 65804

**AFTER RECORDING RETURN TO:**

City of Nixa, Missouri  
Attn: Nicholas Woodman, City Attorney  
715 W. Mt. Vernon St.  
Nixa, MO 65714

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## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement ("Assignment") is dated as of \_\_\_\_\_, 20\_\_ and is made and entered into by and between the City of Nixa, Missouri, a municipality organized under the laws of the State of Missouri ("Assignee") and Brent Johnson and Stacie Johnson, Owners of Tuscany Hills Regional Sewer District, Inc. and CTW Waterworks Regional Not for Profit Water Company, Inc. both not for profit companies organized under the laws of the State of Missouri ("Assignors"). Assignor and Assignee are referred to herein individually as a "Party" and collectively as the "Parties."

**WITNESSETH:**

WHEREAS, Assignor and Assignee have entered into an Asset Purchase Agreement, dated \_\_\_\_\_, ("APA"), pursuant to which Assignors have agreed to assign to Assignee all of their rights, title and interest in and to the "Real Property Entitlements" which means the easements, rights of way, real property licenses and other Real Property Entitlements associated with the Systems as defined and set out in the APA, which is incorporated herein by reference.

Real Property Entitlements (as such term is defined in the APA) may be needed for the continued provision of water and sewer services, including, but not limited to, those described in Schedule 1 attached hereto, and Assignee has agreed to assume all of the obligations of Assignors arising under the Real Property Entitlements assigned to Assignee pursuant to this Assignment arising on and after the Effective Date; and

WHEREAS, some Real Property Entitlements may be used by Assignee for multiple purposes, and Assignee reserve to themselves rights, as may be permitted by

the Real Property Entitlements, to use the Real Property Entitlements for municipal uses other than the provision of water services, including without limitation, electric power, sewer, and communications; and

WHEREAS, Assignors and Assignee desire to enter into this Assignment to effect such assignment and assumption and to provide notice to third parties of same by recording this Assignment and Assumption in the Public Records of Christian County in which the Real Property Entitlements were recorded.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Assignors and Assignee agree as follows:

1. Definitions. All capitalized terms used, but not defined herein shall have the meanings ascribed to such terms in the APA.
2. Acceptance and Assumption. Subject to the terms and conditions of this Assignment and Assumption Agreement and the APA, Assignors hereby assign, transfer, sell, convey, and deliver to Assignee all of Assignors' right, title, and interest in and to the Real Property Entitlements as may be needed for the provision of water and sewer services and Assignee hereby assumes, and agrees to pay and perform and discharge when due, all of Assignors' obligations under the Real Property Entitlements arising on and after the Effective Date.
3. Recordation of Assignment and Assumption. Assignors and Assignee shall take such action as is reasonably necessary to promptly record this Assignment and Assumption in the Public Records of the County of Christian, State of Missouri, where the Real Property Entitlements, or memoranda thereof, have been recorded.
4. Effective Date. This Assignment and Assumption shall be effective as of the date of the APA.
5. Counterparts. This Assignment and Assumption may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
6. No Modification. This Assignment and Assumption is made pursuant to, and is subject to the terms of, the APA. Notwithstanding anything to the contrary contained in this Assignment and Assumption, nothing contained herein is intended to or shall be deemed to limit, restrict, modify, alter, amend, or otherwise change in any manner the rights and obligations of Assignors or Assignee under the APA, and in the event of any conflict between the terms

and provisions hereof and the terms and provisions of the APA, the terms and provisions of the APA shall control.

7. Section Headings. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Assignment and Assumption.
8. Governing Law; Venue; and No Jury Trial.
  - (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance, and remedies.
  - (b) The Parties hereto agree that venue in any and all actions and proceedings related to the subject matter of this agreement shall be in the Circuit Court of the State of Missouri in Christian County, Missouri, which court shall have exclusive jurisdiction for such purpose and the Parties hereto irrevocably submit to the exclusive jurisdiction of such court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Service of process may be made in any manner recognized by such court.
  - (c) Each of the Parties hereto irrevocably waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this agreement or the transactions contemplated hereby. This provision is a material inducement for the Parties here to enter into this agreement and shall survive the closing.

***[Signature Page Follows]***

Assignors and Assignee have caused this Assignment to be signed by their respective duly authorized representatives as of the day and year first set forth below.

ASSIGNORS:

Brent Johnson and Stacie Johnson,  
Owners of Tuscany Hills Regional Sewer District, Inc., and  
CTW Waterworks Regional Not for Profit Water Company, Inc.

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ASSIGNEE:

Brian Steele,  
Mayor of the City of Nixa, Missouri

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Approved as to form and conforming to municipal policy:

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Name: Nicholas Woodman  
City Attorney



Schedule 1  
LIST OF EASEMENTS  
REAL PROPERTY ENTITLEMENTS

This Assignment and Assumption Agreement applies to all utility/water line easements and “Real Property Entitlements” located within Christian County, Missouri listed below:

1. TUSCANY HILLS, PHASE 1, A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK H PAGE 291, RECORDER OF DEEDS, CHRISTIAN COUNTY, MISSOURI;

and

2. TUSCANY HILLS, PHASE 2, A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK H PAGE 292, RECORDER OF DEEDS, CHRISTIAN COUNTY, MISSOURI;

and

3. The service line through the RIGHT OF WAY of Fox Hollow Blvd. now known as N. Bristol Lane, as depicted on Plat:

FOX HOLLOW INDUSTRIAL CENTER, A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK G PAGE 322, RECORDER OF DEEDS, CHRISTIAN COUNTY, MISSOURI.



**Issue:** **SECOND READING COUNCIL BILL #2022-012**  
**NEW ELECTRIC RATE ORDINANCE**

**Date:** February 10, 2022

**Submitted By:** Doug Colvin  
Assistant City Administrator – Director, Nixa Utilities and Public Works

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### Background

Council Bill #2022-012, first read and discussed January 24th, is for the adoption of new electric rates along with a new energy adjustment charge formula that replaces the old Fuel Adjustment Charge previously tied to the expired City Utilities of Springfield contract.

### Analysis

Along with a copy of Council Bill #2022-012, attached is a corrected spreadsheet estimating annual unrestricted fund balances for years 2022 through 2026 which replaces the one presented in error at the January meeting.

The spreadsheet changes include the estimated 2022 revenue as discussed at the meeting along with all of 2021 being changed from budgeted figures to actual revenue and expenses. As you will note, the actual numbers made a considerable difference in cash balances carried forward and presents a much better outcome than before.

To recap some of the items discussed:

- Nixa Electric rates have remained unchanged since 2017. This has been accomplished for several reasons including:
  - Spending down excess unrestricted reserves.
  - The sale of the 69Kv transmission assets in March of 2018 utilizing the proceeds to eliminate all remaining debt and increase the unrestricted reserve balance.
  - This sale also lowered maintenance and operational cost required to own that part of the system.
  - We have acquired new lower-cost wholesale power contracts including a mix of natural gas, wind and directly connected solar energy and renewed a long-term low-cost hydropower agreement. These new power purchase contracts reduce annual wholesale power costs by approximately \$3 to \$4 million dollars per year through 2030.
  - Acquired network transmission service from Southwest Power Pool for the reliable delivery of power to our utility.
- Other key elements that factor into a new rate structure include:
  - Regular operations and maintenance expenses continue to rise sharply due to material shortages and related supply chain issues adding considerable strain on the current budget.



- Nixa Electric has continued to use unrestricted reserves to accomplish several major capital improvement projects for system growth and reliability as well as completing several very costly distribution system relocations to accommodate much needed roadway improvements for the community.
- Nixa Electric used reserves to absorb \$2.3 million in additional unanticipated wholesale supply cost caused by the February 2021 winter storm Uri. Most utilities passed on this additional cost directly to customers while some have even had to incur debt.

At the January meeting we also discussed other necessary considerations for a new rate schedule.

- A one-time lowering of rates is proposed to adjust or reset rates to better reflect recent savings in wholesale supply costs.
- To assure sufficient revenue and reserve fund balances in future years, a 1.5% annual increase beginning in 2023 should be adopted.
- The new rate schedule should absorb existing customer credits for the old CU fuel cost adjustment (FCA) established in the 2010 rate schedule.
- The old CU FCA should be replaced by a wholesale Energy Cost Adjustment (ECA) necessary to level out fluctuating wholesale market and transmission cost of our supply. See Exhibit C.
- Adjust and align retail side demand cost so it is collected from the various classes on a pro-rata basis by usage all with the same rate structure.
- Cash balances should be closely monitored to assure adequate reserves are supported by the proposed rates while continuing to provide reliable utility operations and necessary capital investments.
- Adjust security lighting monthly rental to fully capture energy and maintenance costs for this service.

### Recommendation

Included with this memo are Council Bill 2022-021, Exhibit A proposed Rate Schedule, Exhibit B corrected Cash Reserve Balance sheet and Exhibit C Energy Cost Adjustment formula sheet.

Staff recommends passage of Council Bill #2022-012, which includes new customer rates through 2026, a new ECA formula and new security lighting monthly charge.

**Rate Summary - Rate reduction for 2022 w/ 1.5% annual increase through 2026**

**EXHIBIT A**

<b>Rate Class</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>
<b>Residential</b>						
Service Availability (\$/Mo)	\$10.00	\$15.00	\$15.15	\$15.30	\$15.45	\$15.60
First 1,000 kWh (\$/kWh)	\$0.12782					
All Excess kWh (\$/kWh)	\$0.12322					
All kWh (\$/kWh)		\$0.10500	\$0.10660	\$0.10820	\$0.10980	\$0.11140
		Reduction 1% to 2.8%	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase
<b>Small Commercial</b>						
1Ø Phase Availability (\$/Mo)	\$10.00	\$15.00	\$15.15	\$15.30	\$15.45	\$15.60
3Ø Phase Availability (\$/Mo)	\$21.00	\$33.00	\$33.33	\$33.66	\$34.00	\$34.50
First 1,400 kWh (\$/kWh)	\$0.12782					
All Excess kWh (\$/kWh)	\$0.12249					
All kWh (\$/kWh)		\$0.1015	\$0.1032	\$0.10475	\$0.1063	\$0.1079
		Avg reduction approx 5%	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase
<b>Large Commercial</b> (75 to 149 kW)						
Service Availability (\$/Mo)	\$175.00	\$200.00	\$202.00	\$204.00	\$206.00	\$209.00
All kW Demand (\$/kW)	\$6.50	\$7.75	\$7.83	\$7.91	\$8.00	\$8.10
All kWh (\$/kWh)	\$0.09248	\$0.06825	\$0.06927	\$0.07031	\$0.07137	\$0.07244
		Avg reduction 4% - 5%	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase
<b>Industrial</b> (150 kW and above)						
Service Availability (\$/Mo)	\$175.00	\$200.00	\$202.00	\$204.00	\$206.00	\$209.00
All kW Demand (\$/kW)	\$7.75	\$7.75	\$7.83	\$7.91	\$8.00	\$8.10
All kWh (\$/kWh)	\$0.08753	\$0.06300	\$0.06395	\$0.06490	\$0.06588	\$0.06687
		Avg reduction 6.5% - 7.5%	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase
<b>Primary w/transformation</b> (300 kW and above)						
Service Availability (\$/Mo)	\$600.00	\$600.00	\$605.00	\$612.50	\$620.00	\$625.00
All kW Demand (\$/kW)	\$8.75	\$7.75	\$7.83	\$7.91	\$8.00	\$8.10
All kWh (\$/kWh)	\$0.08753	\$0.06300	\$0.06395	\$0.06490	\$0.06588	\$0.06687
		Avg reduction 10.5%	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase
<b>Primary wo/transformation</b> (300 kW and above)						
Service Availability (\$/Mo)	\$100.00	\$100.00	\$105.00	\$107.50	\$110.00	\$115.00
All kW Demand (\$/kW)	\$8.75	\$7.75	\$7.83	\$7.91	\$8.00	\$8.10
All kWh (\$/kWh)	\$0.08753	\$0.06300	\$0.06395	\$0.06490	\$0.06588	\$0.06687
		Avg reduction 9% - 10.5%	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase	Approx. 1.5% increase
<b>Private/Security Lighting</b>						
Service Availability (\$/Mo)	\$8.70	\$15.00	\$15.15	\$15.30	\$15.45	\$15.60
		72% increase	Approx. 1% increase	Approx. 1% increase	Approx. 1% increase	Approx. 1% increase

## Revenue / Expense / Unrestricted Reserve Balance

## REVENUE

## SALES/FEES/FINES

Account	Description	Reduction from 2017- 2021 rates						+1.5%	
		2020	2021	2022	2023	2024	2025	2026	2026
01-700-40004	ELECTRIC SALES	\$ 19,688,930	\$ 20,613,586	\$ 17,250,000	\$ 17,508,750	\$ 17,771,381	\$ 18,037,952	\$ 18,308,521	
01-700-40015	CONTRACT REVENUE	1,197,245	-	-	-	-	-	-	
01-700-40030	FUEL COST ADJUSTMENT	(2,346,736)	(2,443,455)	-	-	-	-	-	
01-700-40050	PENALTIES	81,847	127,073	120,000	120,000	121,800	123,627	125,481	
01-700-40100	ELECTRIC METER FEE	23,335	26,465	30,000	30,000	30,450	30,907	31,370	
01-700-40145	ELECTRIC NET METERING	40,398	43,768	35,000	35,000	35,525	36,058	36,599	
01-700-40400	RECONNECT FEE	7,289	12,637	13,000	13,000	13,195	13,393	13,594	
01-700-40405	REMOTE APP FEE	1,720	835	1,200	1,200	1,218	1,236	1,255	
01-700-40420	RETURN CHECK FEES	3,775	3,225	4,000	4,000	4,060	4,121	4,183	
01-700-40450	STREET LIGHTS	34,800	8,703	35,000	35,000	35,525	36,058	36,599	
01-700-40470	UNDERGROUND ELECTRIC	256,072	151,771	175,000	175,000	177,625	180,289	182,994	
01-700-45100	SURPLUS SALES	670	31,420	15,000	15,000	15,225	15,453	15,685	
TOTAL Sales Revenue		\$ 18,989,345	18,576,028	\$ 17,678,200	\$ 17,678,200	\$ 18,206,004	\$ 18,479,094	\$ 18,756,281	

## OTHER

TOTAL Other Revenue	\$ 243,574	\$ 366,682	\$ 75,000	\$ 76,125	\$ 77,267	\$ 78,426	\$ 79,602	
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Grand Total Electric Revenue	\$ 19,232,920	\$ 18,942,710	\$ 17,753,200	\$ 17,754,325	\$ 18,283,271	\$ 18,557,520	\$ 18,835,883	
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## EXPENSE

## PERSONNEL

Total Personnel Expense	\$ 1,595,348	\$ 1,700,075	\$ 1,790,485	\$ 1,834,086	\$ 1,861,597	\$ 1,889,521	\$ 1,917,864	
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## OPERATIONS

01-700-5157503	POWER PURCHASES	11,066,640	11,801,819	11,000,000	11,165,000.00	11,332,475.00	11,502,462.13	11,674,999.06	
Total Operational Expense		\$ 14,673,793	\$ 13,637,906	\$ 13,712,162	\$ 13,737,876	\$ 14,150,012	\$ 14,574,512	\$ 15,011,748	

## CAPITAL

Total Capital Expense	\$ 1,188,060	\$ 1,299,030	\$ 5,667,869	\$ 1,131,500	\$ 765,000	\$ 780,000	\$ 1,000,000	
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## TRANSFERS

Total Transfers Out	\$ 1,430,440	\$ 1,512,650	\$ 1,604,320	\$ 1,639,887	\$ 1,676,333	\$ 1,713,681	\$ 1,751,955	
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Grand Total Electric Expense	\$ 18,887,641	\$ 18,149,661	\$ 22,774,836	\$ 18,343,349	\$ 18,452,942	\$ 18,957,714	\$ 19,681,566	
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Annual Revenue vs Expense + Capital	\$ 345,279	\$ 793,049	\$ (5,021,636)	\$ (589,024)	\$ (169,671)	\$ (400,194)	\$ (845,683)	
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Year End Unrestricted Cash Balance	\$ 13,558,272	\$ 14,351,321	\$ 9,329,685	\$ 8,740,661	\$ 8,570,991	\$ 8,170,797	\$ 7,325,114	
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## Energy Cost Adjustment (ECA)

Beginning in 2023, all Kilowatt Hours (kWh) sold will be subject to an ECA to capture increased wholesale energy cost or, share savings from reduced wholesale energy cost which are above or below the price per kWh predicted by the utility for the first partial year of the rate schedule.

The ECA shall be calculated annually each January for the prior calendar year and any difference, positive or negative, shall be applied to monthly bills beginning in February through January of the next.

The formula to determine each annual adjustment shall be:  $A - B = ECA$

A = The anticipated wholesale power cost predicted by the utility through 2026. This kWh price is developed from actual wholesale energy cost for 12 months, January through December 2021 for actual delivery of all wholesale power to the utility. This price is \$0.0573 per kWh.

B = The actual cost of wholesale power per kWh for each calendar year (2023 through 2025) is calculated by dividing the total wholesale power cost realized by the utility by the total kWh sold to customers.

ECA = Energy Cost Adjustment to be applied to customer bills each month from February through January per kWh billed beginning in February 2023.

As an example:

A customers bill has 1,000 kWh use for a month in 2023. Based on the adopted rate for 2023 the unadjusted bill would be \$121.75 + or – the ECA.

Positive ECA. The average cost of wholesale power per kWh for the year 2022 ended up being \$0.0596. Using the formula above the ECA to be applied to customer bills is \$0.0023 per kWh. This amount would be included in monthly customer bills for the months of February 2023 through January 2024. In the case of 1,000 kWh use as shown above the final adjusted bill would be \$124.05.

Negative ECA. The average cost for the months of 2022 ended up being \$0.0554. Again, using the formula above the ECA for the months of February 2023 through January 2024 would be a credit per kWh of (\$0.0019). In the case of 1,000 kWh used, the final adjusted bill would be \$119.85.

1 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING CHAPTER**  
2 **22, ARTICLE IV, SECTION 22-310 OF THE NIXA CITY CODE TO ESTABLISH NEW**  
3 **RATES FOR ELECTRIC SERVICE.**  
4 \_\_\_\_\_

5  
6 **WHEREAS** the City has maintained its current electric rates since 2017; and  
7

8 **WHEREAS** due to recent changes with wholesale power supply contracts and the  
9 sale of the City's transmission assets, the overall operations and maintenance expenses  
10 related to the electric utility have been reduced; and  
11

12 **WHEREAS** City Council desires to adopt the electric rates contained herein which  
13 would result in a reduction in electric rates for utility customers with annual incremental  
14 increases in said rates.  
15

16 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
17 **NIXA, AS FOLLOWS, THAT:**  
18

19 **SECTION 1:** Chapter 22, Article IV, section 22-310 of the Nixa City Code is hereby  
20 amended by repealing said section in its entirety and adopting in lieu thereof a new  
21 section 22-310, which said section shall read as follows:  
22

23 (Note: Language to be added is indicated by being underlined. Language to be removed  
24 is indicated by being ~~stricken~~.)  
25

26 Sec. 22-310. Rates for electric service.  
27

28 Rates and charges for electric service shall be as established ~~by ordinance~~ as set forth  
29 herein.  
30

31 (a) Residential service rate. The following residential service rate shall only apply to  
32 service to residential dwelling units. No other service rate shall be available for  
33 service to which the residential rate applies. The monthly rates shall be as follows:  
34

35 (1) 2022 residential service rate. Beginning March 1, 2022, the following monthly  
36 rates shall be charged:  
37

38 a. A service availability charge of \$15.00 per month shall be assessed for the  
39 provision of this type of electric service.  
40

41 b. The monthly rate per kilowatt-hour for residential service shall be \$0.10500.  
42

43 (2) 2023 residential service rate. Beginning January 1, 2023, the following monthly  
44 rates shall be charged:  
45

a. A service availability charge of \$15.15 per month shall be assessed for the provision of this type of electric service.

b. The monthly rate per kilowatt-hour for residential service shall be \$0.10660.

(3) 2024 residential service rate. Beginning January 1, 2024, the following monthly rates shall be charged:

a. A service availability charge of \$15.30 per month shall be assessed for the provision of this type of electric service.

b. The monthly rate per kilowatt-hour for residential service shall be \$0.10820.

(4) 2025 residential service rate. Beginning January 1, 2025, the following monthly rates shall be charged:

a. A service availability charge of \$15.45 per month shall be assessed for the provision of this type of electric service.

b. The monthly rate per kilowatt-hour for residential service shall be \$0.10980.

(5) 2026 residential service rate. Beginning January 1, 2026, the following monthly rates shall be charged:

a. A service availability charge of \$15.60 per month shall be assessed for the provision of this type of electric service.

b. The monthly rate per kilowatt-hour for residential service shall be \$0.11140.

(b) Small commercial rate. The following small commercial service rate shall only apply to small commercial customers. Small commercial customers are defined as non-residential business electric consumers who obtain their electric service via single-phase or three-phase and whose demand for electric power is less than 75 kilowatts. No other service rate shall be available for service to which the small commercial rate applies. The monthly rates shall be as follows:

(1) 2022 small commercial service rate. Beginning March 1, 2022, the following monthly rates shall be charged:

a. A service availability charge of \$15.00 per month shall be assessed for the provision of a single-phase electric service of this type.

b. A service availability charge of \$33.00 per month shall be assessed for the provision of a three-phase electric service of this type.



c. The monthly rate per kilowatt-hour for small commercial service shall be \$0.1015.

(2) 2023 small commercial service rate. Beginning January 1, 2023, the following monthly rates shall be charged:

a. A service availability charge of \$15.15 per month shall be assessed for the provision of single-phase electric service of this type.

b. A service availability charge of \$33.33 per month shall be assessed for the provision of three-phase electric service of this type.

c. The monthly rate per kilowatt-hour for small commercial service shall be \$0.1032.

(3) 2024 small commercial service rate. Beginning January 1, 2024, the following monthly rates shall be charged:

a. A service availability charge of \$15.30 per month shall be assessed for the provision of single-phase electric service of this type.

b. A service availability charge of \$33.66 per month shall be assessed for the provision of three-phase electric service of this type.

c. The monthly rate per kilowatt-hour for small commercial service shall be \$0.10475.

(4) 2025 small commercial service rate. Beginning January 1, 2025, the following monthly rates shall be charged:

a. A service availability charge of \$15.45 per month shall be assessed for the provision of single-phase electric service of this type.

b. A service availability charge of \$34.00 per month shall be assessed for the provision of three-phase electric service of this type.

c. The monthly rate per kilowatt-hour for small commercial service shall be \$0.1063.

(5) 2026 small commercial service rate. Beginning January 1, 2026, the following monthly rates shall be charged:

a. A service availability charge of \$15.60 per month shall be assessed for the provision of single-phase electric service of this type.

b. A service availability charge of \$34.50 per month shall be assessed for the provision of three-phase electric service of this type.

c. The monthly rate per kilowatt-hour for small commercial service shall be \$0.1079.

(c) Large commercial rate. The following large commercial service rate shall only apply to service to large commercial customers. Large commercial customers are defined as non-residential business electric consumers whose demand for electric power is 75 kilowatts or more but less than 150 kilowatts. No other service rate shall be available for service to which the large commercial rate applies. The monthly rates shall be as follows:

(1) 2022 large commercial service rate. Beginning March 1, 2022, the following monthly rates shall be charged:

a. A service availability charge of \$200.00 per month shall be assessed for the provision of electric service of this type.

b. A demand charge shall be assessed at a rate of \$7.75 per kilowatt based on the highest 15-minute average usage recorded on the demand meter during the month.

c. The monthly rate per kilowatt-hour for large commercial service shall be \$0.06825.

(2) 2023 large commercial service rate. Beginning January 1, 2023, the following monthly rates shall be charged:

a. A service availability charge of \$202.00 per month shall be assessed for the provision of electric service of this type.

b. A demand charge shall be assessed at a rate of \$7.83 per kilowatt based on the highest 15-minute average usage recorded on the demand meter during the month.

c. The monthly rate per kilowatt-hour for large commercial service shall be \$0.06927.

(3) 2024 large commercial service rate. Beginning January 1, 2024, the following monthly rates shall be charged:

a. A service availability charge of \$204.00 per month shall be assessed for the provision of electric service of this type.

b. A demand charge shall be assessed at a rate of \$7.91 per kilowatt based on the highest 15-minute average usage recorded on the demand meter during the month.

c. The monthly rate per kilowatt-hour for large commercial service shall be \$0.07031.

(4) 2025 large commercial service rate. Beginning January 1, 2025, the following monthly rates shall be charged:

a. A service availability charge of \$206.00 per month shall be assessed for the provision of electric service of this type.

b. A demand charge shall be assessed at a rate of \$8.00 per kilowatt based on the highest 15-minute average usage recorded on the demand meter during the month.

c. The monthly rate per kilowatt-hour for large commercial service shall be \$0.07137.

(5) 2026 large commercial service rate. Beginning January 1, 2026, the following monthly rates shall be charged:

a. A service availability charge of \$209.00 per month shall be assessed for the provision of electric service of this type.

b. A demand charge shall be assessed at a rate of \$8.10 per kilowatt based on the highest 15-minute average usage recorded on the demand meter during the month.

c. The monthly rate per kilowatt-hour for large commercial service shall be \$0.07244.

(d) Industrial rate. The following industrial service rate shall only apply to service to industrial customers. Industrial customers are defined as non-residential business electric consumers whose normal demand for electric power is 150 kilowatts or more but less than 300 kilowatts. No other service rate shall be available for service to which the industrial rate applies. The monthly rates shall be as follows:

(1) 2022 industrial service rate. Beginning March 1, 2022, the following monthly rates shall be charged:

a. A service availability charge of \$200.00 per month shall be assessed for the provision of electric service of this type.

b. A demand charge shall be assessed at a rate of \$7.75 per kilowatt based on the highest 15-minute average usage recorded on the demand meter during the month.

c. The monthly rate per kilowatt-hour for industrial service shall be \$0.06300.

(2) 2023 industrial service rate. Beginning January 1, 2023, the following monthly rates shall be charged:

a. A service availability charge of \$202.00 per month shall be assessed for the provision of electric service of this type.

b. A demand charge shall be assessed at a rate of \$7.83 per kilowatt based on the highest 15-minute average usage recorded on the demand meter during the month.

c. The monthly rate per kilowatt-hour for industrial service shall be \$0.06395.

(3) 2024 industrial service rate. Beginning January 1, 2024, the following monthly rates shall be charged:

a. A service availability charge of \$204.00 per month shall be assessed for the provision of electric service of this type.

b. A demand charge shall be assessed at a rate of \$7.91 per kilowatt based on the highest 15-minute average usage recorded on the demand meter during the month.

c. The monthly rate per kilowatt-hour for industrial service shall be \$0.06490.

(4) 2025 industrial service rate. Beginning January 1, 2025, the following monthly rates shall be charged:

a. A service availability charge of \$206.00 per month shall be assessed for the provision of electric service of this type.

b. A demand charge shall be assessed at a rate of \$8.00 per kilowatt based on the highest 15-minute average usage recorded on the demand meter during the month.

c. The monthly rate per kilowatt-hour for industrial service shall be \$0.06588.

(5) 2026 industrial service rate. Beginning January 1, 2026, the following monthly rates shall be charged:

- 271       a.   A service availability charge of \$209.00 per month shall be assessed for the  
272       provision of electric service of this type.
- 273
- 274       b.   A demand charge shall be assessed at a rate of \$8.10 per kilowatt based  
275       on the highest 15-minute average usage recorded on the demand meter  
276       during the month.
- 277
- 278       c.   The monthly rate per kilowatt-hour for industrial service shall be \$0.06687.  
279
- 280   (e) Primary with transformation rate. The following primary rate shall only apply to  
281   service to industrial customers metered at primary voltage with demand above 300  
282   kilowatts and who require the utility to provide transformer service. No other  
283   service rate shall be available for service to which the primary with transformation  
284   rate applies. The monthly rates shall be as follows:
- 285
- 286   (1) 2022 primary with transformation rate. Beginning March 1, 2022, the following  
287   monthly rates shall be charged:
- 288
- 289       a.   A service availability charge of \$600.00 per month shall be assessed for the  
290       provision of electric service of this type.
- 291
- 292       b.   A demand charge shall be assessed at a rate of \$7.75 per kilowatt based  
293       on the highest 15-minute average usage recorded on the demand meter  
294       during the month.
- 295
- 296       c.   The monthly rate per kilowatt-hour for primary with transformation service  
297       shall be \$0.06300.
- 298
- 299   (2) 2023 primary with transformation rate. Beginning January 1, 2023, the following  
300   monthly rates shall be charged:
- 301
- 302       a.   A service availability charge of \$605.00 per month shall be assessed for the  
303       provision of electric service of this type.
- 304
- 305       b.   A demand charge shall be assessed at a rate of \$7.83 per kilowatt based  
306       on the highest 15-minute average usage recorded on the demand meter  
307       during the month.
- 308
- 309       c.   The monthly rate per kilowatt-hour for primary with transformation service  
310       shall be \$0.06395 shall be charged for the hourly consumption of electricity.
- 311
- 312   (3) 2024 primary with transformation rate. Beginning January 1, 2024, the following  
313   monthly rates shall be charged:
- 314

- 315       a. A service availability charge of \$612.50 per month shall be assessed for the  
316       provision of electric service of this type.  
317  
318       b. A demand charge shall be assessed at a rate of \$7.91 per kilowatt based  
319       on the highest 15-minute average usage recorded on the demand meter  
320       during the month.  
321  
322       c. The monthly rate per kilowatt-hour for primary with transformation service  
323       shall be \$0.06490.  
324

325       (4) 2025 primary with transformation rate. Beginning January 1, 2025, the following  
326       monthly rates shall be charged:  
327

- 328       a. A service availability charge of \$620.00 per month shall be assessed for the  
329       provision of electric service of this type.  
330  
331       b. A demand charge shall be assessed at a rate of \$8.00 per kilowatt based  
332       on the highest 15-minute average usage recorded on the demand meter  
333       during the month  
334  
335       c. The monthly rate per kilowatt-hour for primary with transformation service  
336       shall be \$0.06588.  
337

338       (5) 2026 primary with transformation rate. Beginning January 1, 2026, the following  
339       monthly rates shall be charged:  
340

- 341       a. A service availability charge of \$625.00 per month shall be assessed for the  
342       provision of electric service of this type.  
343  
344       b. A demand charge shall be assessed at a rate of \$8.10 per kilowatt based  
345       on the highest 15-minute average usage recorded on the demand meter  
346       during the month.  
347  
348       c. The monthly rate per kilowatt-hour for primary with transformation service  
349       shall be \$0.06687.  
350

351       (f) Primary without transformation. The following primary rate shall be available only to  
352       industrial customers metered at the primary voltage (7,200v) with typical demand  
353       above 300Kw and, who own their transformation facilities. No other service rate shall  
354       be available for service to which the primary without transformation rate applies. The  
355       monthly rates shall be as follows:  
356

357       (1) 2022 primary without transformation rate. Beginning March 1, 2022, the following  
358       monthly rates shall be charged:  
359

- 360        a. A service availability charge of \$100.00 per month shall be assessed for the  
361        provision of electric service of this type.
- 362
- 363        b. A demand charge shall be assessed at a rate of \$7.75 per kilowatt based  
364        on the highest 15-minute average usage recorded on the demand meter  
365        during the month.
- 366
- 367        c. The monthly rate per kilowatt-hour for primary without transformation  
368        service shall be \$0.06300.
- 369

370        (2) 2023 primary without transformation rate. Beginning January 1, 2023, the  
371        following monthly rates shall be charged:

372

- 373        a. A service availability charge of \$105.00 per month shall be assessed for the  
374        provision of electric service of this type.
- 375
- 376        b. A demand charge shall be assessed at a rate of \$7.83 per kilowatt based  
377        on the highest 15-minute average usage recorded on the demand meter  
378        during the month.
- 379
- 380        c. The monthly rate per kilowatt-hour for primary without transformation  
381        service shall be \$0.06395.
- 382

383        (3) 2024 primary without transformation rate. Beginning January 1, 2024, the  
384        following monthly rates shall be charged:

385

- 386        a. A service availability charge of \$107.50 per month shall be assessed for the  
387        provision of electric service of this type.
- 388
- 389        b. A demand charge shall be assessed at a rate of \$7.91 per kilowatt based  
390        on the highest 15-minute average usage recorded on the demand meter  
391        during the month.
- 392
- 393        c. The monthly rate per kilowatt-hour for primary without transformation  
394        service shall be \$0.06490.
- 395

396        (4) 2025 primary without transformation rate. Beginning January 1, 2025, the  
397        following monthly rates shall be charged:

398

- 399        a. A service availability charge of \$110.00 per month shall be assessed for  
400        the provision of electric service of this type.
- 401
- 402        b. A demand charge shall be assessed at a rate of \$8.00 per kilowatt based  
403        on the highest 15-minute average usage recorded on the demand meter  
404        during the month.
- 405



- c. The monthly rate per kilowatt-hour for primary without transformation service shall be \$0.06588.

(5) 2026 primary without transformation rate. Beginning January 1, 2026, the following monthly rates shall be charged:

- a. A service availability charge of \$115.00 per month shall be assessed for the provision of electric service of this type.
- b. A demand charge shall be assessed at a rate of \$8.10 per kilowatt based on the highest 15-minute average usage recorded on the demand meter during the month.
- c. The monthly rate per kilowatt-hour for primary without transformation service shall be \$0.06687.

(g) Private or security lighting. The following private security lighting rate shall apply for each private security light provided to the customer. The monthly rates shall be as follows:

- (1) 2022 private security lighting rate. Beginning March 1, 2022, for service availability, a charge of \$15.00 per month shall be assessed.
- (2) 2023 private security lighting rate. Beginning January 1, 2023, for service availability, a charge of \$15.15 per month shall be assessed.
- (3) 2024 private security lighting rate. Beginning January 1, 2024, for service availability, a charge of \$15.30 per month shall be assessed.
- (4) 2025 private security lighting rate. Beginning January 1, 2025, for service availability, a charge of \$15.45 per month shall be assessed.
- (5) 2026 private security lighting rate. Beginning January 1, 2026, for service availability, a charge of \$15.60 per month shall be assessed.

(h) Energy Cost Adjustment. Effective January 1, 2023, the kilowatt-hour rates established in this section shall be subject to the energy cost adjustment authorized by this subsection.

- (1) The Energy Cost Adjustment ("ECA") shall be calculated annually for the prior calendar year. Any difference from the base wholesale energy cost rate shall be applied monthly to electric utility bills beginning in February through January of the next calendar year for each kilowatt-hour used.
- (2) The method to be utilized to calculate the ECA adjustment shall be the difference between the anticipated wholesale power cost through 2026 and the actual cost



452 of wholesale power cost per kilowatt-hour for each calendar year from 2023  
453 through 2025.

454  
455 (3) The anticipated wholesale power cost is determined by the actual cost of  
456 wholesale energy costs for the 12 months from January 2021 through December  
457 2021 for the actual delivery of all wholesale power to the electric utility.

458  
459 (4) The actual cost of wholesale power per kilowatt-hour for each calendar year from  
460 2023 through 2025 shall be calculated by dividing the total wholesale power cost  
461 realized by the electric utility by the total kilowatt-hours sold.

462  
463 **SECTION 2:** The City Attorney, when codifying the provisions of this Ordinance, is  
464 authorized to provide for different section numbers, subsection numbers, and different  
465 internal citation references than those provided herein when such section numbers,  
466 subsection numbers, or internal citation references are in error or are contrary to the intent  
467 of this Ordinance.

468  
469 **SECTION 3:** Savings Clause. Nothing in this Ordinance shall be construed to  
470 affect any suit or proceeding now pending in any court or any rights acquired, or liability  
471 incurred nor any cause or causes of action occurred or existing, under any act or  
472 ordinance repealed hereby.

473  
474 **SECTION 4:** Severability Clause. If any section, subsection, sentence, clause, or  
475 phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect  
476 the validity of the remaining portions of this Ordinance. The Council hereby declares that  
477 it would have adopted the Ordinance and each section, subsection, sentence, clause, or  
478 phrase thereof, irrespective of the fact that any one or more sections, subsections,  
479 sentences, clauses, or phrases be declared invalid.

480  
481 **SECTION 5:** This Ordinance shall be in full force and effect from and after its final  
482 passage by the City Council and after its approval by the Mayor, subject to the provisions  
483 of section 3.11(g) of the City Charter.

484  
485  
486 **[Remainder of page intentionally left blank. Signatures follow on next page.]**  
487  
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497

**ADOPTED BY THE CITY COUNCIL THIS 14<sup>TH</sup> DAY OF FEBRUARY 2022.**

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

**APPROVED BY THE MAYOR.**

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
DATE OF APPROVAL



**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 administering 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.  
46  
47

**ADOPTED BY THE CITY COUNCIL THIS 14<sup>TH</sup> DAY OF FEBRUARY 2022.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

**APPROVED BY THE MAYOR.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
DATE OF APPROVAL

\_\_\_\_\_  
CITY ATTORNEY

**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

\_\_\_\_\_  
=====



**Issue:** RESOLUTION 2022-021 – NDA AUTHORIZATION

**Date:** February 10, 2022

**Submitted By:** Doug Colvin  
Assistant City Administrator – Director, Nixa Utilities and Public Works

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### Background

The Missouri Joint Municipal Electric Utility Corporation (MJMEUC), the electric corporation arm of the Missouri Public Utility Alliance (MPUA) is in the process of purchasing the 69Kv assets we recently sold to Gridliance. To do this, we are working with their legal counsel and engineering consultant to assist with accurate information about the system and to develop new agreements necessary for operations by both parties. Some of the information that needs to be shared is confidential and/or protected for among other things, security reasons.

### Analysis

Upon the sale of the 69 Kv transmission assets to Gridliance, we entered into agreements with them for certain maintenance functions, how we handled pole attachments, substation rent, etc. These agreements included a Master Services Agreement, Pole Attachment Agreement and Substation Agreement.

Since that time, MJMEUC is working to acquire those assets and has hired TFB Engineering, LLC (TFB) to assist them. The sale process is not exactly amicable between them and TFB has reached out to us for information that Gridliance doesn't seem to have available. The information exchange is necessary for us to develop new, similar, replacement agreements that will come before you in the coming weeks.

Until then, we need to share information which qualifies as proprietary or confidential with TFB Engineering, LLC. Therefore, to do this while simultaneously protecting any confidential or protected information we wish to enter into a Non-Disclosure Agreement (NDA).

The attached Resolution authorizes the City Administrator to execute the attached NDA. The NDA has been reviewed by Mr. Woodman.

### Recommendation

Staff recommendation is to pass Resolution #2022-021.

**RESOLUTION NO. 2022-021**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A NON-DISCLOSURE AGREEMENT WITH TFB ENGINEERING, LLC.**

**WHEREAS** the Missouri Joint Municipal Electric Utility Corporation ("MJMEUC"), is in the process of purchasing the 69Kv electric assets which the City sold to Gridliance; and

**WHEREAS** as part of the due diligence for such acquisition, MJMEUC has been working with the City, through its engineering consultant, TFB Engineering, LLC, to evaluate portions of the 69Kv electric assets; and

**WHEREAS** some of the information held by the City is confidential as it relates to the security of the City's electric distribution system; and

**WHEREAS** to assist with MJMEUC's acquisition of the above referenced electric assets, the City Council desires to enter into a non-disclosure agreement with TFB Engineering, LLC.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:**

**SECTION 1:** The City Administrator, or designee, is hereby authorized to execute the "Non-Disclosure Agreement" ("Contract") attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," with TFB Engineering, LLC. Said Contract shall be in substantially similar form as the document attached hereto as "Resolution Exhibit A." The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

**SECTION 2:** This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**[Remainder of page intentionally left blank. Signatures follow on next page.]**

**RESOLUTION NO. 2022-021**

**ADOPTED BY THE CITY COUNCIL THIS 14<sup>th</sup> DAY OF FEBRUARY 2022.**

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

**APPROVED BY THE MAYOR.**

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
DATE OF APPROVAL

**NON-DISCLOSURE AGREEMENT**

**THIS NON-DISCLOSURE AGREEMENT** ("Agreement"), entered into by and between TFB Engineering, LLC, created and existing under the laws of the State of Missouri and contractor for the Missouri Joint Municipal Electrical Utility Commission ("MJMEUC") a body public an corporate organized and existing under the laws of the State of Missouri (hereinafter collectively referred to as the "Receiving Party"), and the City of Nixa, Missouri a Constitutional Charter City, with its principle office located at 715 W. Mt. Vernon St., Nixa, Missouri 65714 (hereinafter referred to as the "Disclosing Party").

**WHEREAS** the Disclosing Party has developed and/or now possess certain non-public, confidential, and proprietary information; and

**WHEREAS** it may be necessary for the Disclosing Party to expose or submit to the Receiving Party portions of its non-public, confidential, or proprietary information in order for the parties to engage in a business relationship.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration receipt of which is hereby acknowledged, the parties agree as follows:

**1. Confidential Information.** For purposes of this Agreement, "Confidential Information" means all non-public, confidential or proprietary information disclosed before, on or after the Effective Date, relating to the electrical transmission line facilities located in and through the City of Nixa which are being acquired by MJMEUC ("Project") by the Disclosing Party to the Receiving Party whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," or "proprietary" including, without limitation, designs, plans, devices, drawings, mechanisms, specifications, formulations, processes, procedures, methodologies, supplier and customer information, financial data and anything subject to closure under sections 610.010 through 610.035 of the Revised Statutes of Missouri, as amended.

**2. Non-Disclosure Covenant.** Receiving Party, agrees that it shall: (a) not disclose, or permit to be disclosed, any Confidential Information of the Disclosing Party or any information developed therefrom to anyone except those of its affiliates and the officers, employees, representatives or agents of the Receiving Party and its affiliates who are necessary or reasonable to evaluate the same, and that have agreed to be bound by non-disclosure and confidentiality at least as restrictive as the conditions contained herein; (b) treat all of the Disclosing Party's Confidential Information with the same degree of care as the Receiving Party accords to the Receiving Party's own confidential information, but in no case will the Receiving Party use less than reasonable care; (c) not make use of the Confidential Information of the Disclosing Party or any information developed therefrom, except to the extent necessary to fulfill its obligations under this Agreement or any other written agreement between the parties; and (d) only correspond on matters relating to the Project with employees or representatives of the Disclosing Party that have been identified by the Disclosing Party as working on the Project. The Receiving Party shall be responsible for any unauthorized disclosure or use of the Confidential Information by its affiliates, officers, employees, representatives, or agents.

Notwithstanding the foregoing, if the Receiving Party becomes compelled to disclose any Confidential Information of the Disclosing Party pursuant to a court or administrative order, legal process, law, or regulation, such disclosure shall not be deemed a breach of the terms and conditions set forth herein, provided that the Receiving Party promptly notifies the Disclosing Party before such disclosure in order to allow the Disclosing Party opportunity to seek a protective order or other judicial or regulatory relief. In the event of such disclosure, the Receiving Party shall disclose no more than that portion of the

Disclosing Party's Confidential Information which is specifically required to be disclosed by such court or administrative order, legal process, law or regulation.

**3. Remedies.** The parties agree that money damages for any and all breaches of this Agreement are both incalculable and insufficient and that any such breach would irreparably harm the Disclosing Party. As such, in the event of an actual or prospective breach of this Agreement by the Receiving Party, the Disclosing Party shall be entitled to a permanent and/or a preliminary injunction to prevent or remedy such breach and shall have the right of specific enforcement against the Receiving Party in addition to any other remedies to which the Disclosing Party may be entitled at law or in equity.

**4. Return or Destruction of Confidential Information.** Upon expiration or termination of this Agreement, or at any time upon the request of the Disclosing Party, the Receiving Party shall immediately return or destroy all Confidential Information and any information developed therefrom or copies thereof. Except for those documents required to be held by the Receiving Party pursuant to the Missouri Secretary of State's document retention requirements or any other provision of law.

**5. No Representations or Warranties.** The Confidential Information is provided "AS IS" and the Disclosing Party makes no representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information. The Disclosing Party shall not be liable to the Receiving Party relating to or resulting from the Receiving Party's use of any of the Confidential Information or any errors or omissions therefrom.

**6. Ownership of Confidential Information.** The Receiving Party hereby acknowledges that all Confidential Information disclosed to it and any information developed therefrom is owned solely by the Disclosing Party, shall remain the exclusive property of the Disclosing Party. Nothing in this Agreement, nor any action taken by either party shall be construed to convey to the Receiving Party any right, title or interest in the Disclosing Party's Confidential Information, or any license to use (except as expressly stated herein), sell, exploit, copy or further develop in any way any of the Confidential Information. No license is granted or implied under any patent, copyright or trademark, any application for any of the foregoing, or any trade name, trade secret or other proprietary information, in which the Disclosing Party has any right, title or interest. The Receiving Party shall use or cause the Disclosing Party's Confidential Information to be used only in a manner consistent with the terms and conditions of this Agreement.

**7. Term; Termination; and Survival.** The term of this Agreement shall commence on the Effective Date. Notwithstanding anything to the contrary herein, the Receiving Party's obligations of non-disclosure and restrictions on use shall survive termination of this Agreement and shall continue in perpetuity.

**8. No Other Obligation.** The Receiving Party acknowledges that: (a) this Agreement does not require or compel the Disclosing Party to disclose any Confidential Information to the Receiving Party; (b) neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein; and (c) either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Project.

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

To the Disclosing Party at: 715 W. Mt. Vernon St., Nixa, Missouri 65714

To the Receiving Party at: Healy Law Offices, 3010 E. Battlefield, Suite A, Springfield, MO 65804

**10. Waiver; Severability.** No waiver by either party of any breach, default, or violation of any term, warranty, representation, covenant, condition, or provision of this Agreement shall constitute a waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, covenant, condition, or provision. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**11. Assignment.** The Receiving Party may not assign any of its rights hereunder without the prior written consent of the Disclosing Party. Any purported assignment in violation of this Section shall be void. No assignment shall relieve the assigning party of any of its obligations. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express, or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**12. Entire Agreement and Amendment.** This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous agreements concerning such Confidential Information, written or oral. This Agreement may not be modified or amended unless in writing, signed by a duly authorized representative of both parties.

**13. 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.


**14. Governing Law and Dispute Resolution.** This Agreement shall be governed by and construed according to the laws of the State of Missouri. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal or state courts located in or having jurisdiction in the County of Christian, State of Missouri, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

**WHEREFORE,** the parties have duly executed this Agreement on the dates provided below.

**CITY OF NIXA, MISSOURI**

**TFB ENGINEERING, LLC**

By: \_\_\_\_\_  
Jimmy Liles, City Administrator

By: \_\_\_\_\_  
Brent McKinney, Principal

Date: \_\_\_\_\_

Date: 1/25/2022

Approved as to form:





**Issue:** RESOLUTION #2022-022 – TREE TRIMMING CONTRACTOR

**Date:** February 10, 2022

**Submitted By:** Doug Colvin  
Assistant City Administrator – Director, Nixa Utilities and Public Works

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### Background

Nixa Electric utilizes certified tree trimming contractors to assist with vegetation control around overhead power lines. The most recent contract expired at the end of 2021 and a new contract is needed for continued operations.

Following the 2007 and 2008 Ice Storms - Nixa Electric began using certified tree trimming contractors to assist the utility with clearing power lines of limbs. Using certified contractors has become vital for the utility to keep a high level of reliability across the electric distribution system. In addition to raising reliability, using a contractor with certified arborist adds a level of confidence for both the utility and the customers. Customer support for tree trimming operations is as high as it's ever been.

The program, as well as the cost to support it has increased over the years from a very limited amount in the early years costing around \$50,000, to a much larger program today with budget authorization of \$350,000 in 2022. Funds for the program are used for tree trimming and tree removal associated with overhead lines as well as vegetation management (mowing and spraying) in rights-of-way and easements. A smaller part of the program includes other related items such as treatments against Emerald Ash Borer in Nixa parks and a limited tree voucher program. This program is used to replace some customer-owned qualifying trees that have been removed from private property near or growing into power line to locations away from the lines.

### Analysis

Staff solicited proposals for tree trimming and line clearing from the public. The successful bidder would be contracted for a period of three years with the potential for two additional 1-year periods. Bids are received for an hourly cost basis for personnel and equipment. In addition to other responsibilities, our in-house three trimmer/certified arborist meets with customers prior to any work, develops work orders and provides daily oversight of the contract work assuring quality and proper cleanup.

Only two proposals were received, one each from Ark-O-Mo and Rumfelt Tree Service. Both have been reviewed and ranked by staff. Rumfelt Tree Service submitted the best qualified proposal. Rumfelt Tree Service happens to be the same company with the recently expired contract. The company has worked for Nixa Utilities for several years and is highly qualified to complete tree trimming operations around overhead high voltage power lines. All company personnel are responsible and work very well with our customers.

The attached Resolution #2022-022 authorizes the City Administrator to execute a contract with Rumfelt Tree Service.

### Recommendation

Staff recommends passage of Resolution #2022-022.

**RESOLUTION NO. 2022-022**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH RUMFELT TREE SERVICE FOR VEGETATION MANAGEMENT SERVICES.**

**WHEREAS** the City's electric utility utilizes contractors to assist with vegetation management and control around the City's powerlines and overhead utilities; and

**WHEREAS** City staff have solicited proposals for vegetation management services (FFP-055-2021/E); and

**WHEREAS** after evaluating all submitted proposals, staff have recommended Rumfelt Tree Service as the most qualified firm; and

**WHEREAS** the City Council desires to contract with Rumfelt Tree Services for vegetation management services.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:**

**SECTION 1:** The City Administrator, or designee, is hereby authorized to execute the "Professional Services Contract" ("Contract") attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," with Rumfelt Tree Service. Said Contract shall be in substantially similar form as the document attached hereto as "Resolution Exhibit A." The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

**SECTION 2:** This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**[Remainder of page intentionally left blank. Signatures follow on next page.]**

**RESOLUTION NO. 2022-022**

**ADOPTED BY THE CITY COUNCIL THIS 14<sup>th</sup> DAY OF FEBRUARY 2022.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

**APPROVED BY THE MAYOR.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
DATE OF APPROVAL

**RESOLUTION EXHIBIT A**

**PROFESSIONAL SERVICES CONTRACT**

**THIS PROFESSIONAL SERVICES CONTRACT** ("Agreement") by and between Rumfelt Tree Service, a ("Contractor") and the City of Nixa, a Constitutional Charter City of the State of Missouri ("City"), is made and entered into upon the date of execution of the Agreement by all parties.

**WHEREAS** City issued a Request for Proposals (RFP-055-2021/E) for professional services related to providing certain services to the City; and

**WHEREAS** Contractor has submitted a proposal in response to said RFP; and

**WHEREAS** after due consideration, the City has accepted the proposal of the Contractor; and

**WHEREAS** City and Contractor desire to enter into this Agreement whereby the Contractor shall undertake the performance of the services contemplated herein.

**NOW, THEREFORE**, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth, the City and the Contractor hereby agree as follows:

**1) Contract Documents:** This Agreement shall consist of the following documents, attachments, and exhibits:

- a. This Executed Agreement
- b. RFP-055-2021/E, and any addenda (Exhibit A)
- c. Fee Schedule (Exhibit B)

The Agreement shall also include any Exhibits incorporated by reference in the above-described documents. When any provisions of the Contract Documents conflict, the provision contained in RFP-055-2021/E shall control, followed by the Executed Agreement, then the Contractor's Schedule of Fees.

**2) Term:** The term of this Agreement shall be for a period of Three (3) years. The agreement may be extended for two (2) additional one-year extensions, beginning on the date of execution by both parties.

**3) Scope of Services:** The City agrees to engage the services of the Contractor and the Contractor agrees to perform the services hereinafter set forth in Exhibit A with the standard of care, skill, and expertise ordinarily used by other members of Contractor's profession in performing similar services.

Contractor represents and warrants that it is equipped, competent, and able to perform, and that it will perform all services hereinafter set forth in a diligent and competent manner in accordance with the professional standard of care customarily recognized by members of the Contractor's profession.

Contractor shall provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the services which are particularly described as set forth in RFP-055-2021/E (the "Services").

All Services shall be performed and provided in conformance with all applicable policies of the City, and all applicable federal and state laws and regulations.

The City, upon agreement of the Contractor may add Services to the Scope of Services. Such added Services shall be evidence by a written instrument signed by both parties. The City may delete items from the Scope of Services at any time and at the sole discretion of the City.

**4) Compensation:** The City hereby agrees to pay the Contractor, as full compensation for the complete and satisfactory performance of this Agreement such amounts as are set forth in the Contractor's Schedule of Fees, said Schedule being attached hereto and incorporated by this reference as "**Exhibit A.**"

**5) Attorney Fees' and Costs:** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity, or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

**6) Other Representations, Warranties, and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided Services such as the ones to be performed under this Agreement to other municipalities or private enterprises and that the Contractor has sufficient expertise, knowledge, information, and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer.

**7) Amendment; Waiver:** No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

**8) Contractor's Liability Insurance:** The Contractor shall obtain and maintain during the term of this Agreement the insurance coverage's not less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo., as said section may be amended. Insurance policies providing the required coverages shall be with companies licensed to do business in the State of Missouri. All costs of obtaining and maintaining insurance coverages shall be borne by the Contractor.

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for the term of this Agreement.

Policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished to the City prior to Contractor commencing the Services. The certificates must list the City as an additional insured on a primary and non-contributory basis. Certificate Holder shall be listed as "City of Nixa, 715 W. Mt. Vernon, PO Box 395, Nixa MO 65714". The certificate shall bear an endorsement precluding cancellation of or change in coverage without at least thirty days written notice to the City.

## **9) Termination**

- a. Termination for breach:** Failure of the Contractor to fulfill any of Contractor's obligations under this Agreement in a timely and satisfactory manner shall constitute breach of this Agreement. The City shall thereupon have the right to immediately terminate this Agreement with sufficient notice. The City shall give written notice of the termination to the Contractor.

- b. Termination for Convenience:** The City shall have the right at any time to give sufficient written notice to Contractor to terminate and cancel this Agreement, without cause, for the convenience of the City, and Contractor shall immediately stop upon issuance of such notice. In such event, City shall not be liable to Contractor except for the payment for actual work performed prior to such notice.

**10) Notices:** Any notice required to be provided under this Agreement shall be sent via U.S. Mail or via e-mail. Notices shall be effective when received at the address as specified below. All such notices shall be sent to each party at the address below, or to such other address as designated by such party, in writing:

IF TO THE CITY:                      City of Nixa  
   ATTN: Stephanie Ewing, Purchasing Manager  
   PO Box 395  
   Nixa, MO 65714  
   E-mail: [sewing@nixa.com](mailto:sewing@nixa.com)

IF TO CONTRACTOR:              Name & Title: \_\_\_\_\_  
   Company Legal Name: \_\_\_\_\_  
   Address: \_\_\_\_\_  
   Email: \_\_\_\_\_

**11) Severability:** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

**12) Independent Contractor:** Contractor shall be and operate as an independent contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of the Contractor and shall not be deemed employees of the City in any respect.

**13) Compliance with Laws:** Contractor shall comply with all applicable City Ordinances and all other applicable laws and regulations, whether State or Federal, including without limitation, unemployment and workers' compensation, occupational safety, equal employment, and wage and price laws, insofar as applicable to the performance of this Agreement.

**14) Subcontracts and Assignment:** The Contractor shall not subcontract or assign any of the Services to be performed by it hereunder without the express written consent of the City. In the event Contractor utilizes a subcontractor, the Contractor shall ensure that any agreement between Contractor and such subcontractor complies with all requirements imposed for such agreement by federal, state, and local law.

**15) Indemnification:** 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.

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 Agreement, or the work or any subcontract

thereunder (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 Agreement to Contractor.

Firm 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.

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.

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.

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.

Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

**16) Nondisclosure and Confidentiality:** The Contractor agrees that it will preserve the confidentiality of all City data and account information and will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

**17) Multi-year contracts and Non-appropriation.** Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Non- appropriation"), this Agreement shall terminate at the end of the then current fiscal year as if terminated expressly and mutually by both parties. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party.

**18) Accounting:** During the term of this Agreement, the Contractor shall maintain books and accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

**19) Other Contractors:** Nothing in this Agreement shall be construed as prohibiting the City from contracting with other Contractors to provide any of the Services provided for herein.

**20) Work Records and Work Product:** The Contractor shall provide the City with copies of all documents pertinent to the Services which shall include, without limitation, reports, correspondence,

meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Agreement. The Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. Upon termination of this Agreement, the Contractor shall promptly deliver to City any documents, and work product, whether printed or electronic.

**21) Compliance with Immigration Statutes:** Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.

**22) Governing Law and Jurisdiction:** This Agreement and every question arising hereunder shall be construed and determined according to the laws of the State of Missouri. Should any part of this Agreement be litigated, venue shall be proper only in Christian County, Missouri.

**23) Discrimination:** Contractor agrees that, in the performance of this Agreement, not to discriminate on the ground 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 a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**24) Entire Agreement:** This Agreement, including the Exhibit A, shall constitute 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 and specifically referring hereto.

**25) City's Representative:** The City Administrator is hereby designated as the City's authorized representative for purposes of this Agreement. The City Administrator is charged with providing any approvals and exercising any rights of the City under this Agreement, including the approval of any renewal terms contemplated herein.

**(Remainder of page intentionally blank. Signature page to follow.)**



**Jennifer Evans, Director of Finance**



**RFP-055-2021/E**

**Vegetation Management/Tree Removal**

Issue Date: 12/20/2021

Questions Deadline: 12/30/2021 04:00 PM (CT)

Response Deadline: 1/7/2022 10:00 AM (CT)

**Contact Information**

Contact: Stephanie Ewing

Address: Public Works

1111 Kathryn Street

Nixa, MO 65714

## Event Information

Number: RFP-055-2021/E  
Title: Vegetation Management/Tree Removal  
Type: Request for Proposal  
Issue Date: 12/20/2021  
Question Deadline: 12/30/2021 04:00 PM (CT)  
Response Deadline: 1/7/2022 10:00 AM (CT)  
Notes: The City of Nixa is issuing a Request for Proposal for the procurement of Vegetation Management and Tree Removal.

The City highly encourages electronic submissions via this online bidding system as it expedites the process and helps to alleviate errors.

Paper bids will still be accepted. Bids must be delivered by the stated close date and time.

Public opening of bid responses will take place at the stated close date and time at:

City of Nixa  
Public Works  
1111 Kathryn St.  
Nixa, MO 65714

Questions can be submitted through this electronic bidding system.

The City of Nixa reserves the right to accept or refuse any or all bids.

## Ship To Information

Contact: Brian Denney  
Address: Electric  
1111 Kathryn Street  
Nixa, MO 65714  
Phone: (417) 725-2353

## Billing Information

Address: 715 W. Mt. Vernon Street  
PO Box 395  
Nixa, MO 65714  
Phone: (417) 725-2353

## Bid Attachments

### Scope of Work-Tree Trimming RFP 2022.pdf

Scope of Work/RFP Requirements

[View Online](#)

### Terms and Conditions-Tree Trimming RFP 2022.pdf

Terms and Conditions

[View Online](#)

### Sample Work Order-Daily Log.pdf

Sample Work Order

[View Online](#)

### Contract for Tree Trimming RFP 2022.pdf

Sample Contract

[View Online](#)

E-Verify

## Requested Attachments

### Sample Detailed Daily Work Log

(Attachment required)

Please upload a sample of your daily work log

### E-Verify

(Attachment required)

Please download the "Affidavit of Business Entity", located on the Attachment tab. Complete the document and upload it here.

### No Response Form

Please download the "No Response Form", located on the Attachment tab. Complete the document and upload it here.

### Other Attachment

If you have additional documentation you wish to provide, please upload it here. File size limitation is 250MB. If your files are larger than the limitation, a zip file containing the documents can also be uploaded.

## Bid Attributes

### 1 Introduction

There are attributes, including this one, associated with this proposal. Some are notes and require no response, but most have a required response. \*\*Please select each page on the right-hand side of the blue bar below (at the bottom of this list of attributes) in order to view the next page of Bid Attributes\*\*

### 2 Attachments Required

Be sure to upload all required documents and forms to the "Response Attachments" Tab.

### 3 RFP Submission Response

The City of Nixa prefers responses to be submitted online via our electronic system. Submissions may be submitted manually. Manual submissions must be delivered to the Purchasing Department, in a sealed envelope by the date and time stated. No fax or email submissions will be accepted. Only one format is needed. Manual submission shall consist of one (1) original hard copy. For any questions, please contact the Purchasing Department at 417.449.0555.

### 4 Scope of Work

Download the Scope of Work, located on the "Attachments" tab. Thoroughly review and indicate below.

☐ I have downloaded, read and agree.

(Required: Check if applicable)

### 5 General Terms and Conditions

Download the General Terms and Conditions, located on the "Attachments" tab. Thoroughly review and indicate below.

☐ I have downloaded, read and agree.

(Required: Check if applicable)

**6 Proposal Opening**

Any proposal received later than the specified time shall be disqualified.

Questions pertaining to the proposal should be addressed in the Questions Tab or directly to the Purchasing Department at 417.449.0555.

If the City of Nixa office where bids/proposals are to be submitted is closed due to inclement weather, natural disaster, or for any other cause including if the electronic bid system is unavailable on the due date, the deadline for submission shall be extended until the next City calendar business day, unless the bidder is otherwise notified. The time of day for submission shall remain the same.

**7 Section 2**

**PROPOSAL REQUIREMENTS**

The following items require an answer

**8 Evaluation of Proposals**

Designated City of Nixa staff will evaluate all proposals submitted and compare them to the evaluation factors to determine professional qualification(s) to fulfill the needs of the City of Nixa. Proposals will be scored according to the scoring legend below.

Proposal evaluation factors to be considered are:

Knowledge of the City of Nixa and their utility services-15 points

Scope of services offered- 20 points

Cost of services- 30 points

Relevant experience with services for public sector and/or large commercial clients- 25 points

References- 10 points

Total: 100 points

The City of Nixa reserves the right to reject any or all proposals or any part thereof and to accept in whole, or in part, such proposals as may be deemed in the best interest of the City. City staff will recommend City Council award a contract to the bank which best fits the needs of the City.

☐ I acknowledge

(Required: Check if applicable)

**9 Anti-Collusion Statement**

By offering a submission to this Bid, the bidder certifies the bidder has not divulged, discussed, or compared the Bid with other bidders and has not colluded with any other bidder or parties whatsoever. The bidder also certifies, and in the case of a joint Bid, each party thereto certifies as to their own organization, that in connection with this Bid:

Any prices and/or cost data submitted have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices and/or cost data, with any other bidder or with any competitor.

Any prices and/or cost data for this Bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the scheduled opening directly or indirectly to any other bidder or to any competitor.

No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.

The only person or persons interested in this Bid, principal or principals are named therein and that no person other than therein mentioned has any interest in this Bid or in the contract to be entered into.

No person or agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee exempting bona fide employees or established commercial agencies maintained by the Purchaser for the purpose of doing business.

I affirm that I am duly authorized to execute this contract; that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other Bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid.

☐ I agree.

*(Required: Check if applicable)*

**10 No Deviations or Exceptions**

I certify that there are NO deviations or exceptions from the attached specific terms, conditions, and specifications.

☐ [Please select] ☐ Agree - No Deviations ☐ Do Not Agree - Please see below

*(Required: Check only one)*

**11 Deviations and Exceptions**

If your company intends to deviate from the Specifications listed in the attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The City will consider any deviations or exceptions in its bid award decisions. The City reserves the right to accept or reject any proposals based upon any deviations indicated below. If none, please enter N/A (Not Applicable).

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*(Required: Maximum 4000 characters allowed)*

1  
2**Contract Terms**

Please download and review the Sample Contract.  
By checking this box, you agree to accept this Contract as written.

If you do not agree to the terms of this contract, please upload a Contract you would like to be considered in the Response Attachments.

☐ I agree.

(Required: Check if applicable)

**Bid Lines**

1

**35' to 40' Trim Lift (Mini Bucket)**

(Response required)

UOM: Per Hour

Price: \$

Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

Supplier Notes: \_\_\_\_\_

☐ No bid

☐ Additional notes  
(Attach separate sheet)

**Item Attributes****1. Enter the year of the model to be used**

(Required: Numbers only)

**2. Enter the make of the unit to be used.**

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(Required: Maximum 1000 characters allowed)

**3. Enter the model of the unit to be used.**

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(Required: Maximum 1000 characters allowed)

**4. Other type of Equipment**

Please list the type of Equipment you have equivalent, if different than above.

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(Optional: Maximum 75 characters allowed)

2

**55' Trim Lift with Chip Box (Forestry Setup)**

(Response required)

UOM: Per Hour

Price: \$

Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

Supplier Notes: \_\_\_\_\_

☐ No bid

☐ Additional notes  
(Attach separate sheet)

## Item Attributes

### 1. Enter the year of the model to be used

(Required: Numbers only)

### 2. Enter the make of the unit to be used.

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(Required: Maximum 1000 characters allowed)

### 3. Enter the model of the unit to be used.

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(Required: Maximum 1000 characters allowed)

### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

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---

(Optional: Maximum 1000 characters allowed)

## 3 Dump Truck with Chip Box (Forestry Setup)

(Response required)

UOM: Per Hour

Price: \$

Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

Supplier Notes: 

---

- ☐ No bid  
☐ Additional notes  
(Attach separate sheet)

## Item Attributes

### 1. Enter the year of the model to be used

(Required: Numbers only)

### 2. Enter the make of the unit to be used.

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(Required: Maximum 1000 characters allowed)

### 3. Enter the model of the unit to be used.

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(Required: Maximum 1000 characters allowed)



#### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

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(Optional: Maximum 1000 characters allowed)

4

#### 12" Rated Self-Feed Drum or Disc Chipper

(Response required)

UOM: Per Hour

Price: \$

Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

☐ No bid

☐ Additional notes  
(Attach separate sheet)

Supplier Notes: 

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#### Item Attributes

##### 1. Enter the year of the model to be used

(Required: Numbers only)

##### 2. Enter the make of the unit to be used.

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(Required: Maximum 1000 characters allowed)

##### 3. Enter the model of the unit to be used.

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(Required: Maximum 1000 characters allowed)

#### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

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(Optional: Maximum 1000 characters allowed)

5

#### 15" Rated Self-Feed Drum or Disc Chipper with winch

(Response required)

UOM: Per Hour

Price: \$

Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

☐ No bid

☐ Additional notes  
(Attach separate sheet)

Supplier Notes: 

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## Item Attributes

### 1. Enter the year of the model to be used

(Required: Numbers only)

### 2. Enter the make of the unit to be used.

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(Required: Maximum 1000 characters allowed)

### 3. Enter the model of the unit to be used.

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(Required: Maximum 1000 characters allowed)

### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

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(Optional: Maximum 1000 characters allowed)

## 6 Supervisor Vehicle (4x4 - 1/2 ton pick up truck or similar)

(Response required)

UOM: Per Hour

Price: \$

Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

Supplier Notes: 

---

- ☐ No bid  
☐ Additional notes  
(Attach separate sheet)

## Item Attributes

### 1. Enter the year of the model to be used

(Required: Numbers only)

### 2. Enter the make of the unit to be used.

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(Required: Maximum 1000 characters allowed)

### 3. Enter the model of the unit to be used.

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(Required: Maximum 1000 characters allowed)

#### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

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(Optional: Maximum 1000 characters allowed)

#### 7 Mechanical Mower/Grinder-Skid Steer with mulching head (FAE or Fecon or Similar)

(Response required)

UOM: Per Hour Price: \$  Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

☐ No bid  
☐ Additional notes  
(Attach separate sheet)

Supplier Notes:

#### Item Attributes

##### 1. Enter the year of the model to be used

(Required: Numbers only)

##### 2. Enter the make of the unit to be used.

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(Required: Maximum 1000 characters allowed)

##### 3. Enter the model of the unit to be used.

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(Required: Maximum 1000 characters allowed)

#### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

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(Optional: Maximum 1000 characters allowed)

#### 8 Mechanical Mower/Grinder-Skidder with mulching head (FAE or Fecon or Similar)

(Response required)

UOM: Per Hour Price: \$  Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

☐ No bid  
☐ Additional notes  
(Attach separate sheet)

Supplier Notes:

## Item Attributes

### 1. Enter the year of the model to be used

(Required: Numbers only)

### 2. Enter the make of the unit to be used.

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(Required: Maximum 1000 characters allowed)

### 3. Enter the model of the unit to be used.

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(Required: Maximum 1000 characters allowed)

### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

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(Optional: Maximum 1000 characters allowed)

## 9 Mechanical Mower/Grinder Excavator with mulching head

(Response required)

UOM: Per Hour

Price: \$

Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

Supplier Notes: 

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- ☐ No bid  
☐ Additional notes  
(Attach separate sheet)

## Item Attributes

### 1. Enter the year of the model to be used

(Required: Numbers only)

### 2. Enter the make of the unit to be used.

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(Required: Maximum 1000 characters allowed)

### 3. Enter the model of the unit to be used.

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(Required: Maximum 1000 characters allowed)

#### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

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(Optional: Maximum 1000 characters allowed)

1  
0

#### Mechanical Trimmer (Jarraff or SkyTrim or Similar)

(Response required)

UOM: Per Hour Price: \$  Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

☐ No bid  
☐ Additional notes  
(Attach separate sheet)

Supplier Notes:

#### Item Attributes

##### 1. Enter the year of the model to be used

(Required: Numbers only)

##### 2. Enter the make of the unit to be used.

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(Required: Maximum 1000 characters allowed)

##### 3. Enter the model of the unit to be used.

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(Required: Maximum 1000 characters allowed)

#### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

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(Optional: Maximum 1000 characters allowed)

1  
1

#### Labor- Line Clearance Crew Supervisor

(Response required)

UOM: Per Hour Price: \$  Total: \$

Item Notes: Please submit the hourly labor rage for this position.

☐ No bid  
☐ Additional notes  
(Attach separate sheet)

Supplier Notes:

1  
2

**Labor- Line Clearance Trained Crew Leader**

*(Response required)*

UOM: Per Hour Price: \$  Total: \$

Item Notes: Please submit the hourly labor rage for this position.

Supplier Notes: \_\_\_\_\_  
\_\_\_\_\_

☐ No bid  
☐ Additional notes  
(Attach separate sheet)

1  
3

**Labor- Line Clearance Trained Journeyman Climber/Trimmer**

*(Response required)*

UOM: Per Hour Price: \$  Total: \$

Item Notes: Please submit the hourly labor rage for this position.

Supplier Notes: \_\_\_\_\_  
\_\_\_\_\_

☐ No bid  
☐ Additional notes  
(Attach separate sheet)

1  
4

**Labor- Line Clearance Climber/Trimmer Trainee**

*(Response required)*

UOM: Per Hour Price: \$  Total: \$

Item Notes: Please submit the hourly labor rage for this position.

Supplier Notes: \_\_\_\_\_  
\_\_\_\_\_

☐ No bid  
☐ Additional notes  
(Attach separate sheet)

1  
5

**Labor-Crew Groundman**

*(Response required)*

UOM: Per Hour Price: \$  Total: \$

Item Notes: Please submit the hourly labor rage for this position.

Supplier Notes: \_\_\_\_\_  
\_\_\_\_\_

☐ No bid  
☐ Additional notes  
(Attach separate sheet)

1  
6

**Labor-Equipment Operator**

*(Response required)*

UOM: Per Hour Price: \$  Total: \$

Item Notes: Please submit the hourly labor rage for this position.

Supplier Notes: \_\_\_\_\_  
\_\_\_\_\_

☐ No bid  
☐ Additional notes  
(Attach separate sheet)

Supplier Information

Company Name:

Contact Name:

Address:

Phone:

Fax:

Email:

Supplier Notes

By signing below, the bidder shall hereby declare understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions. The bidder shall further agree that the language of this RFP shall govern in the event of a conflict with his/her bid. In addition, the bidder shall further agree that upon receipt of an authorized purchase order from the City of Nixa or when a Contract Resolution is signed and issued by an authorized official of the City of Nixa, a binding contract shall exist between the bidder and the City of Nixa.

Print Name

Signature

**1** 35' to 40' Trim Lift (Mini Bucket)UOM: Per Hour Price:  Total: 

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

**Item Attributes****1. Enter the year of the model to be used****2. Enter the make of the unit to be used.****3. Enter the model of the unit to be used.****4. Other type of Equipment**

Please list the type of Equipment you have equivalent, if different than above.

**2** 55' Trim Lift with Chip Box (Forestry Setup)UOM: Per Hour Price:  Total: 

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

**Item Attributes****1. Enter the year of the model to be used****2. Enter the make of the unit to be used.****3. Enter the model of the unit to be used.****4. Other type of Equipment**

Please list the type of Equipment you have equivalent, if different than above.

**3** Dump Truck with Chip Box (Forestry Setup)UOM: Per Hour**No Bid**

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

**Item Attributes****1. Enter the year of the model to be used****2. Enter the make of the unit to be used.**



**3. Enter the model of the unit to be used.**

No response

**4. Other type of Equipment**

Please list the type of Equipment you have equivalent, if different than above.

No response

**4 12" Rated Self-Feed Drum or Disc Chipper**

UOM: Per Hour Price: \$7.14 Total: \$7.14

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

**Item Attributes**

**1. Enter the year of the model to be used**

2015

**2. Enter the make of the unit to be used.**

Brush Bandit

**3. Enter the model of the unit to be used.**

990

**4. Other type of Equipment**

Please list the type of Equipment you have equivalent, if different than above.

No response

**5 15" Rated Self-Feed Drum or Disc Chipper with winch**

UOM: Per Hour Price: \$13.26 Total: \$13.26

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

**Item Attributes**

**1. Enter the year of the model to be used**

2019

**2. Enter the make of the unit to be used.**

Brush Bandit

**3. Enter the model of the unit to be used.**

1590

**4. Other type of Equipment**

Please list the type of Equipment you have equivalent, if different than above.

No response

**6 Supervisor Vehicle (4x4 - 1/2 ton pick up truck or similar)**

UOM: Per Hour Price: \$7.14 Total: \$7.14

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

**Item Attributes****1. Enter the year of the model to be used**

2018

**2. Enter the make of the unit to be used.**

Ford

**3. Enter the model of the unit to be used.**

250

**4. Other type of Equipment**

Please list the type of Equipment you have equivalent, if different than above.

No response

**7 Mechanical Mower/Grinder-Skid Steer with mulching head (FAE or Fecon or Similar)**

UOM: Per Hour

Price:

\$32.64

Total:

\$32.64

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

**Item Attributes****1. Enter the year of the model to be used**

2015

**2. Enter the make of the unit to be used.**

Takeuchi

**3. Enter the model of the unit to be used.**

TL8

**4. Other type of Equipment**

Please list the type of Equipment you have equivalent, if different than above.

No response

**8 Mechanical Mower/Grinder-Skidder with mulching head (FAE or Fecon or Similar)**

UOM: Per Hour

**No Bid**

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

**Item Attributes****1. Enter the year of the model to be used**

No response

**2. Enter the make of the unit to be used.**

No response

**3. Enter the model of the unit to be used.**

No response

#### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

No response

#### 9 Mechanical Mower/Grinder Excavator with mulching head

UOM: Per Hour

**No Bid**

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

##### Item Attributes

##### 1. Enter the year of the model to be used

No response

##### 2. Enter the make of the unit to be used.

No response

##### 3. Enter the model of the unit to be used.

No response

#### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

No response

#### 10 Mechanical Trimmer (Jarraff or SkyTrim or Similar)

UOM: Per Hour

**No Bid**

Item Notes: Prices shall include all necessary tools, material and equipment for completing line clearance tree pruning, tree removal and rigging, debris removal and haul off and herbicide applications.

##### Item Attributes

##### 1. Enter the year of the model to be used

No response

##### 2. Enter the make of the unit to be used.

No response

##### 3. Enter the model of the unit to be used.

No response

#### 4. Other type of Equipment

Please list the type of Equipment you have equivalent, if different than above.

No response

#### 11 Labor- Line Clearance Crew Supervisor

UOM: Per Hour

Price: \$50.00

Total: \$50.00

Item Notes: Please submit the hourly labor rage for this position.

#### 12 Labor- Line Clearance Trained Crew Leader

UOM: Per Hour

Price: \$40.00

Total: \$40.00

Item Notes: Please submit the hourly labor rage for this position.

1 3	Labor- Line Clearance Trained Journeyman Climber/Trimmer UOM: <u>Per Hour</u> Price: <input type="text" value="\$40.00"/> Total: <input type="text" value="\$40.00"/> Item Notes: Please submit the hourly labor rage for this position.
1 4	Labor- Line Clearance Climber/Trimmer Trainee UOM: <u>Per Hour</u> Price: <input type="text" value="\$0.00"/> Total: <input type="text" value="\$0.00"/> Item Notes: Please submit the hourly labor rage for this position.
1 5	Labor-Crew Groundman UOM: <u>Per Hour</u> Price: <input type="text" value="\$33.00"/> Total: <input type="text" value="\$33.00"/> Item Notes: Please submit the hourly labor rage for this position.
1 6	Labor-Equipment Operator UOM: <u>Per Hour</u> Price: <input type="text" value="\$38.76"/> Total: <input type="text" value="\$38.76"/> Item Notes: Please submit the hourly labor rage for this position.

**Response Total: \$300.84**



**Issue:** Land O Frost Sponsorship Agreement 2022

**Date:** February 1, 2022

**Submitted By:** Matt Crouse, Director of Parks and Recreation

---

### Background

Nixa Parks and Recreation has been fortunate to have a great working relationship with Land O Frost through the form of a sponsorship agreement. This is the yearly renewal of that agreement through February 28, 2023.

### Analysis

Through this agreement Nixa Parks and Recreation will provide team sponsorships, banner sponsorships, and social media posts, e-blasts etc. In return Nixa Parks and Recreation will receive monetary compensation and the ability to host some free sports clinics to the Nixa community.

### Recommendation

Staff recommends the approval of this sponsorship agreement as we can meet the demands of the agreement. The agreement has worked well for the department and provided many opportunities through programming and services to our community. We are fortunate to have such a good working relationship with Land O Frost and hope the relationship continues.

Thank you for your consideration and I would be happy to answer any questions you may have.

Respectfully,

Matt Crouse  
Director, Parks and Recreation

**RESOLUTION NO. 2022-023**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A SPONSORSHIP AGREEMENT WITH LAND O'FROST.**

**WHEREAS** the City and Land O'Frost regularly enter into a sponsorship agreement where Land O'Frost provides funding to certain Parks' Department programs in exchange for certain sponsorship rights; and

**WHEREAS** the City Council desires to authorize the City Administrator to execute, on behalf of the City, a certain sponsorship agreement, attached hereto as "Resolution Exhibit A."

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:**

**SECTION 1:** The City Administrator, or designee, is hereby authorized to execute the contract attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," with Land O'Frost. Said Contract shall be in substantially similar form as the document attached hereto as "Resolution Exhibit A." The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

**SECTION 2:** This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**ADOPTED BY THE CITY COUNCIL THIS 14<sup>th</sup> DAY OF FEBRUARY 2022.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

**APPROVED BY THE MAYOR.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
DATE OF APPROVAL

\_\_\_\_\_  
CITY ATTORNEY

5688  
Contract #



City of Nixa

**/LAND O' FROST PARTNERSHIP 2022**

The following will be included in the comprehensive 2022 Land O' Frost Youth Sponsorship Program for the Springfield area. The following is a summary of the elements that will be included in the annual sponsorship agreement City of Nixa(NPR) and Land O' Frost (LOF).

This agreement will commence on <sup>February 15, - HC</sup> ~~January 1, 2022~~ and will terminate on December 31, 2022

**Sponsorship Elements:**

This sponsorship will focus on approximately 70 teams in the Spring/Fall '22 season. Land O' Frost will sponsor teams 10 and under.

**Community Relations Program**

Land O'Frost will sponsor the following Community Relations Program (LOF Free Community Clinics Sponsor), Land O'Frost will donate the following funds for the Community Relations Program \$1000, which is included in the amount below.

- Prominent Logo inclusion on the front or back of jerseys for 70 teams . LOF will supply all necessary logo \ artwork and NPR will have the shirts printed. **(The LOF logo will need to be a minimum of 2 ½" H x 10" W. The phrase Great Tasting Lunchmeat will need to be placed underneath the Land O' Frost oval. Land O' Frost to be the exclusive jersey sponsor, no other corporate logos to be placed on jerseys.)**
- Opportunity for mention / inclusion of Land O' Frost product message in any league / parent communication.
- One approximately 4' x 8' banner (or similar signage) to be displayed where NPR teams, that LOF sponsors, play. (LOF will give banner artwork and NPR will have banner printed)
- Social media posts on all platforms and web presence to discuss our LOF Community Relations Program with NPR.
- A minimum of two (2) annual Email Blasts to all parents, if available, letting them know of the LOF Community Relations Program.
- Where possible, NPR to share social posts and stories about the LOF Community Relations effort.
- **Client will need Proof of Performance (70 team pictures) by December 31, 2022. The Land O' Frost logo will need to be clearly identified on the shirts in 70 team pictures. The pictures can be informal, taken with a digital camera or regular film.**

**LAND O' FROST WILL DONATE: \$9,750.00**

City of Nixa Representative

Land O' Frost Representative





**Issue:** A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AMENDING THE CONTRACT WITH DECKER & DEGOOD, P.C. FOR AUDITING SERVICES.

**Date:** February 8, 2022

**Submitted By:** Jennifer Evans, Director of Finance

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### **Background**

At the January 24, 2022 Council meeting, a Resolution was passed allowing the City Administrator to enter into a contract with Decker & DeGood, P.C for auditing services. After receiving the contract for signature, the firm asked for an amendment to section 14 regarding the limits to professional liability insurance. They have asked that the requirement be reduced to \$2 million from \$5 million.

### **Analysis**

The contract was presented to the Auditing firm for review prior to the January 24<sup>th</sup> meeting; however, this particular section was overlooked. \$2 million is a reasonable amount of professional liability coverage and is what the firm currently carries.

### **Recommendation**

Staff recommends the passage of this resolution.



**RESOLUTION NO. 2022-024**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA REPEALING RESOLUTION 2022-017 AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A NEW CONTRACT WITH DECKER & DEGOOD, P.C. FOR AUDITING SERVICES.**

**WHEREAS** City Charter section 3.10 requires the Council to provide for an independent audit of the City at least once a year; and

**WHEREAS** the City Council desires to engage Decker & DeGood, P.C. to provide such an audit; and

**WHEREAS** the City Council previously approved Resolution 2022-017 at its January 24, 2022, regular meeting; and

**WHEREAS** said Resolution authorized the execution of a certain contract with Decker & DeGood, P.C. for auditing services; and

**WHEREAS** after Council's authorization was granted, Decker & DeGood indicated that they could not comply with the insurance requirements of the Contract as authorized by Council; and

**WHEREAS** Council desires to repeal Resolution 2022-017 and authorize the execution of a new contract with insurance terms requested by Decker & DeGood.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:**

**SECTION 1:** Resolution 2022-017 is hereby repealed and of no further effect. The authorization to execute the contract referenced in said Resolution is hereby rescinded.

**SECTION 2:** The City Administrator, or designee, is hereby authorized to enter into the "Services Contract" ("Contract") attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," with Decker & DeGood, P.C. Said Contract shall be in substantially similar form as the document attached hereto as "Resolution Exhibit A." The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

**SECTION 3:** This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**[Remainder of page intentionally left blank. Signatures follow on next page.]**

**RESOLUTION NO. 2022-024**

**ADOPTED BY THE CITY COUNCIL THIS 14<sup>th</sup> DAY OF FEBRUARY 2022.**

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

**APPROVED BY THE MAYOR.**

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
DATE OF APPROVAL

**RESOLUTION EXHIBIT A**

**ROUTE ORDER:** Contractor signs, route to City Clerk, City Admin signs two originals, Clerk adds date, City Attorney signs, return one original by mail to Organization and City Clerk retains one original.

<b>EFFECTIVE DATE:</b>	<b>TERMINATION DATE:</b>	<b>CONTRACT NUMBER:</b>
<b>( X ) NEW CONTRACT   ( ) RENEWAL OF CONTRACT NO.   ( ) Addendum No. ____</b>		
<b>City</b>		<b>Contractor</b>
Name: City of Nixa, Missouri Address: 715 W. Mt. Vernon St., PO Box 395 Nixa, MO 65714 Phone: 417.725.3785 FAX: Attn: Jennifer Evans     Dept: Finance		Name: Decker & DeGood, P.C. Address: 3259A E. Sunshine, Springfield, MO 65804 Phone: 417-887-1888 FAX: Attn: Marshall Decker

**SERVICES CONTRACT**

**THIS SERVICES CONTRACT** ("Contract") is made and entered into upon its execution by the parties identified above.

**WHEREAS** the City desires to engage Contractor to perform such services under the terms and conditions of this Contract; and

**WHEREAS** contractor desires to perform such services under the terms and conditions of this Contract.

**NOW, THEREFORE**, for the considerations herein expressed, it is mutually agreed by and between the City and the Contractor as follows:

- 1. Services.** The City agrees to engage the services of the Contractor and the Contractor agrees to perform said Services in accordance with the standard of care, skill, and expertise ordinarily used by other members of Contractor's profession in performing similar services. The Services are more fully described in Exhibit A, which is attached hereto and incorporated herein by this reference. Contractor shall furnish all supervision, labor, tools, equipment, materials, and supplies necessary to perform the Services at Contractor's own expense in accordance with the contract documents, any applicable City ordinances, and any applicable state or federal laws within 280 calendar days from the date Contractor is ordered to proceed, which order shall be issued by the City Administrator within 30 days after the date of execution of this Contract.
- 2. Addition to Services.** The City may add to the Contractor's services or delete therefrom services, provided that the total cost of such work does not exceed the total cost authorized herein. The Contractor shall undertake such changed activities only upon the written direction of the City. All such directives and changes shall be in written form and shall be accepted and countersigned by the Contractor, whose acceptance shall not be unreasonably withheld.
- 3. Exchange of Data.** All information, data, and reports in the City's possession and necessary for the carrying out of the Services, shall be furnished to the Contractor without charge, and the parties shall cooperate with each other in every possible way in the carrying out of the Services.

**4. Personnel.** The Contractor represents that Contractor shall secure at Contractor's own expense; all personnel required to perform the services called for under this Contract by Contractor. Such personnel shall not be employed by or have any contractual relationship with the City except as employees of the Contractor. All of the services required hereunder shall be performed by the Contractor or under Contractor'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 prior written approval of the City.

**5. Term.** This Contract shall terminate on 10-31-2022

**6. Payment.**

**a. Conditioned on acceptable performance.** Provided that Contractor performs the services in the manner set forth herein, the City shall pay the Contractor in accordance with the rate set forth in Exhibit B, which shall constitute full and complete compensation for the Contractor's work provided. No partial payment to the Contractor shall operate as approval of acceptance of work done. Such compensation shall be paid in progress payments, as established by the City, subject to receipt of a requisition for payment and a statement of work provided by the Contractor and Contract by both the City and the Contractor that the Contractor has fully performed the work to be paid for in such progress payments in conformance with the contract.

**b. Total compensation not to exceed.** It is expressly understood that in no event shall the total compensation or reimbursement to be paid to the Contractor under the terms of this Contract exceed the sum of **\$19,750.00**

**7. Termination.**

**a. Termination for breach.** Failure of Contractor to fulfill Contractor's obligations under this Contract in a timely and satisfactory manner in accordance with the terms of this Contract shall constitute a breach of the Contract, and the City shall thereupon have the right to immediately terminate the Contract. The City shall give written notice of termination to the Contractor. In the event of any litigation arising from breach of this Contract, the City shall be entitled to recover from the Contractor all reasonable costs incurred for such litigation, including staff time, court costs, attorney fees, and all other related expenses incurred in such litigation.

**b. Termination for Convenience.** Either party shall have the right at any time upon 90 days' written notice to the other to terminate and cancel this Contract, without cause, for convenience. In such event final payment to the Contractor shall be limited to services provided by the Contractor as of the effective date of said termination.

**c. Documents, reports, and data to be provided to City.** In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the Contractor related to this Contract shall, at the option of the City, become the property of the City, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials; provided, that the Contractor shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of the Contract by the Contractor.

**8. City's Right to Proceed.** In the event this Contract is terminated, the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties

shall be liable to the City for any costs over the amount of this Contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

**9. Confidentiality.** Any reports, data, or similar information given to, prepared or assembled by the Contractor under this Contract shall be considered the property of the City and shall not be made available to any individual or organization by the Contractor without prior written approval of the City.

**10. Conflict of Interest.** Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Nixa, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest in this contract which would violate any applicable federal regulations or the provisions of RSMo Section 105.450 et seq.

**11. 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, 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 and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this Contract, 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 Contract.

**12. Nondiscrimination.** The Contractor 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, 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 a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

a. This Contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

b. This Contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime Contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**13. Occupational License.** The Contractor shall obtain and maintain an occupational license or business registration with the City of Nixa, Missouri, if required by city code and any required state or federal requirement. The cost for this occupational license shall be borne by the Contractor. No contract will be executed by the City until this occupational license has been obtained.

**14. Insurance Requirements.** Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City, professional liability

insurance with limits of not less than Two Million Dollars and shall provide the City with an insurance certificate of such coverage. City shall be named as an additional insured on such policy.

**15. General Independent Contractor Clause.** This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor shall 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 Contribution 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 shall retain sole and absolute discretion as to the judgment and 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 it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Contract shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City shall not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

**16. 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 Contractor 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 thereunder (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, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

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 Contract 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 Contract in its contract price. Contractor's obligation under this Contract 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 required of the Contractor under this Contract.

**17. Contract Documents.** The entire Contract of the parties shall consist of the following documents:

- a. This Contract document
- b. Letter of Engagement (Exhibit A)
- c. Fee Schedule (Exhibit B)

The above listed documents are attached hereto and incorporated by their reference herein as though fully set forth herein. No modification, amendment, or waiver of any of the provisions of this Contract shall be effective unless in writing specifically referring hereto and signed by both parties. In the event of a conflict between the provisions of the contract documents, the provisions of this Contract document shall control against the provisions of the Exhibits.

**18. Nonresident/Foreign Contractors.** The Contractor shall procure and maintain during the life of this Contract:

- a. If the Contractor is a foreign corporation, 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 the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

**19. Notices.** All notices required or permitted hereinunder and required to be in writing may be given by Electronic Mail or by first class mail addressed to City and Contractor at the addresses shown above. The date of delivery of any notice given by mail shall be the date falling on the second full day after the day of its mailing. The date of delivery of notice by Electronic Mail transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

**20. Compliance with Laws.** Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

**21. City Benefits.** The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

**22. Jurisdiction.** This Contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Contract be litigated, venue shall be proper only in the Circuit Court of Christian County, Missouri.

**23. Affidavit for Contracts Over \$5,000.00.** That pursuant to Missouri Revised Statute Sections

285.525 through 285.550, if this contract exceeds the amount of \$5,000.00 and Contractor is associated with a business entity, Contractor shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Contractor must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

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

**CITY OF NIXA**

By: \_\_\_\_\_  
Jimmy Liles, City Administrator

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Nick Woodman, City Attorney

**DECKER & DEGOOD, P.C.**

By: Marshall Decker  
Partner

Name: Marshall Decker

Title: Partner

Date: 2/8/22





**Issue:** A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A CONTRACT WITH ARVEST BANK FOR PURCHASING CARD SERVICES.

**Date:** FEBRUARY 1, 2022

**Submitted By:** Jennifer Evans, Director of Finance

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### **Background**

The City submitted an RFP (Request for Proposal) for Banking and Purchasing Card services on July 15, 2021. This request was structured in such a way as to allow the City to contract with two separate banks – one for banking services and one for purchasing card services if it was most advantageous to the City.

### **Analysis**

Originally, the vendor selected to provide purchasing card services was Commerce Bank; however, the contract presented to them after they were chosen was not acceptable to the bank. Staff went back to the submitted proposals and determined that Arvest Bank was the next best bidder. Before bringing this issue to Council, staff has presented the contract to Arvest Bank and has secured the bank's agreement with the terms and conditions therein.

### **Recommendation**

Staff recommends the passage of this resolution.

**RESOLUTION NO. 2022-025**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH ARVEST BANK FOR PURCHASING CARD SERVICES.**

**WHEREAS** City staff, pursuant to the City's adopted purchasing procedures (Resolution 2019-113), as amended, have solicited proposals from qualified firms for the provision of purchasing card services for the City; and

**WHEREAS** after reviewing all submitted proposals, City staff has determined that Arvest Bank ("Contractor") provided the best proposal for the services.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:**

**SECTION 1:** The City Administrator, or designee, is hereby authorized to execute the "Professional Services Contract – Purchasing Card Services" ("Contract") attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," with Arvest Bank. Said Contract shall be in substantially similar form as the document attached hereto as "Resolution Exhibit A." The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

**SECTION 2:** This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**ADOPTED BY THE CITY COUNCIL THIS 14<sup>th</sup> DAY OF FEBRUARY 2022.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

**APPROVED BY THE MAYOR.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
DATE OF APPROVAL

\_\_\_\_\_  
CITY ATTORNEY

**RESOLUTION EXHIBIT A**

**PROFESSIONAL SERVICES CONTRACT  
Purchasing Card Services**

**THIS PROFESSIONAL SERVICES CONTRACT** ("Agreement") by and between Arvest Bank, located at 505 Northview Rd., Nixa, MO, a banking institution ("Contractor") and the City of Nixa, a Constitutional Charter City of the State of Missouri ("City"), is made and entered into upon the date of execution of the Agreement by all parties.

**WHEREAS** City issued a Request for Proposals (RFP-042-2021/Finance) for professional services related to providing certain services to the City; and

**WHEREAS** Contractor has submitted a proposal in response to said RFP; and

**WHEREAS** after due consideration, the City has accepted the proposal of the Contractor; and

**WHEREAS** City and Contractor desire to enter into this Agreement whereby the Contractor shall undertake the performance of the services contemplated herein for Purchasing Card Services.

**NOW, THEREFORE**, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth, the City and the Contractor hereby agree as follows:

**1) Contract Documents.** This Agreement shall consist of the following documents, attachments, and exhibits:

- a. This Executed Agreement
- b. RFP-042-2021/Finance, and any addenda (Exhibit A)
- c. Appendix B - Purchasing Card Program

The Agreement shall also include any Exhibits incorporated by reference in the above-described documents. When any provisions of the Contract Documents conflict, the provision contained in RFP-042-2021/Finance shall control, followed by the Executed Agreement, then the Contractor's Schedule of Fees.

**2) Term.** The term of this Agreement shall be five years, beginning on the date of execution by both parties.

**3) Scope of Services.** The City agrees to engage the services of the Contractor and the Contractor agrees to perform the services hereinafter set forth in Exhibit B with the standard of care, skill, and expertise ordinarily used by other members of Contractor's profession in performing similar services.

Contractor represents and warrants that it is equipped, competent, and able to perform, and that it will perform all purchasing card services hereinafter set forth in a diligent and competent manner in accordance with the professional standard of care customarily recognized by members of the Contractor's profession.

Contractor shall provide all supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for

the proper completion of the services which are particularly described as set forth in RFP-042-2021/Finance (the "Services").

All Purchasing Card Services shall be performed and provided in conformance with all applicable policies of the City, and all applicable federal and state laws and regulations.

The City, upon agreement of the Contractor may add Services to the Scope of Services. Such added Services shall be evidenced by a written instrument signed by both parties. The City may delete items from the Scope of Services at any time and at the sole discretion of the City.

**4) Compensation.** The City hereby agrees to pay the Contractor, as full compensation for the complete and satisfactory performance of this Agreement such amounts as are set forth in the Contractor's Schedule of Fees, said Schedule being attached hereto and incorporated by this reference as "**Appendix B.**"

**5) Attorney Fees' and Costs.** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity, or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

**6) Other Representations, Warranties, and Other Covenants by the Contractor.** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Purchasing Card Services and has provided Services such as the ones to be performed under this Agreement to other municipalities or private enterprises and that the Contractor has sufficient expertise, knowledge, information, and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer.

**7) Amendment; Waiver.** No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

**8) Contractor's Liability Insurance.** The Contractor shall obtain and maintain during the term of this Agreement the insurance coverage's not less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo, as said section may be amended. Insurance policies providing the required coverages shall be with companies licensed to do business in the State of Missouri. All costs of obtaining and maintaining insurance coverages shall be borne by the Contractor.

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for the term of this Agreement.

Policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished to the City prior to Contractor commencing the Services. The certificates must list the City as an additional insured on a primary and non-contributory basis. Certificate Holder shall be listed as "City of Nixa, 715 W. Mt. Vernon, PO Box 395, Nixa MO 65714". The certificate shall bear an endorsement precluding cancellation of or change in coverage without at least thirty days written notice to the City.

**9) Termination.**

- a. Termination for breach.** Failure of the Contractor to fulfill any of Contractor's obligations under this Agreement in a timely and satisfactory manner shall constitute breach of this Agreement. The City shall thereupon have the right to immediately terminate this Agreement with sufficient notice. The City shall give written notice of the termination to the Contractor.
- b. Termination for Convenience.** The City shall have the right at any time to give sufficient written notice to Contractor to terminate and cancel this Agreement, without cause, for the convenience of the City, and Contractor shall immediately stop upon issuance of such notice. In such event, City shall not be liable to Contractor except for the payment for actual work performed prior to such notice.

**10) Notices.** Any notice required to be provided under this Agreement shall be sent via U.S. Mail or via e-mail. Notices shall be effective when received at the address as specified below. All such notices shall be sent to each party at the address below, or to such other address as designated by such party, in writing:

IF TO THE CITY:                      City of Nixa  
  ATTN: Stephanie Ewing, Purchasing Manager  
  PO Box 395  
  Nixa, MO 65714  
  E-mail: [sewing@nixa.com](mailto:sewing@nixa.com)

IF TO CONTRACTOR:              Name & Title: \_\_\_\_\_  
  Company Legal Name: \_\_\_\_\_  
  Address: \_\_\_\_\_  
  Email: \_\_\_\_\_

**11) Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

**Independent Contractor.** Contractor shall be and operate as an independent contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of the Contractor and shall not be deemed employees of the City in any respect.

**12) Compliance with Laws.** Contractor shall comply with all applicable City Ordinances and all other applicable laws and regulations, whether State or Federal, including without limitation, unemployment and workers' compensation, occupational safety, equal employment, and wage and price laws, insofar as applicable to the performance of this Agreement.

**13) Subcontracts and Assignment.** The Contractor shall not subcontract or assign any of the Services to be performed by it hereunder without the express written consent of the City. In the event Contractor utilizes a subcontractor, the Contractor shall ensure that any agreement between Contractor and such subcontractor complies with all requirements imposed for such agreement by federal, state, and local law.

**14) Indemnification.**

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. 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 Agreement, or the work or any subcontract thereunder (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 Agreement to Contractor.

Firm 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.

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.

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.

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.

Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

**15) Nondisclosure and Confidentiality.** The Contractor agrees that it will preserve the confidentiality of all City data and account information and will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

**16) Multi-year contracts and Non-appropriation.** Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Non-appropriation"), this Agreement shall terminate at the end of the then current fiscal year as if terminated expressly and mutually by both parties. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party.

**17) Accounting.** During the term of this Agreement, the Contractor shall maintain books and

accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

**18) Other Contractors.** Nothing in this Agreement shall be construed as prohibiting the City from contracting with other Contractors to provide any of the Services provided for herein.

**19) Work Records and Work Product.** The Contractor shall provide the City with copies of all documents pertinent to the Purchasing Card Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Agreement. The Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. Upon termination of this Agreement, the Contractor shall promptly deliver to City any documents, and work product, whether printed or electronic.

**20) Compliance with Immigration Statutes.** Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.

**21) Governing Law and Jurisdiction.** This Agreement and every question arising hereunder shall be construed and determined according to the laws of the State of Missouri. Should any part of this Agreement be litigated, venue shall be proper only in Christian County, Missouri.

**22) Discrimination.** Contractor agrees that, in the performance of this Agreement, not to discriminate on the ground 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 a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**23) Entire Agreement.** This Agreement, including Exhibit B, shall constitute the

Agreement between the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing and specifically referring hereto.

**24) City's Representative.** The City Administrator is hereby designated as the City's authorized representative for purposes of this Agreement. The City Administrator is charged with providing any approvals and exercising any rights of the City under this Agreement, including the approval of any renewal terms contemplated herein.

**(Remainder of page intentionally blank. Signature page to follow.)**



IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRACTOR:

Keith Zollicoffer  
Signature.

Keith Zollicoffer

Director, SVP, Commercial  
CC Payment Solutions

Date. 01/19/2022

ATTEST:

Signature.

Name.

Title.

Date

CITY OF NIXA, MISSOURI

Jimmy Liles, City Administrator

Approved as to form:

Nick Woodman, 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.

Jennifer Evans, Director of Finance

**REQUEST FOR PROPOSALS (RFP) TO PROVIDE BANK DEPOSITORY SERVICES**

**RFP #:** RFP-042-2021/Finance  
**OWNER:** City of Nixa  
**CONTACT:** Stephanie Ewing, Purchasing Manager  
**PHONE:** 417-449-0555  
**SERVICE:** Bank Depository Services  
**ISSUE DATE:** July 15, 2021  
**DELIVERY ADDRESS:** Nixa Public Works  
Stephanie Ewing 1111 W. Kathryn  
Nixa, MO 65714  
**BID OPENING DATE:** August 16, 2021 @ 10:00 AM CDT

**SUBMITTING A PROPOSAL:** A vendor submitting a Proposal as part of this Request for Proposal ("RFP") shall follow the instructions below. Failure to adhere to these instructions may lead to rejection of Proposal.

Proposals must be submitted in a sealed container box, envelope, etc., addressed in the following manner:

Middle of Envelope: City of Nixa Purchasing  
Attn: Stephanie Ewing  
1111 W. Kathryn  
P.O. Box 395  
Nixa, MO 65714

Bottom Right Envelope: RFP- 042-2021/Finance  
August 16, 2021 @10:00AM

Vendor must submit one (1) original, bound copy and one (1) electronic copy signed in ink by a person authorized to bind company in agreements.

All proposals, whether mailed or hand delivered, must be received at the above address no later than August 16, 2021 @ 10:00 AM (local time). Method of delivery is at the sole discretion and risk of the vendor. Vendors mailing their proposals should allow sufficient time to ensure receipt of their proposal by the date and time specified

**(RFP REQUIREMENTS CONTINUE ON NEXT PAGE.)**

## **RFP REQUIREMENTS.**

1. **SUMMARY.** The City of Nixa invites full-service banks that are Federal or State of Missouri chartered, and have full service locations within the city limits of Nixa to provide comprehensive day-to-day depository and banking services. This Request for Proposal (RFP) is intended to cover all operating accounts, banking services, safekeeping requirements, and overnight investment of surplus cash in bank balances. The investment of funds in long-term vehicles (six months or greater) will be placed by competitive bids at time of maturities or in the event of surplus and is separate from this RFP. The City is also seeking proposals for the optional service of a Purchasing Card Program. The City reserves the right to enter into separate agreements for this optional banking service.

- 1.1. **CURRENT BANKING SERVICES.** The City currently maintains four (4) separate bank accounts to process receipts and payments. Please see **Appendix C** for a description of each account and the volume of activity.

The City's operating accounts include a variety of activities consisting of various revenue receipts, such as utility receipts, tax receipts, and payments consisting of checks, wires and EFT transfers.

The City currently has online access to all accounts with the ability to initiate ACH payments.

## **2. SCOPE OF WORK.**

- 2.1. **Required Banking Services:** The Depository must provide the following banking services without charge. Please review the following required services and complete the Depository Proposal, **Appendix A**, making notation whether you can comply. Describe any proposed changes, deviations, or any additional features that would be included at no additional cost.

- 2.1.1. **Account Maintenance.** All deposits of the City shall be placed in an interest-bearing account. Currently, the City maintains one general checking account, two money market accounts and one small business checking account. The City requires the option to create additional accounts as required.

- 2.1.2. **Monthly Statements.** Monthly bank statements for the full calendar month must be made available to the City no later than five (5) business days after the end of the month. Detailed bank statements with front and back check copies or document images must be provided. The City also requires online access to account information.

- 2.1.3. **Deposits.** Deposits are made at the end of each business day. Cash deposits total approximately 900 deposits per year representing approximately \$17,000,000

- 2.1.3.1. The Bank shall provide imprinted deposit slips for each account.
      - 2.1.3.2. The Bank shall provide 20 locking bank bags.
      - 2.1.3.3. The City shall have the availability to view item details of deposits.
      - 2.1.3.4. All checks must be presented two times before a check is returned.
      - 2.1.3.5. If remote deposit is available, please so state.

- 2.1.4. Availability of Funds Deposited.** The City desires to know the collected funds availability schedule for its deposits. These deposits include checks, money orders, cash, ACH credits, and wires from local, regional, and out of state banks. The City requires updates as the schedule changes.
- 2.1.5. Check Clearing.** An average of 242 checks are cleared each month through the four City Accounts.
- 2.1.5.1.** The Bank shall provide imprinted checks (stock at option of the City).
  - 2.1.5.2.** The City is not to be charged for stop payments.
  - 2.1.5.3.** The Bank will pay all checks issued against the account even if payment creates an overdraft to the account. The Finance Director or designee will be notified about any overdrafts within 24 hours of the occurrence, at which time the City agrees to cover the overdraft. The Bank will not charge a fee for overdrafts.
- 2.1.6. ACH Received/Processed.** The Bank must be both a sending and receiving bank on the Automated Clearing House system to accommodate payroll direct deposit, other payments, and incoming revenue to the City. The City processes payroll on a by-weekly basis and originates approximately 4,500 payroll-related ACH transactions per year. The City service 10,000 utility customers; approximately 20% of those customers use ACH debits to make monthly payments.
- 2.1.7. Credit Cards.** The City receives credit card payments for various services; most transactions are processed by a third-party vendor. Elavon is used to process utility payments and park activity transactions. The volume of these transactions average \$841,000 monthly. Our current Bank provides a terminal and transaction processing for all Point-of-Sale transactions taken at City Hall. The average monthly volume of these transaction is \$12,300. Please detail charges and processes to accept these payments in Appendix A.
- 2.1.8. Wire Transfers.** The City prefers the ability to execute wire transfers either by phone or by Internet at the option of the City.
- 2.1.9. Online Banking Services.** The City requires online banking services. Please provide a description of the banks online products and services. This online access should include security measures to insure protection of the City's information. At a minimum, the City requires the following online banking services.
- 2.1.9.1.** Current day's balance (activity and credits)
  - 2.1.9.2.** Daily balance reporting available by 8:00 am the following business day.
  - 2.1.9.3.** Detailed debit and credit postings.
  - 2.1.9.4.** Initiation of regular recurring wire transfers.
  - 2.1.9.5.** Initiation of ACH debit and credit transactions.
  - 2.1.9.6.** Placement of Stop Payment orders.
  - 2.1.9.7.** Ability to create reports for above transactions.
  - 2.1.9.8.** Multi-level security for various City staff.
  - 2.1.9.9.** No fee should be associated with online banking services.

**2.1.10. Stop Payment Process.** The City will require the bank to issue  
stop Page 3 of 18

payments including stale date check stop payments upon telephone or online communications from authorized City personnel.

**2.1.11. Designated Account Liaison.** The City will require the selected bank to designate a senior officer as a liaison. This officer must be capable of coordination of all City activities with the bank, and be able to resolve any problems or issues that may arise.

**2.1.12. Record Retention.** The bank shall maintain all transaction records with the City for the term of ten (10) years following transaction date.

**2.1.13. Employee Payroll.** The City of Nixa requires all employees to enroll for direct deposit. The bank must be able to provide employee payroll using ACH payments. The City currently has 150 full time employees and 125 parttime and seasonal employees.

**2.1.14. Banking Supplies.** The bank will provide lockable or disposable money bags, preprinted security checks and printed deposit slips for all accounts at no charge to the City.

**2.1.15. Returned Items.** The City requires prompt notification of returned items whether checks or ACH. This notification should include an image of the item if it is a check or a detailed description (including customer's name, date and amount) if it is an ACH. In either case, the reason for the return should be included. There should be no fee associated with returned items.

**2.1.16. Collateralization.** For the protection for the City's deposits, the City requires pledged collateral.

**2.1.16.1.** The Depository shall at all times maintain securities as pledged collateral in an amount equal to 105% of the amount on deposit with the depository, less the amount which is an insured deposit pursuant to the Federal Deposit insurance Act, as amended.

**2.1.16.2.** The depository shall maintain such collateral with a disinterested banking institution chartered under existing Federal and State of Missouri laws. The depository and the disinterested banking institution must agree to execute a Collateral Pledge Agreement which provides that the disinterested banking institution would immediately surrender the pledged collateral to the City and the City shall have the right to convert such collateral into cash and dispense it in the event the depository shall fail to pay any City deposit or part thereof.

**2.1.16.3.** If at any time pledged securities are not satisfactory to the City for deposits made as provided by laws, the City may require additional or substitute securities be pledged as are satisfactory to it.

**2.1.16.4.** Pledged securities may from time to time be withdrawn and other securities of like kind and character may be substituted with the consent of the City prior to the action. The custodian bank shall confirm in writing the receipt, substitution, and release of securities to and from the custodial account.

**2.1.16.5.** Securities pledged as collateral shall be evidenced with safekeeping receipts to be received by the City. The City will release safekeeping receipts by signing same and forwarding to the banking institution upon request and receipt of confirmation that the substitute securities have

been received by the disinterested banking institution.

**2.2. Optional Banking Services.** The City requests the proposing banks to offer any optional services or make any recommendations it believes would enhance the cash management capabilities of the City. All proposing banks are encouraged to make suggestions or add additional information not requested in this proposal. Banks are encouraged to describe factors that distinguish their institutions from potential competitors. However, all respondents must submit a proposal on all required services in the proposal format provided. Failure to submit proposals on required services will result in elimination from consideration.

**2.2.1. Investments.** The City may request bids from local banking and investment institutions for certificates of deposits. This is a competitive bid process and the contracted banking institution is encouraged to provide bids on these investments, but such investments will not be held exclusively by the contracted institution. Please provide current rate quotes in **Appendix A**.

**2.2.2. Purchasing Card.** The City currently utilizes approximately 27 purchasing cards. The average monthly amount spent on purchasing cards is \$12,200.

The City reserves the right to enter into separate contracts for optional banking services.

### **3. INTERPRETATION TO RESPONDENT.**

A prospective respondent, who is in doubt as to the meaning of any part of this RFP or any addenda thereto, may submit a written request for interpretation. Such requests shall be addressed to:

City of Nixa  
Attn: Stephanie Ewing (Purchasing Coordinator)  
715 W. Mt. Vernon St.  
P.O. Box 395  
Nixa, MO 65714  
Email: [sewing@nixa.com](mailto:sewing@nixa.com)

Any such interpretation will be made by written addendum. The City shall not be responsible for any explanation or interpretation of proposed document other than by such an addendum. Any addenda must be acknowledged in the proposal and will become a part of the Contract Documents. Failure to acknowledge all addenda issued in the proposal will constitute grounds for rejection of that proposal.

All requests for interpretation must be received by the Purchasing Coordinator no later than five (5) calendar days prior to the proposal opening date. Requests received after that date will not be answered. Persons submitting a request will be responsible for its prompt delivery.

Any and all addendums will be posted on the City's web site ([nixa.com](http://nixa.com)) under Current Bid Opportunities on the Purchasing page. Though the City will try to notify all prospective bidders if an addendum is posted, it shall be the responsibility of the bidder to check for and obtain addendums prior to the bid submission date. Receipt of an addendum to this RFP must be acknowledged by respondents. Respondents shall endorse their acknowledgement of said addendum by signing and returning the addendum with bid response.

**4. VENDOR RESPONSE REQUIREMENTS.** In order for your response to this RFP to be

considered complete, information submitted in response to this RFP shall include:

#### **4.1. Company Overview**

##### **4.1.1. Bank name and contact info**

**4.1.1.1.** Contact person for this RFP

**4.1.1.2.** Mailing address

**4.1.1.3.** Phone numbers

**4.1.1.4.** Email address

**4.1.2.** Year established and former Bank name(s) if applicable.

**4.1.3.** Brief company overview and number of years providing banking and cash management services, especially to public sector clients.

**4.1.4.** Differentiators that set your solutions/services apart from your competitors.

**4.1.5.** One-source vendors are preferred. If utilizing subcontractors for any portion of the RFP requirements, provide subcontractor company information and key personnel involved.

**4.1.6.** Bank agrees to notify City of any new or modified services offered by the bank that would be beneficial for the City.

**4.1.7.** Bank agrees to notify the City in advance of a change in senior relationship managers.

**4.1.8.** Bank agrees to provide the City with annual financial statement upon request.

**4.1.9.** Bank is an institution eligible to be a depository of public funds under Missouri Statutes.

#### **4.2. Pricing Information**

**4.2.1.** Return a copy of **Appendix A – Pricing Page for Banking Services** with an 'X' in the appropriate blanks.

**4.2.2.** Return a copy of **Appendix B – Purchasing Card Program** filled out completely.

#### **4.3. Contact Information**

**4.3.1.** How should we contact you if we decide we want to learn more about your proposed services?

#### **4.4. Signature on Proposal**

Proposal must be signed in ink and include the full business address of the respondent.

Proposal by partnerships must be signed in the partnership name by one or more of the general partners. Proposal by a corporation must be signed by an officer of the corporation or other person authorized to bind the corporation to the proposal. The names and titles of all persons signing shall be typed or printed below their signatures.

## **5. TERMS & CONDITIONS.**

### **5.1. Contract Term**

The City of Nixa's award of any "Banking Services" agreement(s) shall be for a period of Three (3) years. The agreements may be extended for two (2) additional one year extensions.

### **5.2. Errors in Proposal**

Each Consultant must carefully examine his proposal prior to submission. Failure to do so is at the Consultant's risk. Consultant is responsible for any errors contained therein.

Claim of oversight is not a basis for permitting withdrawal of a proposal after opening.

### **5.3. Proposal Withdrawal**

Proposal may be revised, modified, or withdrawn by the bank at any time prior to opening. Any such revision, modification, or withdrawal shall be in writing. After the Bids are opened, they shall be irrevocable for a period sixty (60) days. Bids shall not be withdrawn or revised after opening.

### **5.4. Conditions Affecting the Work**

Each respondent should take such steps as thought necessary to ascertain the nature and location of the work and any peculiar local conditions, which can affect the work or its cost. Failure to do so will not relieve the respondent of their responsibility for proper estimation of the difficulty or cost of the work.

The City of Nixa assumes no responsibility for any understanding or representation made by any person at any time, unless it is included in the Proposal Documents, including addenda.

### **5.5. Conflict of Interest.**

The submission of a proposal pursuant to this request shall be deemed a certification that, to the best of the respondent's knowledge, no employee of the City of Nixa or City Council member has any direct or indirect financial interest in any agreement, contract or proposal for work or supplies to be furnished to the City of Nixa. Respondent further certifies that such respondent has not and will not, directly or indirectly, enter into any agreement, or understanding; participate in any collusion; or otherwise take any action in restraint of free competitive pricing in connection with such agreement, contract or Proposal; nor will respondent knowingly provide gratuities to City of Nixa employees or Council members, or to their family members. Respondent shall require all subcontractors (at all tiers) to be bound by this conflict-of-interest provision.

### **5.6. Insurance.**

The vendor contracted by the City shall secure and maintain insurance at its own cost and expense, throughout the duration of the contract agreement. This insurance shall remain in



force for the full duration of any contract or contract renewal with City of Nixa. The insurance shall be of such types and in such amounts as may be necessary to protect the respondent and the interest of the City of Nixa against all hazards or risks of loss as specified by the City or which may arise out of the contracted services.

#### **5.7. Clarification of RFP**

Respondents may be required to clarify their proposal or further explain the functions of the services proposed. Any clarification will be in writing by the respondent and will be considered part of the proposal. Refusal by a respondent to comply with this requirement will be cause for rejection of the proposal.

#### **5.8. Sub-contractors**

The selected vendor will be required to assume responsibility for all services obtained under contracts resulting from this RFP. The City will consider the selected vendor to be the sole point of contact regarding payment of any and all charges resulting from contract obligations. It will be the responsibility of the vendor to verify completeness of each order, and its suitability to meet the needs of the City.

The awarded vendor will be the prime contractor in all matters. All sub-contracting must be approved by the City in writing. Prime contractor assumes all responsibility for subcontractor and will be the sole interface with said subcontractor.

#### **5.9. Contract**

This RFP does not commit the City of Nixa to award a contract, to pay costs incurred in the preparation of a proposal in response to this request, or to procure or contract for additional services or supplies. The City reserves the right to accept or reject, in part or in its entirety, any or all proposals received as a result of the RFP, if it is in the best interest of the City to do so.

The vendor must provide requested services in compliance with federal, state and local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of this contract which in any manner affect the completion of the work. The vendor shall indemnify and hold harmless the City and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the vendor.

Each vendor, by signing and returning this proposal, stipulates that he/she has read, understands, and will comply with all provisions of this RFP.

If respondent has a standard contract, such standard contract should be forwarded as part of this RFP. The contract will be subject to review by legal counsel of the City as to legality of form and compliance with state, local, and federal laws.

The City has attached a sample contract document to this RFP as "Attachment A." The City intends to utilize the document referenced as "Attachment 1" when contracting with the selected respondent. Respondents shall include with their proposal any objections or requested

modifications to this document. The City will consider such objections and requests when considering whether to award a contract as part of this RFP.

## 6. EVALUATION OF PROPOSAL

The City Administrator and other city staff as selected by the City Administrator will evaluate all proposals submitted and compare them to the evaluation factors to determine professional qualification(s) to fulfill the needs of the City of Nixa. Proposals will be scored according to the scoring legend below.

Proposal evaluation factors to be considered are:

Scoring Legend	Possible Points	Points Awarded
Compensation/Interest rate on the accounts	30	
Scope of services offered.	20	
Cost of services	20	
Relevant experience managing similar accounts and services with public sector and/or large commercial clients	10	
Experience, resources, and qualifications of the financial institution and individuals assigned to this account	5	
Financial strength of proposing institution	5	
Adequacy of financial controls and protection against loss	5	
Completeness of Proposal	5	
<b>Total:</b>	<b>100</b>	

The City of Nixa reserves the right to reject any or all proposals or any part thereof and to accept in whole, or in part, such proposals as may be deemed in the best interest of the City. City staff will recommend City Council award a contract to the bank which best fits the needs of the City.

## **7. SIGNATURE.**

When submitting proposals, firms shall include the following signature block as part of their submittal:

The undersigned declares that all interested principals are named herein. The undersigned further declares that no other person or firm has any interest in the proposal or agreement to be entered into and that this proposal is made without collusion with any other person, company, or party, submitting a proposal.

The respondent recognizes that the City of Nixa reserves the right to accept or reject any or all proposals and to waive any technicality or informality therein.

In making this proposal the undersigned has taken into account each provision of all of said Proposal Document:

### **Signature of Respondent:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**City of Nixa**  
**Statement of No Proposal RFP-042-2021/Finance**

IF YOU DO NOT INTEND TO SUBMIT A PROPOSAL, PLEASE COMPLETE AND RETURN THIS FORM PRIOR TO: August 16, 2021.

TO: City of Nixa Stephanie Ewing  
P.O. Box 395  
Nixa, MO 65714  
Fax it to 417-725-2480 or email: [sewing@nixa.com](mailto:sewing@nixa.com)

We the undersigned, have declined to submit a proposal for: Website, App & Related Software Integrations, for the following reasons.

- ☐ Insufficient time to respond to invitation.
- ☐ We do not offer this product/s or equivalent.
- ☐ Unable to meet specifications.
- ☐ Unable to meet insurance requirements.
- ☐ Our schedule would not allow us to perform.
- ☐ Specifications unclear (please explain below).
- ☐ Other (Please specify below).

Additional remarks:

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**Vendor Information:**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature and Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Date: \_\_\_\_\_

## ATTACHMENT A

### PROFESSIONAL SERVICES CONTRACT

**THIS PROFESSIONAL SERVICES CONTRACT** ("Agreement") by and between \_\_\_\_\_, a \_\_\_\_\_ ("Contractor") and the City of Nixa, a Constitutional Charter City of the State of Missouri ("City"), is made and entered into upon the date of execution of the Agreement by all parties.

**WHEREAS** City issued a Request for Proposals (RFP-042-2021/Finance) for professional services related to providing certain services to the City; and

**WHEREAS** Contractor has submitted a proposal in response to said RFP; and

**WHEREAS** after due consideration, the City has accepted the proposal of the Contractor; and

**WHEREAS** City and Contractor desire to enter into this Agreement whereby the Contractor shall undertake the performance of the services contemplated herein.

**NOW, THEREFORE**, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth, the City and the Contractor hereby agree as follows:

**1) Contract Documents.** This Agreement shall consist of the following documents, attachments, and exhibits:

- a. This Executed Agreement
- b. RFP-042-2021/Finance, and any addenda (Exhibit A)
- c. Appendix A- Pricing Page for Banking Services
- d. Appendix B- Pricing Page for Purchasing Card Services

The Agreement shall also include any Exhibits incorporated by reference in the above-described documents. When any provisions of the Contract Documents conflict, the provision contained in RFP-042-2021/Finance shall control, followed by the Executed Agreement, then the Contractor's Schedule of Fees.

**2) Term.** The term of this Agreement shall be five years, beginning on the date of execution by both parties.

**3) Scope of Services.** The City agrees to engage the services of the Contractor and the Contractor agrees to perform the services hereinafter set forth in Exhibit A with the standard of care, skill, and expertise ordinarily used by other members of Contractor's profession in performing similar services.

Contractor represents and warrants that it is equipped, competent, and able to perform, and that it will perform all services hereinafter set forth in a diligent and competent manner in accordance with the professional standard of care customarily recognized by members of the Contractor's profession.

Contractor shall provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the services which are particularly described as set forth in RFP-

042-2021/Finance (the "Services").

All Services shall be performed and provided in conformance with all applicable policies of the City, and all applicable federal and state laws and regulations.

The City, upon agreement of the Contractor may add Services to the Scope of Services. Such added Services shall be evidence by a written instrument signed by both parties. The City may delete items from the Scope of Services at any time and at the sole discretion of the City.

**4) Compensation.** The City hereby agrees to pay the Contractor, as full compensation for the complete and satisfactory performance of this Agreement such amounts as are set forth in the Contractor's Schedule of Fees, said Schedule being attached hereto and incorporated by this reference as "**Appendix A.**"

**5) Attorney Fees' and Costs.** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity, or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

**6) Other Representations, Warranties, and Other Covenants by the Contractor.** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided Services such as the ones to be performed under this Agreement to other municipalities or private enterprises and that the Contractor has sufficient expertise, knowledge, information, and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer.

**7) Amendment; Waiver.** No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

**8) Contractor's Liability Insurance.** The Contractor shall obtain and maintain during the term of this Agreement the insurance coverage's not less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo., as said section may be amended. Insurance policies providing the required coverages shall be with companies licensed to do business in the State of Missouri. All costs of obtaining and maintaining insurance coverages shall be borne by the Contractor.

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for the term of this Agreement.

Policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished to the City prior to Contractor commencing the Services. The certificates must list the City as an additional insured on a primary and non-contributory basis. Certificate Holder shall be listed as "City of Nixa, 715 W. Mt. Vernon, PO Box 395, Nixa MO 65714". The certificate shall bear an endorsement precluding cancellation of or change in coverage without at least thirty days written notice to the City.

**9) Termination.**

- a. Termination for breach.** Failure of the Contractor to fulfill any of Contractor's obligations under this Agreement in a timely and satisfactory manner shall constitute breach of this Agreement. The City shall thereupon have the right to immediately terminate this Agreement with sufficient notice. The City shall give written notice of the termination to the Contractor.
- b. Termination for Convenience.** The City shall have the right at any time to give sufficient written notice to Contractor to terminate and cancel this Agreement, without cause, for the convenience of the City, and Contractor shall immediately stop upon issuance of such notice. In such event, City shall not be liable to Contractor except for the payment for actual work performed prior to such notice.

**10) Notices.** Any notice required to be provided under this Agreement shall be sent via U.S. Mail or via e-mail. Notices shall be effective when received at the address as specified below. All such notices shall be sent to each party at the address below, or to such other address as designated by such party, in writing:

IF TO THE CITY:                      City of Nixa  
  ATTN: Stephanie Ewing, Purchasing Manager  
  PO Box 395  
  Nixa, MO 65714  
  E-mail: \_\_\_\_\_

IF TO CONTRACTOR:              Name & Title: \_\_\_\_\_  
  Company Legal Name: \_\_\_\_\_  
  Address: \_\_\_\_\_  
  Email: \_\_\_\_\_

**11) Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

**Independent Contractor.** Contractor shall be and operate as an independent contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel

engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of the Contractor and shall not be deemed employees of the City in any respect.

**12) Compliance with Laws.** Contractor shall comply with all applicable City Ordinances and all other applicable laws and regulations, whether State or Federal, including without limitation, unemployment and workers' compensation, occupational safety, equal employment, and wage and price laws, insofar as applicable to the performance of this Agreement.

**13) Subcontracts and Assignment.** The Contractor shall not subcontract or assign any of the Services to be performed by it hereunder without the express written consent of the City. In the event Contractor utilizes a subcontractor, the Contractor shall ensure that any agreement between Contractor and such subcontractor complies with all requirements imposed for such agreement by federal, state, and local law.

**14) Indemnification.**

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.

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 Agreement, or the work or any subcontract thereunder (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 Agreement to Contractor.

Firm 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.

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.

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.

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.

Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency



including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

**15) Nondisclosure and Confidentiality.** The Contractor agrees that it will preserve the confidentiality of all City data and account information and will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

**16) Multi-year contracts and Non-appropriation.** Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Non-appropriation"), this Agreement shall terminate at the end of the then current fiscal year as if terminated expressly and mutually by both parties. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party.

**17) Accounting.** During the term of this Agreement, the Contractor shall maintain books and accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

**18) Other Contractors.** Nothing in this Agreement shall be construed as prohibiting the City from contracting with other Contractors to provide any of the Services provided for herein.

**19) Work Records and Work Product.** The Contractor shall provide the City with copies of all documents pertinent to the Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Agreement. The Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. Upon termination of this Agreement, the Contractor shall promptly deliver to City any documents, and work product, whether printed or electronic.

**20) Compliance with Immigration Statutes.** Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.

**21) Governing Law and Jurisdiction.** This Agreement and every question arising hereunder shall be construed and determined according to the laws of the State of Missouri. Should any part of this Agreement be litigated, venue shall be proper only in Christian County, Missouri.

**22) Discrimination.** Contractor agrees that, in the performance of this Agreement, not to discriminate on the ground 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 a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**23) Entire Agreement.** This Agreement, including the Exhibit A, and Exhibit B, shall constitute 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 and specifically referring hereto.

**24) City's Representative.** The City Administrator is hereby designated as the City's authorized representative for purposes of this Agreement. The City Administrator is charged with providing any approvals and exercising any rights of the City under this Agreement, including the approval of any renewal terms contemplated herein.

**(Remainder of page intentionally blank. Signature page to follow.)**

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRACTOR:

CITY OF NIXA, MISSOURI

\_\_\_\_\_  
Signature.

\_\_\_\_\_  
Jimmy Liles, City Administrator

\_\_\_\_\_  
Printed Name.

Approved as to form:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Nick Woodman, City Attorney

\_\_\_\_\_  
Date.

**CERTIFICATE OF FINANCIAL OFFICER**

ATTEST:

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.

\_\_\_\_\_  
Signature.

\_\_\_\_\_  
Name.

\_\_\_\_\_  
Jennifer Evans, Director of Finance

\_\_\_\_\_  
Title.

\_\_\_\_\_  
Date

## **APPENDIX B – Purchasing Card Program**

### **1. Introduction**

The City currently utilizes approximately 27 purchasing cards as a means of payment for on-line purchases, travel and other items.

### **2. General Information**

Please provide the following information regarding your purchasing card program:

- a. How long has your company been providing these services?
- b. Will one primary contact be assigned to the City's account for this program?
- c. Is program capable of providing an import file that is compatible with Tyler Technologies – Incode?

### **3. Program Features**

- a. On what platform do you issue commercial payment solutions? (i.e. American Express,
  - i. Visa, MasterCard)? What are the prime benefits of this platform?
- b. Is a third-party processor used for authorizations and transaction posting?
- c. Discuss settlement terms – what billing cycles are available, how will statements be received, what are payment terms from “statement date.” What options are available for the City to make payment, i.e. ACH, check? What options are available to customize billing statements and cycles?
- d. Describe any unique features provided by your program that need to be considered.

### **4. Controls**

- a. Describe the card controls and usage restrictions supported by the issuer's program.
  - i. City level restrictions
  - ii. Cardholder level restrictions
  - iii. Merchant Category Code/Standard Industry Classifications (MCC/SIC) restrictions
  - iv. Cash advance restrictions
  - v. Dollar limits
  - vi. Multiple purchase limits
- b. What are the liabilities of the City of Nixa and employees in the event of fraud, abuse, or loss of a card?

- c. Does your program screen transactions for fraud patterns?
- d. What (if any) credit limits would be imposed?
- e. How are cards replaced in an emergency situation? Is there a fee?
- f. Describe incentives, price breaks, rebates offered based on business volume, timeliness of payments, etc.
- g. Provide information about on-line access and report generation.

**5. Technical Capabilities**

- a. What are the hardware and software requirements for using your card transaction reporting software packages?
- b. What technical support is available for your reporting packages and what hours are they available? Where, are they located?
- c. How do you ensure that no unauthorized individual accesses the system both internally (at The City) and externally (at your location)?
- d. What physical and software security measures does the issuer take to protect the confidentiality of the company's transaction information?

**6. Information Reporting**

- a. Provide a general description of the reporting packages you offer including sample screenshots (e.g. welcome page, menus, transaction screen, reconciliation module, etc).
- b. How quickly after a transaction has been conducted is information available?

**7. Implementation**

- a. Provide a complete description of your implementation process, including a sample plan and description of various implementation tasks for both you as the issuer and the City. How long will implementation take?
- b. Describe the support provided during implementation, including user manuals, instructional and/or educational materials, on-site visits, or other assistance.

- c. Do you offer live, in-person training based on our timeframe and at our convenience?
- d. What are some of the common implementation obstacles you have observed?

The proposal submitted would be the primary document upon which each proposing bank will be evaluated. Bidders may be asked to demonstrate electronic finance software concentrating on, but not limited to, ease of use, features, reporting options available and compatibility with our hardware.

## PURCHASE CARD SERVICES

### Purchase Card Service Item Pricing

In order to fully evaluate each bank's ability to meet the Purchase Card service needs of the City, a standard reply format is required. Each proposal must include a response to each item of the RFP in the order given. Only proposals submitted in the exhibit format provided will be evaluated for contract award.

#### Transactional charge fee schedule:

Annual Percentage Rate	%
Monthly Periodic Rate	%
Grace Period for Repayment of Purchases	
Annual Membership Fees	\$
Over Limit Fees	\$
Late Fees	\$
Minimum Finance Charge	\$
Annual per Card	\$
Per Transaction	\$
Program Implementation/set-up	\$
Reporting – standard and customized	\$
Fraud Protection	\$
Other:	

## PURCHASE CARD SERVICES

We have read the Request for Proposal and fully understand its intent, contents and scope. We certify that we have adequate personnel, equipment, technology and facilities to fulfill the specified requirements. We understand that our ability to meet the criteria and provide the required services shall be judged solely by the City.

The undersigned is aware the City reserves the right to reject any, and all proposals and is submitting this proposal without collusion with any other person, individuals or corporations. I certify that I am a duly authorized representative for the Bank listed below and that information and material enclosed with this proposal accurately represents the capabilities of the Bank for providing these services.

Submitted by:

Banking institution \_\_\_\_\_

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

### CONTACT PERSON FOR BID

Printed name \_\_\_\_\_

Address \_\_\_\_\_

Email \_\_\_\_\_ Phone \_\_\_\_\_





**Issue:** A RESOLUTION OF THE NIXA CITY COUNCIL APPOINTING MARK HARTSOCK TO THE NIXA BOARD OF ADJUSTMENT

**Date:** February 14, 2022

**Submitted By:** Garrett Tyson, Director of Planning and Development

---

### **Background**

Mayor Steele has nominated Mr. Mark Hartsock for appointment to the Nixa Board of Adjustment.

### **Analysis**

Upon the City Council's consent, Mr. Hartsock will be appointed to serve the remainder of a recently vacated term that expires in April 2023.

The filling of the vacant board position is necessary to ensure full membership.

### **Recommendation**

Staff recommends the approval of this resolution.

**RESOLUTION NO. 2022-026**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA CONSENTING TO THE  
MAYOR'S APPOINTMENT OF MARK HARTSOCK TO THE BOARD OF  
ADJUSTMENT.**

**WHEREAS** the late Steve Russell's position on the Board of Adjustment is now  
vacant; and

**WHEREAS** the Mayor has appointed Mark Hartsock to serve the remainder of the  
term for the vacant position and the City Council consents to the Mayor's appointment as  
provided for herein.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF  
NIXA, AS FOLLOWS, THAT:**

**SECTION 1:** The City Council hereby consents to the Mayor's appointment of Mark  
Hartsock to the City's Board of Adjustment. Mr. Hartsock's term shall expire on May 31.  
2023.

**SECTION 2:** This Resolution shall be in full force and effect from and after its final  
passage by the City Council and after its approval by the Mayor, subject to the provisions  
of section 3.11(g) of the City Charter.

**ADOPTED BY THE CITY COUNCIL THIS 14<sup>th</sup> DAY OF FEBRUARY 2022.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

**APPROVED BY THE MAYOR.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
DATE OF APPROVAL

\_\_\_\_\_  
CITY ATTORNEY



**Issue:** RESOLUTION #2022-027 CC911 TOWER USE AGREEMENT

**Date:** February 10, 2022

**Submitted By:** Doug Colvin  
Assistant City Administrator – Director, Nixa Utilities and Public Works

---

### Background

Christian County 911 has been working to improve radio communications for among others, the Nixa Police Department. Improvements are necessary for our Police Department to have full and reliable communications across the entire service area. CC911 would like to have low-cost use of water tower #7 near Summit and High Point schools to install a radio repeater, antenna, and associated equipment.

### Analysis

As with recent action taken for the amateur radio operators (HAM Radio), staff has worked with CC911 representatives to develop the attached Tower Use Agreement to allow them a low cost way to improve radio communications for our PD.

This agreement, which is nearly identical to the HAM Radio agreement except for the tenant name and location, allows their use of the tower for a five-year period at the reduced price of \$1 per month. Staff has predetermined all equipment (also like that for HAM) is acceptable as an attachment to our facilities without concern of failure or damage.

Resolution #2022-027 authorizes the City Administrator to execute the agreement.

### Recommendation

Staff recommendation is for City Council to pass Resolution #2022-027

**RESOLUTION NO. 2022-027**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A TOWER ATTACHMENT AGREEMENT WITH CHRISTIAN COUNTY EMERGENCY SERVICES.**

**WHEREAS** Christian County Emergency Services and the Nixa Police Department desire to improve radio communications for the Police Department; and

**WHEREAS** by authorizing the attachment of certain Christian County Emergency Services equipment on the City's water tower located at 1355 North Street it is believed that such equipment will improve the Police Department's radio service.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:**

**SECTION 1:** The City Administrator, or designee, is hereby authorized to execute the "Tower Attachment Agreement" ("Contract") attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," with Christian County Emergency Services. Said Contract shall be in substantially similar form as the document attached hereto as "Resolution Exhibit A." The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

**SECTION 2:** This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**ADOPTED BY THE CITY COUNCIL THIS 14<sup>th</sup> DAY OF FEBRUARY 2022.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

**APPROVED BY THE MAYOR.**

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
DATE OF APPROVAL

\_\_\_\_\_  
CITY ATTORNEY

**TOWER ATTACHMENT AGREEMENT**

**THIS TOWER ATTACHMENT AGREEMENT** ("Agreement") is entered into upon the day of its execution by both parties, by and between the City of Nixa, a Missouri constitutional charter city, ("Owner") and Christian County Emergency Services ("Tenant").

1. **Grant.** Subject to the provisions of this Agreement, Owner hereby grants to Tenant the following:

a. The nonexclusive right to install, maintain, operate, remove, and replace certain Equipment and other appurtenances related thereto, on Owner's tower ("Tower") located at 1355 North Street, Nixa, MO 65714, ("Property").

b. Tenant may install equipment, personal property, and other improvements, as listed on "Exhibit A" ("Equipment"). Owner may, in its sole discretion and at the request of the Tenant, authorize Tenant to place additional equipment, personal property, or other improvements on the Property, provided that such approval is in writing. All Equipment so installed shall not interfere with Owner's use of the Property, including without limitation any facilities or utilities on the Property, or undermine the structural integrity of the Tower. The Exhibits referenced in this paragraph are attached hereto and incorporated herein by their reference herein.

c. Any Equipment owned by Tenant, whether or not fixed or attached to the Owner's Property or Tower, shall remain the property of the Tenant. Tenant shall dismantle and remove its Equipment and facilities from the Tower and Property prior to the expiration or termination of this Agreement, unless additional time is provided by the Owner. In the event Tenant's Equipment and facilities are not removed from the Tower or the Property after the time allowed under this Agreement, Owner may cause the Equipment and facilities to be removed, and Tenant shall be responsible for the payment of actual costs incurred by Owner for: (i) removal and storage of Tenant's Equipment and facilities; (ii) repair of damages caused to the Tower or Property by such removal; and (iii) restoration of the Tower or Property to substantially the same condition as its condition prior to Tenant's attachment to the Tower, reasonable wear and tear excepted, together with any reasonable attorney's fees incurred by Owner to enforce such removal. Tenant shall provide Owner with a performance bond or other acceptable form of surety, supported by bids acceptable to Owner, in an amount equal to the estimated cost of removing Tenant's Equipment and restoring the Tower as provided above. The parties expressly agree that the terms contained herein relating to the Tenant's obligation and responsibility for paying the Owner's actual costs incurred for removing Equipment and facilities shall survive the termination of this Agreement and shall continue in full force and effect until the Owner's claims have been resolved.

2. **Owner's rights.** Owner shall continue to have the full right to occupy and use the Property, operate the Tower, and to grant others the right to occupy or utilize the remainder of the Property and the Tower at Owner's sole discretion, subject to the provisions of this Agreement.

3. **Tenant's use.**

a. Tenant shall use the Property for the purpose of installing, maintaining, improving and operating, at Tenant's sole cost and expense, a communications facility, which shall

include only the Equipment referenced on "Exhibit A," or any Equipment later authorized by the Owner in writing.

b. Tenant shall be solely responsible for securing any and all building permits and approvals, zoning changes or approvals, variances, use permits, and other governmental permits from applicable governmental authorities, including any Federal Communications Commission and Federal Aviation Administration approval (collectively, "Permits") prior to construction on the Property. Owner agrees to reasonably cooperate with Tenant in obtaining the Permits, and copies of the Permits shall be provided to Owner upon request. Tenant shall promptly pay all costs and expenses of obtaining the Permits and shall not cause or knowingly permit any lien to be maintained against the Owner's Property as a result thereof.

c. During the term of this Agreement, Tenant shall have reasonable access to the Property at all times, subject to Owner's occupancy of the Property, provided that Tenant shall provide notice to Owner when they or their agents will be present on the Property.

4. **Term.** The term of this Agreement shall be **five years** ("Term") commencing on the date this Agreement is fully executed by the parties (the "Commencement Date").

5. **Rent.** Beginning on the Commencement Date, Tenant shall pay Owner \$1.00 monthly for their use of the Property and Tower ("Rent"). Rent payments shall be made monthly and sent to the Owner's notice address as specified below.

6. **Holding Over.** In the event that Tenant continues to occupy the Tower or Property after the expiration of the Term of this Agreement, without executing a new Tower Attachment Agreement with Owner, Tenant shall occupy the Property month-to-month and the terms of this Agreement shall continue in full force and effect during Tenant's continued occupancy.

7. **Tower Maintenance.**

a. Owner represents and warrants that its operation of the Tower, exclusive of Tenant's Equipment, meets and will be maintained in accordance with all applicable laws, rules and regulations of the Federal Communications Commission, Federal Aviation Administration and all applicable local codes and regulations. The costs of maintaining the Tower, including painting of the exterior and finishing or painting the interior of the Tower, shall be borne by Owner, with the exception of maintenance of Tenant's antennae and equipment. Any additional charge for maintenance, operation or painting of the Tower resulting from Tenant's occupancy of the Tower shall be borne by Tenant. In the event damage is caused to Tenant's equipment or personal property by Owner, upon due notice and proof of loss provided by Tenant, Owner shall reimburse Tenant the reasonable cost of repairing such damage.

b. For any maintenance that may affect Tenant's antennae or equipment, Owner shall: (i) give Tenant 48 hours written notice of the proposed maintenance; and (ii) allow Tenant the opportunity to have its personnel or agents present during the maintenance operations.

c. If some or all of Tenant's equipment must be removed from the Tower to accommodate repairs or maintenance, Owner shall use reasonable efforts to permit

Tenant to place temporary transmission facilities at an alternative location acceptable to Tenant until such time as Owner completes its repairs or maintenance.

d. Tenant shall maintain its Equipment in good operating condition. In the event damage is caused to the Tower by Tenant or Tenant's agents, employees, contractors, or subcontractors, the cost of repairing such damages shall be borne by Tenant who shall, upon due notice provided by Owner, timely repair any such damage.

e. Upon termination or expiration of this Agreement, Tenant shall remove its Equipment, and any other facilities or property, from the Tower and Property in accordance with the terms of this Agreement and shall repair damage, if any, to the Tower caused by the removal of Tenant's Equipment (normal wear and tear excepted).

f. Except to the extent provided by this Agreement, Tenant's activities, operations, and Equipment shall not adversely interfere with Owner's maintenance, repair, and operation of the Tower and its lighting system. Tenant expressly agrees that Tenant's use of the Tower, under this Agreement, is subservient to Owner's use of Tower.

**8. Tenant's duties.**

a. Tenant shall secure any and all appropriate approvals or Permits and maintain said approvals and Permits for the duration of this Agreement, for Tenant's intended use of its Equipment on the Property from the Federal Communications Commission, the Federal Aviation Administration, and any other federal, state or local agency having jurisdiction over Tenant's proposed use of the Equipment or Property.

b. Tenant shall accept the condition of the Property as it exists on the Commencement Date. Tenant has the option of obtaining an environmental audit of the Property performed by an environmental consulting firm of Tenant's choice and at Tenant's sole cost and expense.

c. Tenant shall install Equipment only of types and generating frequencies which will not cause interference to transmissions or signals from the existing equipment of Owner and other users of the Tower as may be already in place on the Tower or Property as of the Commencement Date. At Owner's request, Tenant shall provide a detailed interference analysis showing potential conflicts between Tenant's frequencies and those of the existing equipment of Owner or other users already in place on the Tower or Owner's Property. In the event Tenant's Equipment causes such interference, Tenant will take commercially reasonable steps to correct such interference and will, if necessary, shut down the Equipment causing such interference (except for intermittent operations for the purpose of testing, after performing maintenance, repair, modifications, replacement, or other action taken for the purpose of correcting such interference) and if such interference is not corrected within 30 days after receipt of written notice, Tenant agrees to remove its Equipment from the Tower and the Property and this Agreement shall terminate. After Tenant's equipment has been installed, Owner shall place similar restrictions regarding interference with Tenant's frequencies on others using the Tower with Owner's permission, or under Owner's authority, installed on the Tower after installation of Tenant's Equipment.

**9. Utilities.** Tenant represents that utilities adequate for Tenant's intended use of the Property are presently available as of the Commencement Date. Tenant shall be responsible for

paying for any utility use generated by Tenant's occupancy of the Property and Tower. Owner shall not be responsible for providing or paying any utility costs associated with Tenant's occupancy of the Property or Tower.

**10. Termination.** Except as otherwise provided herein, this Agreement may be terminated as follows:

**a.** By either party upon default of any material term of this Agreement by the other party and when such default is not cured within **30 days** after receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions of this Agreement).

**b.** By Owner or Tenant for any reason upon **90 days** written notice.

Any termination right exercised by Tenant, regardless of whether said right appears in this section or another section of this Agreement, shall be predicated on the payment of one year's total rent as an early termination fee, in addition to any rent already paid. Tenant shall not be entitled to any refund on any rent already paid should the Agreement be terminated for any reason. The parties expressly agree that the terms contained in this Agreement which relate to the Tenant's obligation and responsibility for paying the Owner's actual costs incurred for removing Equipment and facilities, or otherwise restoring the Property to its condition prior to Tenant's occupancy, shall survive the termination of this Agreement and shall continue in full force and effect until the Owner's claims have been resolved.

**11. Structural Analysis.**

**a.** Tenant shall be solely responsible with ensuring that Tenant's installation of the Equipment shall not adversely affect the structural integrity of the Tower, and that no structural damage results to the Tower due to installation of the Equipment or facilities of the Tenant.

**b.** Prior to the Tenant's installation, Tenant shall provide a study, showing that Tenant's installation shall not adversely affect the structural integrity of the Tower or showing what modifications or reinforcements, if any, are necessary to make the Tower structurally sound so as to accommodate Tenant's installation. Said study shall be to the reasonable satisfaction of the Owner and Owner shall have the right to require a study be completed by a Missouri Registered Structural Engineer, or to refuse installation by Tenant if said study is not to the reasonable satisfaction of the Owner.

**c.** Tenant may terminate this Agreement if it determines based on actual and reasonable information that Tenant cannot use the Tower to house the Equipment due to issues concerning the structural integrity of the Tower. Tenant may reinforce or otherwise make the Tower structurally sound for Tenant's use in accordance with the study referenced above, at Tenant's sole cost. Any structural reinforcement is solely the responsibility of Tenant and shall be subject to approval of Owner.

**12. Taxes.** Tenant shall be responsible for any and all taxes which may be levied upon Tenant's improvements (including Equipment) located on the Property.

**13. Liability Insurance.** Tenant shall provide Owner with proof of the following insurance coverage and shall name the Owner as additional insured in each coverage. Throughout the Term



of this Agreement, Tenant shall maintain, at its own expense, insurance covering claims for public liability, personal injury, death, and property damage under a policy of general liability insurance, with limits not less than \$3,000,000 for all claims arising out of a single accident or occurrence, and not less than \$500,000 for any one person in a single accident or occurrence. Tenant shall also provide property damage insurance in an amount not less than \$500,000. All such insurance shall insure against liabilities arising out of or in connection with Tenant's use and occupancy of the Property and the Tower. Such insurance shall specifically insure Owner for property damage to the Tower resulting from Tenant's occupancy. On January 1, of each subsequent calendar year Tenant shall provide an increase in the amounts of insurance required herein if the Missouri Department of Insurance has published an increase in the sovereign immunity limits for Missouri public entities. Such increase shall be in an amount to ensure that the coverages required herein meet or exceed the sovereign immunity limits published by the Missouri Department of Insurance. Nothing herein shall be construed as a waiver of either party's sovereign or governmental immunity.

**14. Environmental Matters.**

**a.** Tenant shall comply with all laws, ordinances, rules, order or regulations applicable to Hazardous Materials. Tenant shall not use the Property for treatment, storage, transportation to or from, use or disposal of Hazardous Materials in violation of any applicable laws (other than batteries and/or petroleum products necessary for the operation of an emergency electrical generator to serve the Equipment). Tenant shall be responsible for and hold Owner harmless from, any expense incident to the abatement or compliance with the requirements of any federal, state, or local statutory or regulatory requirements caused, directly or indirectly, by the activities of Tenant or Tenant's agents, employees or contractors, or resulting from the presence of any Hazardous Materials brought onto the Owner's Property by Tenant, Tenant's agents, employees, contractors, licenses or invitee.

**b.** As used in this Agreement, "Hazardous Materials" shall mean any and all polychlorinated biphenyls, petroleum products asbestos, urea formaldehyde and other hazardous or toxic materials, wastes or substances, any pollutants, and/or contaminants, or any other similar substances or materials which are defined or identified as such in or regulated by any federal, state or local laws, rules or regulations (whether not existing or hereinafter enacted) pertaining to environmental regulations, contamination, cleanup or any judicial or administrative interpretation of such law as, rules or regulations, or any substance that after release into the environment or directly through food chains will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities.

**15. Hold Harmless.** Tenant agrees to defend, indemnify and hold Owner, its governing body, and employees, harmless from all costs, damages, losses, claims, actions, suits, causes of action, judgments, and charges of every kind and nature whatsoever, including reasonable attorney's fees, which may in any manner arise out of or relate to (i) Tenant's use of the Equipment or Property, or (ii) Tenant's performance or failure to perform under this Agreement, including without limitation, those claims that may arise out of the use or furnishing of materials, or (iii) any negligence or intentional misconduct by Tenant, or its agents, employees, or contractors, or (iv) Hazardous Materials on the Owner's Property if brought onto the Property by Tenant or its agents, employees, contractors, licensees, or invitees.

**16. Notices.** All notices, requests, demands and other communications shall be in writing and shall be deemed given upon delivery if personally delivered or mailed, by certified mail, return receipt requested, or via electronic communication to the addresses indicated below:

If to Owner, to:

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

If Tenant, to:

Christian County Emergency Services  
110 W Elm Street, Rm 50, Ozark MO 65721  
Email: [bbacon@cces911.org](mailto:bbacon@cces911.org)

**17. Assignment.** Tenant may assign or sublease this Agreement, provided Tenant promptly notifies Owner of such assignment or sublease and obtains Owner's prior written approval therefore, and the assignment or sublease is subject to the provisions of this Agreement.

**18. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

**19. Compliance with Laws.** All installations and operations in connection with this Agreement by either party shall be conducted in accordance with all applicable rules and regulations of the Federal Communications Commission, Federal Aviation Administration and any other applicable federal, state, or local laws, codes and regulations.

**20. Additional provisions.**

**a.** This Agreement constitutes the entire agreement and understanding of Owner and Tenant, and supersedes all offers, negotiations, and other agreements. Any amendments to said Agreement must be in writing and executed by Owner and Tenant.

**b.** This Agreement shall be construed in accordance with the laws of the state of Missouri. Venue regarding any disputes arising out of the terms of this Agreement shall only be proper in Christian County, Missouri.

**c.** If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

**d.** Each of the undersigned warrants that they have the full right, power, and authority to execute this Agreement on behalf of the party indicated.

**e.** Unless specifically provided to the contrary herein, approvals of Owner herein may be given by the City Administrator, or their authorized designee, without the need of any further action of the City Council. The City Administrator, or their authorized designee, is the Owner's authorized representative for purposes of carrying out the terms of this Agreement.

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

**CITY OF NIXA**

\_\_\_\_\_  
Jimmy Liles, City Administrator

Date: \_\_\_\_\_

**ATTEST**

\_\_\_\_\_  
Cindy Robbins, City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

\_\_\_\_\_  
Nick Woodman, City Attorney

**CHRISTIAN COUNTY EMERGENCY SERVICES**

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST**

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Antenna, coax and equipment installation - CCES911****Antennas to be added by CCES911**

(1) Andrew/Commscope DB-201L

\* Weighs 24 lbs / wind load = 1.1 sq/ft

(1) Sinclair SD314-HF2P2SNM

\* Weighs 23 lbs / wind load 1.91 sq/ft

(1) Comprod 572F-70TM-2:

\* Weighs 21 lbs / wind load 2.60 sq/ft

(2) Commscope DB-436C

\* Weighs 7.055 lbs each / wind load = 0.45 sq/ft each

(1) Ubiquiti PBE-M5-300 Dish

\* Weighs 2.65 lbs / wind load = 5.74 sq/ft

**Total weight being added by CCES911 antennas:**

84.76 lbs

**Total wind loading being added by CCES911 antennas:**

12.25 sq/ft

**CCES911 Antenna Mounting to Nixa Water Tank:**

The antenna systems proposed by the CCES911 will mount to existing pipes mounted to the top of the water tower AFTER the antenna systems are removed by Verizon. No new modifications to the water tank structure or to the pipes mounted to the tank will be necessary to mount the CCES911 amateur radio antennas at this location.

**General equipment to be installed inside the Nixa Water Tank:**

<b>Equipment</b>	<b>Model</b>	<b>Serial #</b>
Motorola Quantar - UHF Amateur Repeater	T5365A	509CJV2054
Motorola UHF Duplexer	0185417U05	379528-161
TX-RX 220 Duplexer	28-52-02-2	2257
S-Com Repeater Controller	7330	733
TYT TH-9000 - 220 MHz Amateur repeater	TH-9000	1803A19764
Motorola CDM - 29.680 Transmit radio	CDM-750	103TBJB151
Motorola CDM - 425.500 MHz Receive Radio	CDM-1550LS+	001THE0067
Motorola CDM - 442/447.425 TX/RX Radio	CDM-1550LS+	103TDWJ106
Power Supply - Astron	RM-35M	N/A
Bext 29 MHz Amplifier	T-1500	T98007
Motorola Enclosed Equipment Cabinet	N/A	N/A



**Issue:** RESOLUTION FOR DEPARTMENT OF TRANSPORTATION GRANTS

**Date:** February 3, 2022

**Submitted By:** Joe Campbell Chief of Police

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## **Background**

Per City policy, City Council can adopt a resolution allowing for the application and acceptance of non-matching grants from the Missouri Department of Transportation Division of Highway Safety (Mo DOT) for the funding of traffic safety programs. On an annual basis, the police department applies for specific DWI, and Hazardous Moving Violations (HMV) grants. These grants are a primary funding source for our DWI and HMV enforcement efforts throughout the fiscal year.

Additionally, the police department also applies for various smaller program specific non-matching traffic grants offered by MoDOT often referred to as "mini" grants. These include the following:

1. Youth Seatbelt Enforcement
2. Youth DWI Enforcement
3. Click It or Ticket
4. July 4th DWI Enforcement
5. Holiday Enforcement
6. Youth Alcohol Enforcement
7. Drive Sober or Get Pulled Over

## **Analysis**

The above-mentioned grants financially support the police department's efforts to make the roads of city safer. These grants cover the costs of additional traffic enforcement overtime hours worked by our officers. Without this grant funding, overtime hours worked by officers for these types for traffic enforcement efforts would be limited or eliminated due to department budget constraints.

## **Recommendation**

Staff recommends approval of the resolution.

**RESOLUTION NO. 2022-028**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO APPLY FOR AND ACCEPT GRANT FUNDING PROVIDED BY THE MISSOURI DEPARTMENT OF TRANSPORTATION FOR CERTAIN TRAFFIC SAFETY PROGRAMS.**

**WHEREAS** periodically the City has an opportunity to apply for non-matching grants provided by the Missouri Department of Transportation; and

**WHEREAS** the funding provided by these grants are generally related to traffic safety operations.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:**

**SECTION 1:** The City Administrator, or designee, is hereby authorized to apply for and accept grants provided by the Missouri Department of Transportation and which are related to the following programs, for the current fiscal year:

1. Youth Seatbelt Enforcement;
2. Youth DWI Enforcement;
3. Click It or Ticket;
4. July 4<sup>th</sup> DWI Enforcement;
5. Holiday Enforcement;
6. Youth Alcohol Enforcement; and
7. Drive Sober or Get Pulled Over;
8. Hazardous Moving Violation grant program;
9. DWI Saturation enforcement; and
10. Any other grant opportunities which may become available through the Missouri Department of Transportation, and which relate to traffic safety and enforcement and do not require a matching contribution by the City.

The City Administrator, or designee, is authorized to do all things necessary or convenient to apply for and accept said funding and to carry out the terms of this Resolution, including the execution of documents required to obtain said funding,

**SECTION 2:** This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**[Remainder of page intentionally left blank. Signatures follow on next page.]**

**RESOLUTION NO. 2022-028**

**ADOPTED BY THE CITY COUNCIL THIS 14<sup>th</sup> DAY OF FEBRUARY 2022.**

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

**APPROVED BY THE MAYOR.**

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
DATE OF APPROVAL



**Issue:** SW REGIONAL LIFT STATION 2022 CAPITAL PROJECT AMENDMENT

**Date:** February 10, 2022

**Submitted By:** Doug Colvin  
Assistant City Administrator – Director, Nixa Utilities and Public Works

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### Background

In early 2018, Nixa Wastewater and other public works staff utilized the services of Shaffer and Hines to complete a Wastewater Master Plan for the western and southern parts of the community. The intent was to have some long-term planning for future development in the area. This plan consists of building three large regional lift stations like those on the north and east side of town. The plan also provides direction for several smaller developer installed lift stations that feed into the regional locations.

### Analysis

Adopted in the 2022 Budget and Capital Improvement Program is a project to design and build the SW Regional Lift Station which would replace the capacity-limited Oakmont Lift Station and provide additional sewer capacity for undeveloped properties on the western side of town.

Planned funding for the SW Regional LS project would be from a portion of the ARPA funds in the amount of \$2.6 million. A breakdown of these funds includes \$260,000 for design, another \$100,000 for land and easement acquisition with the remainder to be used for the actual construction of the lift station and associated gravity, force main, and electric service lines.

Recently, I've received new direction to propose that instead of carrying this project through construction in 2022, we complete the design portions of the SW Regional LS and the Kelby Creek Regional Lift Station Expansion and seek other funding for construction at a later date.

This second regional lift station is an expansion of the Kelby Creek Lift Station and replacement of the downstream force main for more capacity. Once built, this improvement would open undeveloped areas along the southern and southeastern areas of town on both sides of US-160. Full design and construction for this improvement is approximately \$2 million.

To complete design for both projects, staff estimates the cost at approximately \$470,000. There should be enough time to complete the design and develop bid documents for the two shovel ready projects by years end and possibly in time for 2023 CIP development.

### Recommendation

Discuss and direct staff to complete the SW Regional LS or complete design of both the SW Regional and Kelby Creek Lift Stations.



