



**NIXA CITY COUNCIL  
Tentative Agenda  
May 10<sup>th</sup>, 2021  
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**

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

Nixa Arts Council

**Presentations (Informational Only; No Public Hearing):**

Show Me Christian County-Andrea Sitzes

**Proclamation:**

Economic Development Week

**Resolutions: (Reading and Public Hearing; Council Vote Anticipated):**

**Resolution #2021-051** Establishing a Special Committee of the Council; Setting Forth the Membership of Said Committee; and Referring Council Bill No. 2021-044 to Said Committee

**Ordinances (First Reading and Public Hearing; No Council Vote Anticipated):**

**Council Bill #2021-051** Vacating a Certain Sanitary Sewer Easement Located at 514 South Nicholas Road and Accepting Replacement Easement Rights

**Council Bill #2021-052** Authorizing the City Administrator to Execute an STP-Urban Program Agreement with the Missouri Highways and Transportation Commission and a Consultant Services Agreement with CJW Transportation Consultants, LLC, Regarding Proposed Improvements to North Street

**Council Bill #2021-053** Amending Chapter 117, Article VII of the Nixa City Code to Modify the City's Density and Dimensional Regulations

**Council Bill #2021-054** Rezoning 18 Acres of Property Generally Located at the Southeast Corner of the Main Street and Tracker Road Intersection from R-1 and GC Zoning Districts to R-1 and R-3 Zoning Districts

**Council Bill #2021-055** Annexing 10 Acres of Property Generally Located at the 100 Block of East Tracker Road and Zoning Said Property to R-1 and GC Zoning Districts

**Council Bill #2021-056** Annexing 28 Acres of Property Generally Located at the Northeast Corner of the Main Street and Tracker Road Intersection and Zoning Said Property to R-1 and GC Zoning Districts

**Ordinances (Second Reading and Public Hearing; Council Vote Anticipated):**

**Council Bill #2021-043** Repealing Ordinance No. 1388 for the Purpose of Opting into the Sales Tax Holiday Established by Section 144.049 RSMO

**Council Bill #2021-044** Amending Section 6-13 of the Nixa City Code to Allow for the Keeping of Chickens

**Council Bill #2021-045** Authorizing the City Administrator to Execute an Agreement with the Nixa Area Chamber of Commerce Regarding A Public Art Program Utilizing City Electric Boxes and Amending the 2021 Annual Budget to Fund Said Program

**Council Bill #2021-046** Authorizing the City Administrator to Execute on Behalf of the City a Memorandum of Understanding with Nixa Public Schools Regarding the Shared Use of Certain Baseball Fields

**Council Bill #2021-047** Authorizing the City Administrator to Apply for and Accept a 2021 Bulletproof Vest Partnership Grant in the Amount of \$9,065.00 Which Includes a Matching Requirement

**Discussion Items (No Public Hearing):**

**Unfinished Business Items:**

Council Liaison Assignments

**Mayor and Council Member Reports:**

**Closed Executive Session:**

The City Council is anticipated to hold a closed executive session under section 610.021 RSMo. The session is to be closed pursuant to sections 610.021(2) & (12) as the discussion relates to the leasing, purchase, or sale of real estate and documents and discussion related to a negotiated contract.

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(2) & (12).

**Adjournment:**

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

**Council/ Staff Liaisons**

/Doug Colvin-Public Works

Darlene Graham/Joe Campbell-Police

Aron Peterson/Matt Crouse-Park

Jarad Giddens/Garrett Tyson-Planning/Development

Justin Orf/Cindy Robbins-Administration/Court & Drew Douglas-Communications

/Jennifer Evans-Finance & Amanda Hunsucker-Human Resources

**a) BUSINESS DEVELOPMENT AND ATTRACTION**

- i) 4 By 4 Brewing - MODOT Requested site plan. Reached out to the architect, once they receive the final engineering plans they will share so we can get the documents to the appropriate parties.
- ii) Project Spin - USDA REDLG funding request has now moved past the state of MO and is at the federal level for consideration of competitive funds.
- iii) Project Eli - Working with Mr. Russell and the Nixa Chamber on an experiential retail/F&B project.
- iv) Project Horizon - Proposed sites in Nixa and Ozark. Conducted site visit with the client. Owner is weighing options of shutting down operations long enough to justify a move. Jobs - 50 estimated, CAPX TBD.
- v) Project Daisy - Working with the city of Clever to identify potential sites. Finally made connection with the land owner in an industrial area, the land owner is unwilling to sell at this time. Searching for alternatives in hopes of moving this project forward.
- vi) Project Peak - connected local Pharmacy company with CoxHealth on options to partner on supplies within their facility and also inquiry on existing building and possible expansion uses in Nixa.
- vii) Project Royal - assisting local developer with master plan and negotiations on a public/private partnership or developer's agreement. Large site plan including sports complex, commercial, mixed use, multi-family, and new urbanization single family dwellings. Targeting remote & teleworking high-income earners.
- viii) SBDC Lead - Received lead from Chrystal Irons with SBDC. Her client is starting a business and interested in Christian County. Proposed existing facilities in Nixa and Ozark. Resulted in a site visit for both locations.
- ix) PROSPECT:
  - (1) Received lead from a Developer we are working with, he may have the bid for an IT company in the region that wants to purchase and build a new location. Proposed site in Nixa for the operation. Jobs - currently 120, projected to grow to 200 in the next two years.
  - (2) Received lead for a company wanting to establish a saw mill in Highlandville.
- x) SREP Projects (Leads funneled from the Missouri Partnership or region):
  - (1) Project 29 - 60-80 acres of development ready land for manufacturing. Proposing one site in the county with utilities near the site and meets the accessibility requirements.
  - (2) Project Icarus - unable to respond. Search requested an existing facility on airport property for large-scale aerospace and defense related manufacturing.
  - (3) Project Aqua - unable to respond. Search requested existing facility 35,000 - 50,000 SF with ceiling height 20' to accommodate food processing facility.

**b) BUSINESS RETENTION AND EXPANSION**

- i) Project Empire - Spoke on behalf of the Project at Nixa City Council at the last two meetings. The Consent to Annex request passed and the company will be able to stay on timeline.
- ii) [VP - BRE Report](#) - Click to view
- iii) Provided commercial placemaking information for local real estate firm

**c) WORKFORCE DEVELOPMENT AND ATTRACTION**

- i) Meeting with Nixa staff regarding workforce development & networking efforts
- ii) Met with Taney County Partnership concerning workforce recruitment from Puerto Rico on behalf of local business
- iii) Update on seasonal workforce from Latin America from American Jobs Centers and Embassy
- iv) Attended webinar: The Future of Labor Data
- v) Taught (3) ED101 lectures for Ozark Schools
- vi) Attended IEDC Green Jobs meeting

**d) REGIONALISM AND ALIGNMENT**

- i) Participated in SBJ 2021 Economic Growth Survey Kickoff
- ii) Attended Advisory Council Meeting for SREP
- iii) Meeting with the Springfield Chamber of Commerce
- iv) Attended two meetings with representatives from Nixa, Ozark, and the Christian County Commission to discuss long-range County marketing project
- v) Participated in Insight Missouri Planning Committee
- vi) Attended MEDC Board of Directors meeting
- vii) Participated in 2021 Virtual Transportation Advocacy Day through the Springfield Chamber of Commerce
- viii) Meeting with David Cameron, City Administrator for Republic
- ix) Connections: Travis Allen, Total Highspeed w/ Caleb Arthur, Sun Solar

**e) INVESTORS**

- i) StepUp 2.0 meetings
  - (1) Appleby Healy, Nixa Community Foundation, Liberty Utilities, Legacy Bank, Stenger, MSU, Integrity Development, CoxHealth
  - (2) New/Extended commitments:
    - (a) Bank of Billings, CJW Transportation Consultants, Ozarks Technical Community College, Stenger Management, Jared Enterprises, SVN (Tom Rankin, Jeff Childs, Arch Watson, Lee McLean III)

**f) PREPARED COMMUNITIES/NETWORKING**

- i) Attended first Republic Chamber of Commerce meeting under new director
- ii) Staff served as keynote speakers at the Clever Chamber of Commerce



- meeting.
- iii) Serving as the keynote speaker for the Sparta Chamber of Commerce on how to pursue SBA funding for small businesses.
- iv) Meeting with a Real Estate developer on a new urbanization concept. Connecting with regional business partners for sustainability options.
- v) Attended Ozark Chamber ambassador meeting
- vi) Ozark Chamber GAO
- vii) Nixa Chamber Luncheon
- viii) Attended [Riverside bridge raising ceremony](#) at Finley Farms
- ix) Annual MEDC Conference planning meeting
- x) Hosted SMCC booth at annual NIXPO event
- xi) Attended Ozark Ask the Experts Panel with Ollis/Akers/Arney
- xii) Attended Ribbon cutting for Mr. Dent
- xiii) Participated in Ozark Chamber Ambassadors meeting
- xiv) Attended meeting at RiverCliff regarding new data technology

**g) COMMUNITY/LEGISLATIVE RELATIONS**

- i) Ozark Economic Development Update meeting
- ii) Nixa monthly joint meeting
- iii) Meeting with Sonya Anderson, new District Office Director for Senator Roy Blunt
- iv) Meeting with DED regarding local broadband initiatives
- v) Presented Nixa City Council Economic Development Update
- vi) Attended SMCOG board of directors meeting
- vii) Presented Ozark Board of Aldermen Update
- viii) Meeting with Alderman Elect Eddie Campbell regarding local ED efforts
- ix) Presented County Commission ED update
- x) Participated in Governor's Conference Steering Committee meeting

**h) OPERATIONS / ADMINISTRATIVE / MARKETING**

- i) Submitted article on outdoor recreation/natural amenities for the City of Ozark [newsletter](#) after Garrison Springs announcement
- ii) Gathered quotes & met with sign & marketing material companies for outward branding of potential new offices.
- iii) Onboarding for two new members of SMCC Board of Directors
- iv) Staff onboarding for Anna Evans, VP of BRE
- v) Vetted 40 possible office locations, presented updates to SMCC Board of Directors
- vi) Panelist for GRO Economic Development in rural communities webinar, an initiative for the Community Partnership of the Ozarks
- vii) Annual staff review executed by SMCC Executive Committee
- viii) Upcoming Events: Insight Missouri in St. Louis April 28-30, 2021

## **Business Retention & Expansion - Show Me Christian County**

March 22 - April 16, 2021

Submitted by: Anna Evans, VP - BRE

### **I. Strong Business Council**

- A. Interviews Completed
  - 1. Children's Smile Center - Ozark
  - 2. Prudential - Nixa
- B. Interviews Scheduled
  - 1. Insight Design - Nixa
  - 2. Appleby Healy - Ozark
- C. Meetings
  - 1. Monthly Strong Business Council meeting Monday, April 18
    - a) New member: Theresa Sampaio, MO Dept of Economic Development (successor to Mary Rajek, DED)

### **II. Fortify Christian County**

- A. CBRM course completed
  - 1. Test passed + certification achieved - Certified Business Resiliency Manager
    - a) Industry standard best practices for risk assessment, business impact analysis, resiliency strategy, plan development, plan testing, program maintenance
    - b) Eligible to obtain Certified Business Resilience IT Professional designation
- B. Established as counselor in MSU Small Business Development Center system
  - 1. Current projects
    - a) Research and follow up with small business currently exploring expansion of business model
    - b) Working with owner to update business plan
  - 2. Completed training on Neoserra system
- C. Established FEMA Student ID
  - 1. Working to complete ICS 100 training (virtual)

### **III. Outreach**

- A. Keynote speaker for Nixa Rotary Club re: SMCC and BR/E program

### **IV. Operations**

- A. Reconfigured BR/E visit communications process
  - 1. New processes for interview invitations, company background research, staff + councilor interaction and reminders, reporting, post-interview follow up
- B. Created new form sign-up for BR/E interview requests
- C. Updated existing form survey for post-interview follow up

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

**PROCLAMATION**

**ECONOMIC DEVELOPMENT WEEK**

***WHEREAS***, the International Economic Development Council is the largest professional economic development organization dedicated to serving economic developers; and

***WHEREAS***, the International Economic Development Council provides leadership and excellence in economic development for communities, members, and partners through conferences, training course, advisory services and research, in-depth publications, public policy advocacy, and initiatives such as the Accredited Economic Development Organization program and the Certified Economic Developer designation; and

***WHEREAS***, economic developers promote economic well-being and quality of life for their communities by creating, retaining, and expanding jobs that facilitate growth, enhance wealth, and provide a stable tax base; and

***WHEREAS***, economic developers stimulate and incubate entrepreneurship in order to help establish the next generation of new businesses, which is the hallmark of the American economy; and

***WHEREAS***, economic developers are engaged in a wide variety of settings including rural and urban, local, state, provincial, and federal governments, public-private partnerships, chambers of commerce, universities, and a variety of other institutions; and

***WHEREAS***, economic developers attract and retain high-quality jobs, develop vibrant communities, and improve the quality of life in their regions; and

***WHEREAS***, economic developers work in the City of Nixa within the State of Missouri; and

***THEREFORE, I***, Brian Steele, Mayor of the City of Nixa, Missouri, do hereby proclaim the week of May 9<sup>th</sup> through May 15<sup>th</sup>, 2021 as

***“National Economic Development Week”***

*In the City of Nixa and remind individuals of the importance of this community celebration which supports expanding career opportunities and improving quality of life*

*Mayor*

**ATTEST:**

*City Clerk*



**Issue:** **RESOLUTION No. 2021-051. A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA ESTABLISHING A SPECIAL COMMITTEE OF THE COUNCIL; SETTING FORTH THE MEMBERSHIP OF SAID COMMITTEE; AND REFERRING COUNCIL BILL No. 2021-044 TO SAID COMMITTEE.**

**Date:** April 27, 2021

**Submitted By:** Nick Woodman, City Attorney

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### Background

At City Council's April 26, 2021 regular meeting, Council took up Council Bill No. 2021-044 for first reading and public comment. Council Bill No. 2021-044 is a bill which modifies the provisions of Chapter 6 of the Nixa City Code to allow chickens to be kept in residential areas of the City under certain regulations.

After the public comment period for this bill, and after discussion from Councilmembers, it was the consensus of Council that a Special Committee be formed to further consider Council Bill No. 2021-044.

Council adopted a similar legislative approach regarding the legislative process of Ordinance No. 2171. Ordinance No. 2171 modified portions of the Nixa City Code to address truck-tractor parking in residential areas of the City.

During the discussion of forming a Special Committee to review Council Bill No. 2021-044, Council also agreed that Councilmember Darlene Graham should be appointed to the Committee as Chair. Additionally, it was agreed that Mayor Pro Tempore Jarad Giddens and Councilmember Shawn Lucas be appointed to the Committee.

### Analysis

Because there are no established committees of City Council at this time, City Council must create Committees as the need arises.

Resolution No. 2021-051 would establish a Special Committee of City Council, refer Council Bill No. 2021-044 to the Committee for further deliberation, appoint members to the Committee, and empower the Committee to conduct its business on behalf of the Council.

The Resolution states that the Committee and the authority granted to the Committee shall dissolve on October 31, 2021. Council may grant extensions of the Committee's term and should the Committee be unable to complete its work by this time, Council Bill No. 2021-044 would be returned to Council's legislative docket.

1 **RESOLUTION NO. 2021-051**

2  
3 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA ESTABLISHING A**  
4 **SPECIAL COMMITTEE OF THE COUNCIL; SETTING FORTH THE MEMBERSHIP**  
5 **OF SAID COMMITTEE; AND REFERRING COUNCIL BILL NO. 2021-044 TO SAID**  
6 **COMMITTEE.**  
7  
8

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9 **WHEREAS** during the April 26, 2021 regular City Council meeting, City Council  
10 held a first reading and public comment on Council Bill No. 2021-044; and  
11

12 **WHEREAS** said Council Bill contains modifications to the Nixa City Code which  
13 would allow for the keeping of chickens in residential areas of the City under certain  
14 regulations; and  
15

16 **WHEREAS** during the discussion of said Council Bill, the consensus of Council  
17 was to establish a Committee of the Council to review the bill and report to Council on  
18 recommended amendments; and  
19

20 **WHEREAS** City Council desires to establish a Special Committee of the Council  
21 to review Council Bill No. 2021-044; and  
22

23 **WHEREAS** the Mayor, pursuant to authority contained in Nixa City Charter  
24 section 4.4(f), desires to appoint Councilmember Darlene Graham as Chair of the  
25 Committee; and  
26

27 **WHEREAS** the Mayor, pursuant to authority contained in Nixa City Charter  
28 section 4.4(f), desires to appoint Mayor Pro Tempore Jarad Giddens and  
29 Councilmember Shawn Lucas to said Committee; and  
30

31 **WHEREAS** City Council consents to the Mayor's appointments to the  
32 Committee.  
33

34 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**  
35 **NIXA, AS FOLLOWS, THAT:**  
36

37 **SECTION 1:** City Council hereby establishes a Special Committee of the City  
38 Council. Said Committee is charged with reviewing Council Bill No. 2021-044, making  
39 any amendments the Committee deems advisable to said bill, reporting the bill back to  
40 the full City Council for further deliberations, and exercising any other powers or duties  
41 deemed advisable by the Committee to carry out the charge set forth herein. City  
42 Council hereby refers Council Bill 2021-044 to the Special Committee established  
43 herein.  
44

45 **SECTION 2:** City Council hereby consents to the Mayor's appointment of  
46 Darlene Graham as Chair of said Committee. The Council also consents to the Mayor's

47 appointment of Mayor Pro Tempore Jarad Giddens and Councilmember Shawn Lucas  
48 to said Committee. Said members are hereby appointed to the Committee and shall  
49 serve until the dissolution of the Committee.  
50

51 **SECTION 3:** The Chair of the Committee shall preside over all meetings of the  
52 Committee, set the agenda of the Committee, and perform any other functions or duties  
53 that the Committee may provide. The Committee shall meet upon the call of the Chair,  
54 provided that notice is provided to the other members of the Committee and an agenda  
55 for the meeting is provided. The Committee is authorized to establish rules of order and  
56 decorum for the conduct of its meetings, which shall be enforced by the Chair, and may,  
57 at the discretion of the Committee, take public testimony on any item considered by the  
58 Committee. The Committee is further authorized and empowered to do all things which  
59 may be necessary or convenient to carry out the terms and intent of this Resolution.  
60

61 **SECTION 4:** This Resolution shall be in full force and effect from and after its  
62 final passage by the City Council and after its approval by the Mayor, subject to the  
63 provisions of section 3.11(g) of the City Charter. The Committee established herein  
64 shall dissolve, and any authority granted herein shall terminate, on October 31, 2021,  
65 unless otherwise repealed or extended by City Council. Upon the termination of the  
66 Committee, Council Bill No. 2021-044 shall be returned to Council's legislative docket  
67 for consideration at Council's next available regular meeting, unless said Council Bill  
68 has been referred to the Council by the Committee prior to the Committee's termination.  
69

70  
71 **ADOPTED BY THE COUNCIL OF THE CITY OF NIXA THIS 10<sup>TH</sup> DAY OF MAY 2021.**  
72

73  
74 ATTEST:  
75

76 \_\_\_\_\_  
77 CITY CLERK

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

78  
79  
80 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**  
81

82  
83 ATTEST:  
84

85 \_\_\_\_\_  
86 CITY CLERK

\_\_\_\_\_  
MAYOR

87  
88  
89 APPROVED AS TO FORM:  
90

91 \_\_\_\_\_  
92 CITY ATTORNEY



**Issue:** VACATION OF A SANITARY SEWER EASEMENT AT NIXA HIGH SCHOOL  
AND ACCEPTING A REPLACEMENT EASEMENT

**Date:** May 10, 2021

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

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## **Background**

Nixa R-II School District has submitted a Vacation of Easement request for a sanitary sewer main easement located at the Nixa High School, 514 South Nicholas. The sanitary sewer main needs to be moved to allow for the Performing Arts Center addition to the High School. The project will relocate the sanitary sewer main away from the new addition and place it in a new sanitary sewer easement.

## **Analysis**

The applicant is requesting that the City vacate a sanitary sewer easement located on the East side of the Nixa High School. The sanitary sewer line will be relocated as part of the Performing Arts Center addition at the High School. The new sanitary sewer line will be placed in a new easement that will be outside of the building footprint. The new sanitary sewer easement has been submitted and is ready to be recorded after the easement vacation has been recorded.

## **Recommendation**

Staff recommends approval. The Planning and Zoning Commission voted unanimously in favor of the easement vacation.



# NHS Easement Vacation



S NICHOLAS RD

Approx. Location of  
Easement Vacation

Realigned  
SS Main

## Legend

- Hydrants
- Water Main
- Wastewater Main
- ForceMain



2  
3 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA VACATING A**  
4 **CERTAIN SANITARY SEWER EASEMENT LOCATED AT 514 SOUTH NICHOLAS**  
5 **ROAD AND ACCEPTING REPLACEMENT EASEMENT RIGHTS.**  
6  
7

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8 **WHEREAS** an application has been submitted requesting that the City vacate a  
9 certain sanitary sewer easement generally located at 514 South Nicholas Road; and  
10

11 **WHEREAS** the purpose of this request is to accommodate the construction of  
12 the Performing Arts Center by Nixa Public Schools; and  
13

14 **WHEREAS** the Planning and Zoning Commission, at their meeting of May 3,  
15 2021, recommended approval of the request to vacate said easement; and  
16

17 **WHEREAS** the City Council finds that, provided the conditions of this Ordinance  
18 are fully complied with, the easement vacation requested is appropriate and thereby the  
19 Council desires to relinquish said easement consisted with the provisions of this  
20 Ordinance.  
21

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

25 **SECTION 1:** The City Council hereby vacates and relinquishes that portion of the  
26 City's sanitary sewer easement described on "Council Bill Exhibit A," and which is  
27 generally located at 514 South Nicholas Road. Provided that, said vacation and  
28 relinquishment shall not become effective until the conditions contained in this  
29 Ordinance have been fully complied with. "Council Bill Exhibit A" is attached hereto and  
30 is incorporated by this reference as though fully set forth herein.  
31

32 **SECTION 2:** The City Council hereby accepts the dedication to the City of the  
33 perpetual sanitary sewer easement described on "Council Bill Exhibit B." Said  
34 easement's purpose is to provide the City with replacement easement rights for sanitary  
35 sewer infrastructure as a result of the City's vacation and relinquishment of its existing  
36 easement rights. "Council Bill Exhibit B" is attached hereto and is incorporated by this  
37 reference as though fully set forth herein.  
38

39 **SECTION 3:** The vacation and relinquishment contemplated by this Ordinance  
40 shall not become effective until the replacement easement described on "Council Bill  
41 Exhibit B," is dedicated to the City and properly recorded.  
42

43 **SECTION 4:** City Council finds that the sections contained in this Ordinance are  
44 an integral part of its decision to vacate said easement and, if for any reason, any  
45 section or provision of this Ordinance is found to be null and void, the whole Ordinance  
46 shall be considered null and void.

**SECTION 5:** Upon the Director or Planning and Development certifying in writing to the City Clerk that the conditions contained in this Ordinance have been fully complied with, to the reasonable satisfaction of said Director, then 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 COUNCIL OF THE CITY OF NIXA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

ATTEST:

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

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

**APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

ATTEST:

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

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

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

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Title of Document: VACATION OF SANITARY SEWER EASEMENT

Date of Document:: \_\_\_\_\_

Grantor(s): CITY OF NIXA, MISSOURI

Grantee(s): NIXA R-II SCHOOL DISTRICT

Legal Description: See Attached Exhibit A

Reference Book and Page(s): \_\_\_\_\_

Mail Recorded Document to: City of Nixa  
Attention: Cindy Robbins  
P.O. Box 395  
Nixa, Missouri 65714

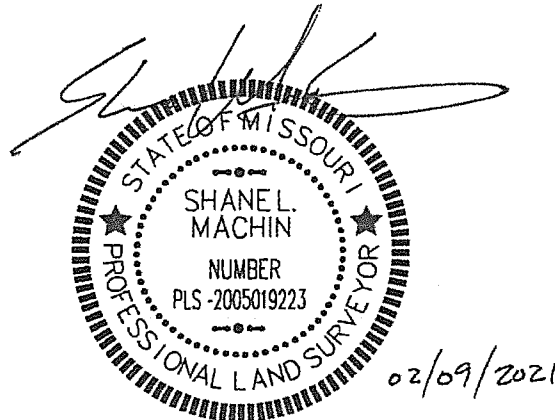
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## EXHIBIT A

A PORTION OF AN EXISTING PERPETUAL SANITARY SEWER EASEMENT, TO BE VACATED, BEING A PART OF LOT 2 IN NIXA RII SUBDIVISION, A SUBDIVISION IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI RECORDED IN PLAT BOOK G AT PAGE 794 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE. SAID EASEMENT VACATION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

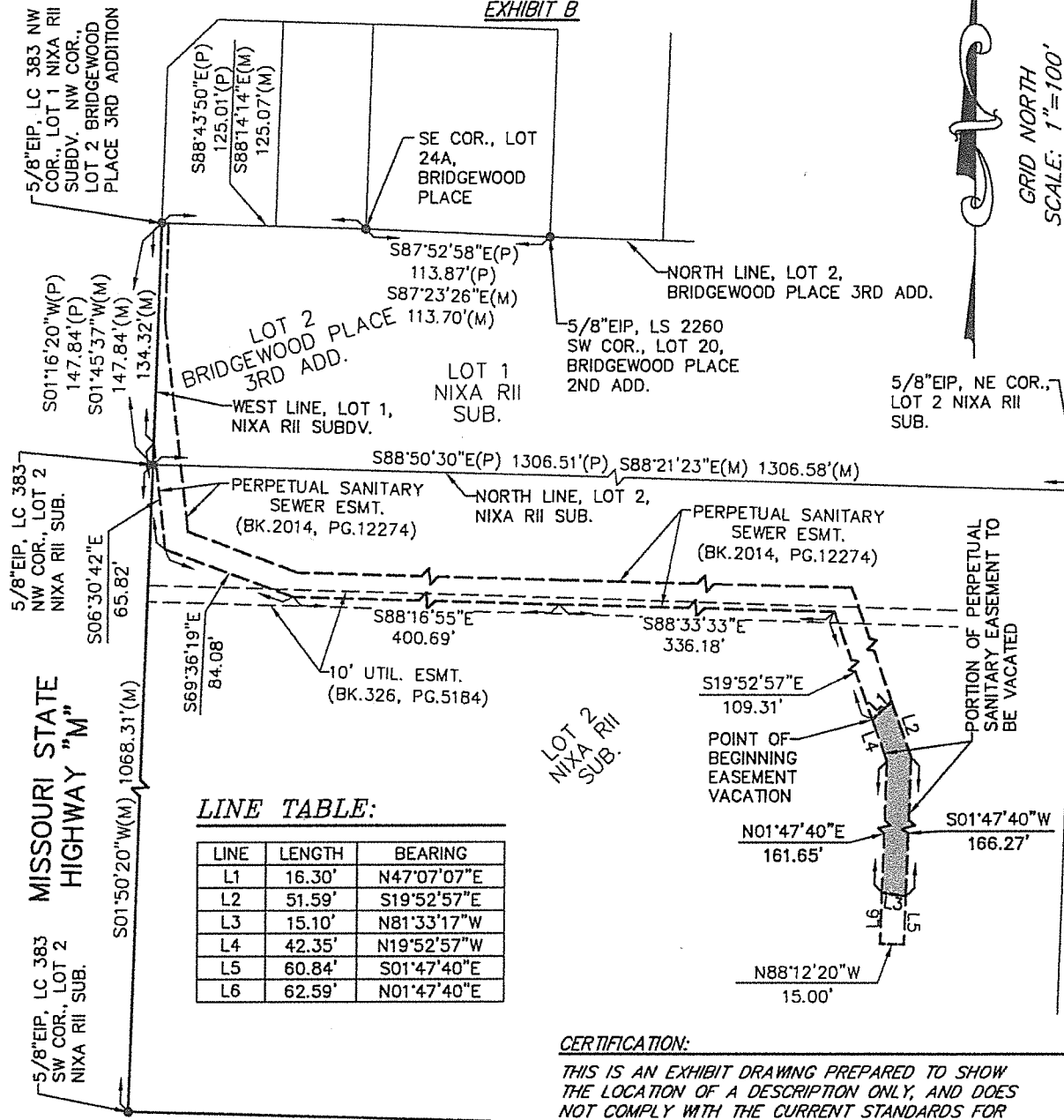
BEGINNING AT AN EXISTING IRON PIN AT THE NORTHWEST CORNER OF LOT 1 IN SAID NIXA RII SUBDIVISION, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 2 IN BRIDGEWOOD PLACE 3RD ADDITION, A SUBDIVISION IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI; THENCE S01°45'37"W, ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE 134.32 FEET; THENCE ALONG THE WESTERLY AND SOUTHERLY LINE OF SAID EXISTING PERPETUAL SANITARY SEWER EASEMENT, AS DESCRIBED IN BOOK 2014 AT PAGE 12274 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE, THE FOLLOWING FIVE (5) COURSES: 1) THENCE S06°30'42"E, A DISTANCE 65.82 FEET; 2) THENCE S69°36'19"E, A DISTANCE OF 84.08 FEET; 3) THENCE S88°16'55"E, A DISTANCE 400.69 FEET; 4) THENCE S88°33'33"E, A DISTANCE OF 336.18 FEET; 5) THENCE S19°52'57"E, A DISTANCE OF 109.31 FEET TO THE POINT OF BEGINNING OF SAID PORTION OF AN EXISTING PERPETUAL SANITARY EASEMENT TO BE VACATED; THENCE N47°07'07"E, A DISTANCE OF 16.30 FEET, TO A POINT ON THE EASTERLY LINE OF SAID EXISTING PERPETUAL SANITARY SEWER EASEMENT; THENCE S19°52'57"E, ALONG THE EASTERLY LINE OF SAID EXISTING PERPETUAL SANITARY SEWER EASEMENT, A DISTANCE OF 51.59 FEET; THENCE S01°47'40"W, CONTINUING ALONG SAID EASTERLY LINE, A DISTANCE OF 166.27 FEET; THENCE N81°33'17"W, A DISTANCE OF 15.10 FEET, TO A POINT ON THE WESTERLY LINE OF SAID EXISTING PERPETUAL SANITARY SEWER EASEMENT; THENCE N01°47'40"E, ALONG THE WESTERLY LINE OF SAID EXISTING PERPETUAL SANITARY SEWER EASEMENT, A DISTANCE OF 161.65 FEET; THENCE N19°52'57"W, CONTINUING ALONG SAID WESTERLY LINE, A DISTANCE 42.35 FEET TO THE POINT OF BEGINNING. SAID EASEMENT VACATION CONTAINS 3,164 SQUARE FEET (MORE OR LESS).

(BEARINGS ARE BASED ON GRID NORTH, MISSOURI COORDINATE SYSTEM OF 1983, CENTRAL ZONE.)



THIS IS A SKETCH FOR REFERENCE PURPOSES ONLY. THIS IS NOT A BOUNDARY SURVEY, AND SHOULD NOT BE USED AS SUCH.

EXHIBIT B



LINE TABLE:

LINE	LENGTH	BEARING
L1	16.30'	N47°07'07"E
L2	51.59'	S19°52'57"E
L3	15.10'	N81°33'17"W
L4	42.35'	N19°52'57"W
L5	60.84'	S01°47'40"E
L6	62.59'	N01°47'40"E

CERTIFICATION:

THIS IS AN EXHIBIT DRAWING PREPARED TO SHOW THE LOCATION OF A DESCRIPTION ONLY, AND DOES NOT COMPLY WITH THE CURRENT STANDARDS FOR PROPERTY BOUNDARY SURVEYS.

AREA:

EASEMENT VACATION: 3,164 SQ. FT±

PREPARED FOR:

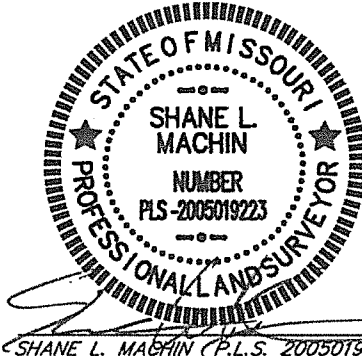
CITY OF NIXA  
BOOK 2014, PAGE 12274

**SHAFFER & HINES, inc.**

CONSULTING ENGINEERS - PROFESSIONAL LAND SURVEYORS

731 W. MT. Vernon, Nixa, Missouri 65714  
Phone (417) 725-4663 - Fax (417) 725-5230

PROJECT NO.: 190024 DATE: 02-09-2021



02/09/2021  
DATE

Date of Document:: \_\_\_\_\_

Grantee(s): CITY OF NIXA, MISSOURI

Reference Book and Page(s): \_\_\_\_\_

## PERPETUAL SANITARY SEWER EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of ONE DOLLAR (\$1.00) in cash and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, NIXA R-II SCHOOL DISTRICT, a Missouri school district, with a mailing address of 301 S. Main St., Nixa, Missouri 65714 (also known as Nixa Public Schools, and referred to herein as "Grantor") does hereby grant, bargain and convey to the CITY OF NIXA, MISSOURI, with a mailing address of P.O. Box 395, Nixa, Missouri 65714 (together with its successors, licensees, lessees, and assigns, referred to herein as "Grantee"), a PERPETUAL SANITARY SEWER EASEMENT, together with the right, privilege and authority to construct, reconstruct, repair, maintain, patrol, and replace sanitary sewer pipes, manholes, laterals and such appurtenances thereto as are deemed necessary by Grantee, in, on, through, over, under, and across that certain land owned by Grantor in the COUNTY OF CHRISTIAN, State of Missouri, and more particularly described on the attached Exhibit A and depicted on the exhibit sketch attached hereto as Exhibit B (the "Easement Area").

TO HAVE AND TO HOLD the same, together with (i) all rights, privileges and appurtenances thereto belonging, (ii) the right, privilege and authority to remove from the Easement Area any obstructions which interfere with the construction, maintenance or operation of the improvements described above; provided, however, that Grantee shall repair, replace or otherwise return the Easement Area to a good and safe condition, and as close to the condition existing prior to such removal as is reasonably possible, and (iii) the right of ingress to and egress from the Easement Area over and across Grantor's adjacent land as necessary or useful for the enjoyment of the easement herein granted.

Grantor warrants that it has good title to the Easement Area and the right to convey the same, and it will warrant and defend the easement herein conveyed unto the said Grantee against the lawful claims and demands of all persons claiming by, through or under it, except for any restrictions, easements, reservations and other matters of record.

Grantor, and Grantor's tenants, heirs, successor, and assigns, shall have the right to use and enjoy the Easement Area fully, so long as such use does not interfere with the rights and privileges hereinbefore granted to the Grantee; provided however, that no buildings or structures shall be erected or placed upon said Easement Area, nor shall the terrain be altered, nor shall any other roads be placed in on, through, over, or across the Easement Area without the prior written consent of Grantee (such consent not to be unreasonably withheld, conditioned or delayed).

IN WITNESS WHEREOF, said Grantor has executed this perpetual sanitary sewer easement this 23<sup>rd</sup> day of March, 2021.

Linda L. Daugherty

President, Nixa Board of Education

STATE OF MISSOURI     )  
  )SS.  
COUNTY OF Christian )

On the 23<sup>rd</sup> day of March, 20  , before me, a Notary Public, within and for the        County and        State aforesaid,        personally appeared Linda Daugherty

to me known to be the person(s) described in, and who executed the foregoing instrument, and who severally acknowledged that they had read said instrument, and that they had executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal the day and year first above written.

Brenda Kay Rantz  
Notary Public

My Commission Expires the 14<sup>th</sup> day of March, 2022.

BRENDA KAY RANTZ  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Christian County  
My Commission Expires Mar. 14, 2022  
Commission #14437467

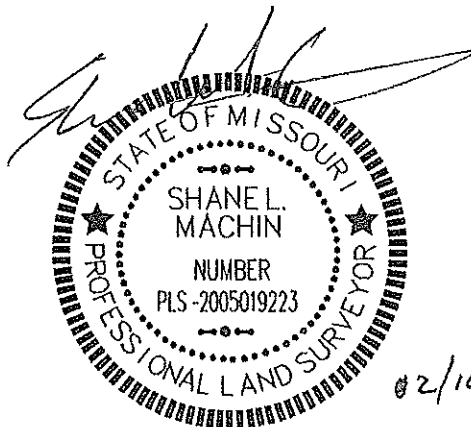


## EXHIBIT A

A 15.00 FEET WIDE PERPETUAL SANITARY SEWER EASEMENT, BEING A PART OF LOT 2 IN NIXA RII SUBDIVISION, A SUBDIVISION IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI RECORDED IN PLAT BOOK G AT PAGE 794 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE. SAID PERPETUAL SANITARY SEWER EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN EXISTING IRON PIN AT THE NORTHWEST CORNER OF LOT 1 IN SAID NIXA RII SUBDIVISION, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 2 IN BRIDGEWOOD PLACE 3RD ADDITION, A SUBDIVISION IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI; THENCE S01°45'37"W, ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE 134.32 FEET; THENCE ALONG THE WESTERLY AND SOUTHERLY LINE OF AN EXISTING PERPETUAL SANITARY SEWER EASEMENT, AS DESCRIBED IN BOOK 2014 AT PAGE 12274 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE, THE FOLLOWING FIVE (5) COURSES: 1) THENCE S06°30'42"E, A DISTANCE 65.82 FEET; 2) THENCE S69°36'19"E, A DISTANCE OF 84.08 FEET; 3) THENCE S88°16'55"E, A DISTANCE 400.69 FEET; 4) THENCE S88°33'33"E, A DISTANCE OF 336.18 FEET; 5) THENCE S19°52'57"E, A DISTANCE OF 109.31 FEET FOR A POINT OF BEGINNING; THENCE N47°07'07"E, LEAVING SAID WESTERLY LINE, A DISTANCE OF 16.30 FEET, TO A POINT ON THE EASTERLY LINE OF SAID EXISTING PERPETUAL SANITARY SEWER EASEMENT; THENCE S65°52'49"E, LEAVING SAID EASTERLY LINE, A DISTANCE OF 68.68 FEET; THENCE S15°05'46"W, A DISTANCE OF 128.01 FEET TO A POINT ON THE EASTERLY LINE OF SAID EXISTING PERPETUAL SANITARY SEWER EASEMENT DESCRIBED BOOK 2014 AT PAGE 12274; THENCE N81°33'17"W, LEAVING SAID EASTERLY LINE, A DISTANCE OF 15.10 FEET TO A POINT ON THE WESTERLY LINE OF SAID EXISTING PERPETUAL SANITARY SEWER EASEMENT; THENCE N15°05'46"E, LEAVING SAID WESTERLY LINE, A DISTANCE OF 116.96 FEET; THENCE N65°52'49"E, A DISTANCE OF 62.24 FEET TO THE POINT OF BEGINNING. SAID PERPETUAL SANITARY SEWER EASEMENT CONTAINS 3,799 SQUARE FEET (MORE OR LESS), AND IS SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY, AND RESTRICTIONS OF RECORD.

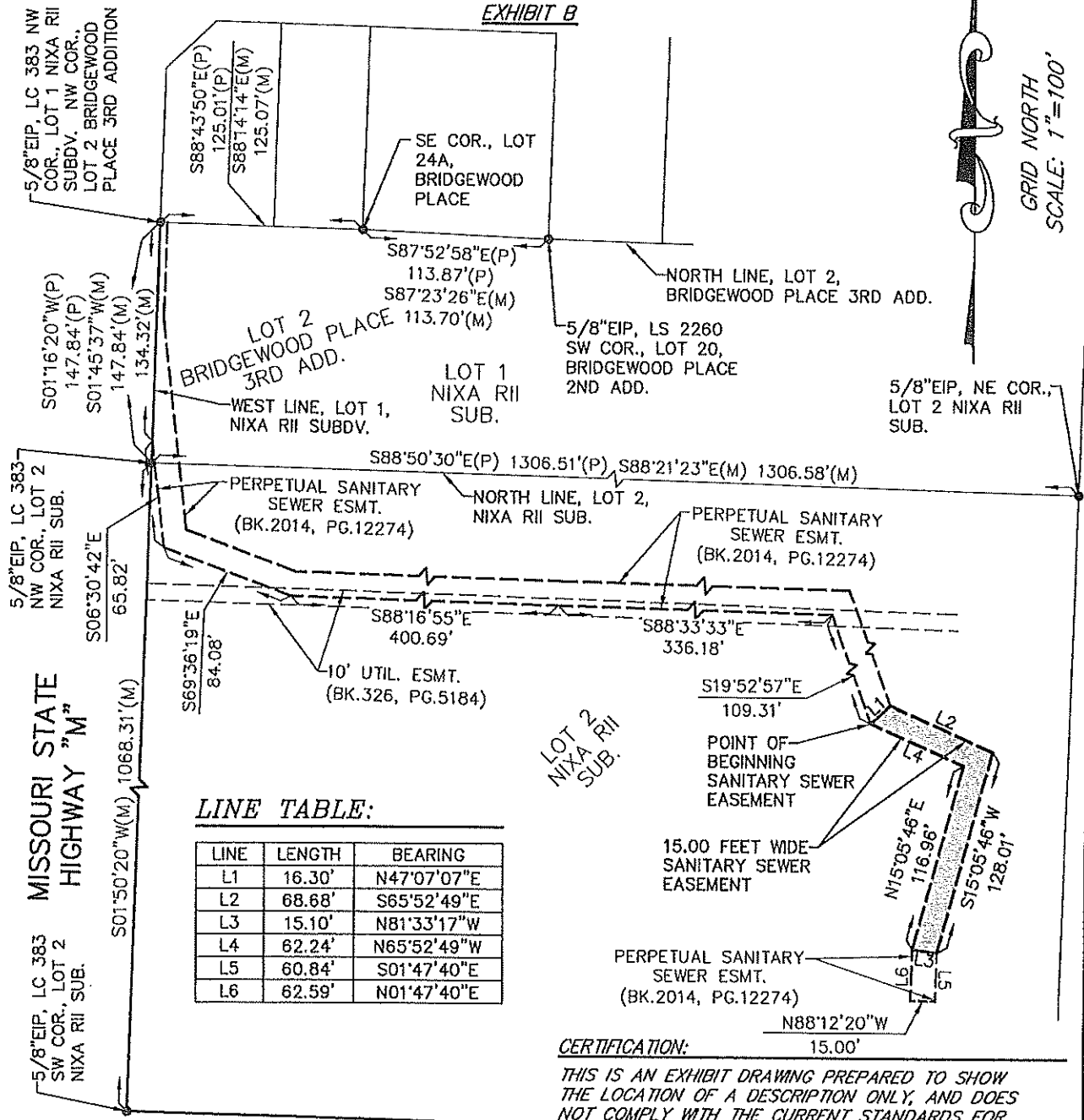
(BEARINGS ARE BASED ON GRID NORTH, MISSOURI COORDINATE SYSTEM OF 1983, CENTRAL ZONE.)



THIS IS A SKETCH FOR REFERENCE PURPOSES ONLY. THIS IS NOT A BOUNDARY SURVEY, AND SHOULD NOT BE USED AS SUCH.

EXHIBIT B

GRID NORTH  
SCALE: 1"=100'



AREA:

SANITARY SEWER EASEMENT: 3,799 SQ. FT±

PREPARED FOR:

NIXA REORGANIZED SCHOOL DISTRICT RII  
BOOK 307, PAGE 3445

**SHAFFER & THINES, inc.**

CONSULTING ENGINEERS - PROFESSIONAL LAND SURVEYORS  
731 W. MT. Vernon, Nixa, Missouri 65714  
Phone (417) 725-4663 - Fax (417) 725-5230

PROJECT NO.: 190024 DATE: 02-10-2021



SHANE L. MACHIN P.L.S. 2005019223

62/10/2021  
DATE



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## Memorandum

**To:** Mayor  
City Council

**From:** Travis Cossey, Jeff Roussell

**RE:** First Reading, STP-Urban Program Agreement STPBG-9901(833) and consultant contract

**Date:** May 10, 2021

For your consideration is a STP-Urban Program Agreement and Consultant Services Contract for design services to acquire design documents for improvements to North St. from the intersection of Maplewood Hills to the intersection of Cheyenne. This project is included in the 2021 budget as a CIP for \$546,882.00. The design project was authorized by the OTO (Ozarks Transportation Organization) as a 2021 TIP (Transportation Improvement Program) allowing us to utilize a portion of our Federal Transportation Funds towards the design. The program agreement between MoDOT and the City of Nixa will allow the city to receive reimbursement for up to 80% of the design cost with Federal Transportation Funds not to exceed \$437,506.00.

Staff initiated a RFQ (Request for Qualifications) process following MoDOT guidelines to determine the consulting firm best qualified to provide the necessary design services. Staff received seven proposals that were reviewed for compliance with the scope of services requested. The review committee recommended CJW Transportation Consultants LLC. be awarded the contract for services. Agreeing with the review committee's assessment, MoDOT authorized the City to negotiate a price for services. CJW provided a fee proposal of \$537,942.48. The contract fee proposal is within the City's 2021 CIP budgeted amount.

Staff is recommending approval of the ordinance authorizing the City to enter into a program agreement with MoDOT for 80% reimbursement funds along with a contract for consulting services with CJW Transportation Consultants LLC to provide the necessary design work to proceed with the project as identified in the 2021 CIP.

Staff is available to answer any questions or concerns you have regarding the proposed ordinance.

2  
3 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING**  
4 **THE CITY ADMINISTRATOR TO EXECUTE AN STP-URBAN PROGRAM**  
5 **AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION**  
6 **COMMISSION AND A CONSULTANT SERVICES AGREEMENT WITH CJW**  
7 **TRANSPORTATION CONSULTANTS, LLC, REGARDING PROPOSED**  
8 **IMPROVEMENTS TO NORTH STREET.**  
9

---

10  
11 **WHEREAS** the City desires to make certain improvements to a portion of North  
12 Street lying between the Maplewood Hills intersection to the Cheyenne intersection; and  
13

14 **WHEREAS** said improvement project was included as a Capital Improvement  
15 Project in the City's 2021 budget; and  
16

17 **WHEREAS** the design of said project was approved by the Ozarks  
18 Transportation Organization as a 2021 Transportation Improvement Program, which  
19 allows the City to utilize a portion of the City's allocation of Federal Transportation  
20 Funds for the design of the project; and  
21

22 **WHEREAS** City Council desires to enter into the STP-Urban Program  
23 Agreement with Missouri Highways and Transportation Commission to secure funding  
24 for this project; and  
25

26 **WHEREAS** the City Council desires to enter into an agreement with CJW  
27 Transportation Consultants LLC to provide design services for the project; and  
28

29 **WHEREAS** CJW Transportation Consultants were selected as the best qualified  
30 firm via the City's Request for Qualifications process.  
31

32 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
33 **NIXA, AS FOLLOWS, THAT:**  
34

35 **SECTION 1:** The City Administrator, or designee, is hereby authorized to  
36 execute, on behalf of the City, the documents attached hereto and incorporated herein  
37 by this reference as "Council Bill Exhibit A" and "Council Bill Exhibit B." Said documents  
38 shall be in substantially similar form as the documents attached hereto as "Council Bill  
39 Exhibit A" and "Council Bill Exhibit B." The City Administrator is further authorized to do  
40 all things necessary or convenient to carry out the terms of this Ordinance and to  
41 implement the Program provided that such actions are consistent with the terms and  
42 intent of this Ordinance.  
43

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

47 **ADOPTED BY THE COUNCIL OF THE CITY OF NIXA THIS \_\_\_\_\_ DAY OF**  
48 **\_\_\_\_\_ 2021.**

49  
50  
51 **ATTEST:**

52  
53 \_\_\_\_\_  
54 **CITY CLERK** \_\_\_\_\_ **PRESIDING OFFICER**

55  
56  
57 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

58  
59  
60 **ATTEST:**

61  
62 \_\_\_\_\_  
63 **CITY CLERK** \_\_\_\_\_ **MAYOR**

64  
65  
66 **APPROVED AS TO FORM:**

67  
68 \_\_\_\_\_  
69 **CITY ATTORNEY**

CCO Form: FS11  
 Approved: 07/96 (KMH)  
 Revised: 03/17 (MWH)  
 Modified:

CFDA Number: CFDA #20.205  
 CFDA Title: Highway Planning and Construction  
 Award name/number: STBG-9901(833) TIP# NX2102  
 Award Year: 2021  
 Federal Agency: Federal Highway Administration, Department of Transportation

### **MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION STP-URBAN PROGRAM AGREEMENT**

THIS STP-URBAN AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Nixa, Christian County, Missouri (hereinafter, "City").

WITNESSETH:

WHEREAS, the Fixing America's Surface Transportation Act (FAST) 23 U.S.C. §133, authorizes a Surface Transportation Program (STP) to fund transportation related projects; and

WHEREAS, the City desires to construct certain improvements, more specifically described below, using such STP funding; and

WHEREAS, those improvements are to be designed and constructed in compliance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) **PURPOSE:** The purpose of this Agreement is to grant the use of STP funds to the City. The improvement contemplated by this Agreement and designated as Project STBG-9901(833) involves improvements along North Street from east of Maplewood Hills Road to Cheyenne Road. The City shall be responsible for all aspects of the construction of the improvement.

(2) **LOCATION:** The contemplated improvement designated as Project STBG-9901(833) by the Commission is within the city limits of Nixa, Missouri. The general location of the improvement is shown on an attachment hereto marked "Exhibit A" and incorporated herein by reference. More specific descriptions are as follows: Improvements along North Street from east of Maplewood Hills Road to Cheyenne Road.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City.

(4) LIMITS OF SYSTEM: The limits of the surface transportation system for the City shall correspond to its geographical area as encompassed by the urban boundaries of the City as fixed cooperatively by the parties subject to approval by the Federal Highway Administration (FHWA).

(5) ROUTES TO BE INCLUDED: The City shall select the high traffic volume arterial and collector routes to be included in the surface transportation system, to be concurred with by the Commission, subject to approval by the FHWA. It is understood by the parties that surface transportation system projects will be limited to the said surface transportation system, but that streets and arterial routes may be added to the surface transportation system, including transfers from other federal aid systems.

(6) INVENTORY AND INSPECTION: The City shall:

(A) Furnish annually, upon request from the Commission or FHWA, information concerning conditions on streets included in the STP system under local jurisdiction indicating miles of system by pavement width, surface type, number of lanes and traffic volume category.

(B) Inspect and provide inventories of all bridges on that portion of the federal-aid highway systems under the jurisdiction of the City in accordance with the Federal Special Bridge Program, as set forth in 23 U.S.C. §144, and applicable amendments or regulations promulgated thereunder.

(7) CITY TO MAINTAIN: Upon completion of construction of this improvement, the City shall accept control and maintenance of the improved street and shall thereafter keep, control, and maintain the same as, and for all purposes, a part of the City street system at its own cost and expense and at no cost and expense whatsoever to the Commission. Any traffic signals installed on highways maintained by the Commission will be turned over to the Commission upon completion of the project for maintenance. All obligations of the Commission under this Agreement shall cease upon completion of the improvement.

(8) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(9) CONSTRUCTION SPECIFICATIONS: Parties agree that all construction under the STP for the City will be constructed in accordance with current MoDOT design criteria/specifications for urban construction unless separate standards for the surface transportation system have been established by the City and the Commission subject to the approval of the FHWA.

(10) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The



City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(11) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, City shall acquire any additional necessary right of way required for the project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act.

(12) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. All federally funded projects are required to have a project end date. Any costs incurred after the project end date are not eligible for reimbursement. The federal share for this project will be 80 percent **(80%)** not to exceed **\$437,506.00**. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(B) The total reimbursement otherwise payable to the City under this Agreement is subject to reduction, offset, levy, judgment, collection or withholding, if there is a reduction in the available federal funding, or to satisfy other obligations of the City to the Commission, the State of Missouri, the United States, or another entity acting pursuant to a lawful court order, which City obligations or liability are created by law, judicial action, or by pledge, contract or other enforceable instrument. Any costs incurred by the City prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs.

(13) PERMITS: The City shall secure any necessary approvals or permits from the Federal Government and the State of Missouri as required to permit the construction and maintenance of the contemplated improvements.

(14) TRAFFIC CONTROL: The plans shall provide for handling traffic with signs, signal and marking in accordance with the Manual of Uniform Traffic Control Devices (MUTCD).

(15) WORK ON STATE RIGHT OF WAY: If any contemplated improvements for Project STBG-9901(833) will involve work on the state's right of way, the City will provide reproducible final plans to the Commission relating to such work.

(16) DISADVANTAGED BUSINESS ENTERPRISES (DBEs): At time of processing the required project agreements with the FHWA, the Commission will advise the City of any required goals for participation by DBEs to be included in the (City's/County's/Grantee's) proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(17) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(18) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. All progress payment requests must be submitted for reimbursement within 90 days of the project completion date for the final phase of work. The City shall repay any progress payments which involve ineligible costs.

(19) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(20) OUTDOOR ADVERTISING: The City further agrees that the right of way provided for any STP improvement will be held and maintained inviolate for public highway or street purposes, and will enact and enforce any ordinances or regulations necessary to prohibit the presence of billboards or other advertising signs or devices and the vending or sale of merchandise on such right of way, and will remove or cause to be removed from such right of way any sign, private installation of any nature, or any privately owned object or thing which may interfere with the free flow of traffic or impair the full use and safety of the highway or street.

(21) FINAL AUDIT: The Commission will perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(22) AUDIT REQUIREMENT: If the City expend(s) seven hundred fifty thousand dollars (\$750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars (\$750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(23) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

(24) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(25) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(26) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(27) COMMISSION REPRESENTATIVE: The Commission's Southwest District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(28) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

- (A) To the City:  
Travis Cossey, City of Nixa  
715 West Mount Vernon Street, Nixa, MO 65714  
Phone # 417-725-2353      email: tcossey@nixa.com

- (B) To the Commission:  
Chad Zickefoose, MoDOT Southwest District  
3025 East Kearney Street, Springfield, MO 65803  
Phone # 417-895-7638 email: chad.zickefoose@modot.mo.gov

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(29) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, et seq.), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, et seq.). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department

of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (29) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(30) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the FHWA and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(31) CONFLICT OF INTEREST: The City shall comply with conflict of interest policies identified in 23 CFR 1.33. A conflict of interest occurs when an entity has a financial or personal interest in a federally funded project.

(32) MANDATORY DISCLOSURES: The City shall comply with 2 CFR 200.113 and disclose, in a timely manner, in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City on \_\_\_\_\_.

Executed by the Commission on \_\_\_\_\_.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

CITY OF NIXA

\_\_\_\_\_  
Assistant Chief Engineer

\_\_\_\_\_  
City Administrator

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary to the Commission

\_\_\_\_\_  
City Clerk

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Commission Counsel

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Financial Officer

Ordinance No: \_\_\_\_\_

## Exhibit A - Location of Project



## Exhibit B – Project Schedule

Project Description: STBG-9901(833) Maplewood Hills Road to Cheyenne Road

Task	Date
Date funding is made available or allocated to recipient	Jan 2021
Solicitation for Professional Engineering Services (advertised)	
Engineering Services Contract Approved	
Conceptual Study (if applicable)	
Preliminary and Right-of-Way Plans Submittal (if Applicable)	Dec 2021
Plans, Specifications & Estimate (PS&E) Submittal	Nov 2022
Plans, Specifications & Estimate (PS&E) Approval	Jul 2023
Advertisement for Letting	Sept 2023
Bid Opening	Oct 2023
Construction Contract Award <b>(REQUIRED)</b>	Dec 2023

\*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

\*\*Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and requires request to adjust.



## Exhibit C

FHWA-1273 -- Revised May 1, 2012

### REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

#### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

#### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

#### II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities

Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the

notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts

should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with

Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The

employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs

which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing

work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of

trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and trainees**

##### **a. Apprentices (programs of the USDOL).**

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be

permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### **b. Trainees (programs of the USDOL).**

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

##### **d. Apprentices and Trainees (programs of the U.S. DOT).**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

**VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any

subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;



Shall be fined under this title or imprisoned not more than 5 years or both."

## **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

### **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier

Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

## **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

## **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**SPONSOR:** City of Nixa  
**LOCATION:** North Street  
**PROJECT:** STBG – 9901(833)

*THIS CONTRACT* is between *City of Nixa*, Missouri, hereinafter referred to as the "Local Agency", and CJW Transportation Consultants, LLC 5051 S National Avenue Suite 7A Springfield, Missouri 65810, hereinafter referred to as the "Engineer".

*INASMUCH* as funds have been made available by the Federal Highway Administration through its *Surface Transportation Program*, coordinated through the Missouri Department of Transportation, the Local Agency intends to *Widen North Street from Cheyenne to Maplewood Hills, and Improve the intersection of Cheyenne and North Street* and requires professional engineering services. The Engineer will provide the Local Agency with professional services hereinafter detailed for the planning, and design of the desired improvements and the Local Agency will pay the Engineer as provided in this contract. It is mutually agreed as follows:

The North Street widening project will construct approximately 1 mile of a three lane roadway with pedestrian facilities. The project will include the evaluation of, and planning for a roundabout at the intersection of North Street and Cheyenne road. Services to be provided include environmental assessment, public meeting, utility coordination, and production of construction plans. The Engineer will serve as an extension of City staff to provide assistance in the procurement and delivery of the project designated as "North Street widening" with Federal No. STBG-9901(833).

**ARTICLE I – SCOPE OF SERVICES**  
**See Attachment A**

**ARTICLE II - DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS:**

- A. DBE Goal: The following DBE goal has been established for this Agreement. The dollar value of services and related equipment, supplies, and materials used in furtherance thereof which is credited toward this goal will be based on the amount actually paid to DBE firms. The goal for the percentage of services to be awarded to DBE firms is 10 % of the total Agreement dollar value.
- B. DBE Participation Obtained by Engineer: The Engineer has obtained DBE participation, and agrees to use DBE firms to complete, 10 % of the total services to be performed under this Agreement, by dollar value. The DBE firms which the Engineer shall use, and the type and dollar value of the services each DBE will perform, is as follows:

<u>DBE FIRM NAME, STREET AND COMPLETE MAILING ADDRESS</u>	<u>TYPE OF DBE SERVICE</u>	<u>TOTAL \$ VALUE OF THE DBE SUBCONTRACT</u>	<u>CONTRACT \$ AMOUNT TO APPLY TO TOTAL DBE GOAL</u>	<u>PERCENTAGE OF SUBCONTRACT DOLLAR VALUE APPLICABLE TO TOTAL GOAL</u>
Shaffer & Hines 731 W Mt Vernon Nixa, Missouri 65714	Surveying & Traffic Control Design	\$55,000.00	\$55,000.00	100%

### **ARTICLE III-ADDITIONAL SERVICES**

The Local Agency reserves the right to request additional work, and changed or unforeseen conditions may require changes and work beyond the scope of this contract. In this event, a supplement to this agreement shall be executed and submitted for the approval of MoDOT prior to performing the additional or changed work or incurring any additional cost thereof. Any change in compensation will be covered in the supplement.

### **ARTICLE IV - RESPONSIBILITIES OF LOCAL AGENCY**

The Local Agency will cooperate fully with the Engineer in the development of the project, including the following:

- A. make available all information pertaining to the project which may be in the possession of the Local Agency;
- B. provide the Engineer with the Local Agency's requirements for the project;
- C. make provisions for the Engineer to enter upon property at the project site for the performance of his duties;
- D. examine all studies and layouts developed by the Engineer, obtain reviews by MoDOT, and render decisions thereon in a prompt manner so as not to delay the Engineer;
- E. designate a Local Agency's employee to act as Local Agency's Person in Responsible Charge under this contract, such person shall have authority to transmit instructions, interpret the Local Agency's policies and render decisions with respect to matters covered by this agreement (see EPG 136.3);
- F. perform appraisals and appraisal review, negotiate with property owners and otherwise provide all services in connection with acquiring all right-of-way needed to construct this project.

## **ARTICLE V - PERIOD OF SERVICE**

The Engineer will commence work within two weeks after receiving notice to proceed from the Local Agency. The general phases of work will be completed in accordance with the following schedule:

- A. PS&E Approval by MODOT shall be completed on December 31, 2022
- B. Construction Phase shall be completed 60 days after construction final completion schedule.

The Local Agency will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Engineer. Requests for extensions of time shall be made in writing by the Engineer, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

## **ARTICLE VI – STANDARDS**

The Engineer shall be responsible for working with the Local Agency in determining the appropriate design parameters and construction specifications for the project using good engineering judgment based on the specific site conditions, Local Agency needs, and guidance provided in the most current version of EPG 136 LPA Policy. If the project is on the state highway system or is a bridge project, then the latest version of MoDOT's Engineering Policy Guide (EPG) and Missouri Standard Specifications for Highway Construction shall be used (see EPG 136.7). The project plans must also be in compliance with the latest ADA (Americans with Disabilities Act) Regulations.

## **ARTICLE VII - COMPENSATION**

For services provided under this contract, the Local Agency will compensate the Engineer as follows:

- A. For design services, including work through the construction contract award stage, the Local Agency will pay the Engineer the actual costs incurred plus a predetermined fixed fee of \$ 55,977.19, with a ceiling established for said design services in the amount of \$ 537,942.48, which amount shall not be exceeded.
- C. The compensation outlined above has been derived from estimates of cost which are detailed in Attachment B. Any major changes in work, extra work, exceeding of the contract ceiling, or change in the predetermined fixed fee will require a supplement to this contract, as covered in Article III - ADDITIONAL SERVICES.

- D. Actual costs in Sections A and B above are defined as:
1. Actual payroll salaries paid to employees for time that they are productively engaged in work covered by this contract, plus
  2. An amount calculated at 64.71% of actual salaries in Item 1 above for payroll additives, including payroll taxes, holiday and vacation pay, sick leave pay, insurance benefits, retirement and incentive pay, plus
  3. An amount calculated at 80.32% of actual salaries in Item 1 above for general administrative overhead, based on the Engineer's system for allocating indirect costs in accordance with sound accounting principles and business practice, plus
  4. Other costs directly attributable to the project but not included in the above overhead, such as vehicle mileage, meals and lodging, printing, surveying expendables, and computer time, plus
  5. Project costs incurred by others on a subcontract basis, said costs to be passed through the Engineer on the basis of reasonable and actual cost as invoiced by the subcontractors.
- E. The rates shown for additives and overhead in Sections VII. D.2 and VII. D.3 above are the established Engineer's overhead rate accepted at the time of contract execution and shall be utilized throughout the life of this contract for billing purposes.
- F. The payment of costs under this contract will be limited to costs which are allowable under 23 CFR 172 and 48 CFR 31.
- G. **METHOD OF PAYMENT** - Partial payments for work satisfactorily completed will be made to the Engineer upon receipt of itemized invoices by the Local Agency. Invoices will be submitted no more frequently than once every two weeks and must be submitted monthly for invoices greater than \$10,000. A pro-rated portion of the fixed fee will be paid with each invoice. Upon receipt of the invoice and progress report, the Local Agency will, as soon as practical, but not later than 45 days from receipt, pay the Engineer for the services rendered, including the proportion of the fixed fee earned as reflected by the estimate of the portion of the services completed as shown by the progress report, less partial payments previously made. A late payment charge of one and one half percent (1.5%) per month shall be assessed for those invoiced amount not paid, through no fault of the Engineer, within 45 days after the Local Agency's receipt of the Engineer's invoice. The Local Agency will not be liable for the late payment charge on any invoice which requests payment for costs which exceed the proportion of the maximum amount payable earned as reflected by the estimate of the portion of the services completed, as shown by the progress report. The payment, other than the fixed fee, will be subject to final audit of actual expenses during the period of the Agreement.



- H. **PROPERTY ACCOUNTABILITY** - If it becomes necessary to acquire any specialized equipment for the performance of this contract, appropriate credit will be given for any residual value of said equipment after completion of usage of the equipment.

## **ARTICLE VIII - COVENANT AGAINST CONTINGENT FEES**

The Engineer warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the Local Agency shall have the right to annul this agreement without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee, plus reasonable attorney's fees.

## **ARTICLE IX - SUBLETTING, ASSIGNMENT OR TRANSFER**

No portion of the work covered by this contract, except as provided herein, shall be sublet or transferred without the written consent of the Local Agency. The subletting of the work shall in no way relieve the Engineer of his primary responsibility for the quality and performance of the work. It is the intention of the Engineer to engage subcontractors for the purposes of:

<b>Sub-Consultant Name</b>	<b>Address</b>	<b>Services</b>
<b>Bartlett &amp; West Meeting</b>	<b>1200 SW Executive Dr Topeka, KS 66615</b>	<b>Design, Public QA/QC</b>
<b>Shaffer &amp; Hines Boundary,</b>	<b>729 W Mt Vernon St Nixa, Missouri 65714</b>	<b>Surveying, Design</b>
<b>Palmerton &amp; Parrish</b>	<b>4167 W Kearney St Springfield, MO 65803</b>	<b>Geotechnical</b>

## **ARTICLE X - PROFESSIONAL ENDORSEMENT**

All plans, specifications and other documents shall be endorsed by the Engineer and shall reflect the name and seal of the Professional Engineer endorsing the work. By signing and sealing the PS&E submittals the Engineer of Record will be representing to MoDOT that the design is meeting the intent of the federal aid programs.

## **ARTICLE XI - RETENTION OF RECORDS**

The Engineer shall maintain all records, survey notes, design documents, cost and accounting records, construction records and other records pertaining to this contract and to the project covered by this contract, for a period of not less than three years following final payment by FHWA. Said records shall be made available for inspection by authorized representatives of the Local Agency, MoDOT or the federal government during regular working hours at the Engineer's place of business.

## **ARTICLE XII - OWNERSHIP OF DOCUMENTS**

Plans, tracings, maps and specifications prepared under this contract shall be delivered to and become the property of the Local Agency upon termination or completion of work. Basic survey notes, design computations and other data prepared under this contract shall be made available to the Local Agency upon request. All such information produced under this contract shall be available for use by the Local Agency without restriction or limitation on its use. If the Local Agency incorporates any portion of the work into a project other than that for which it was performed, the Local Agency shall save the Engineer harmless from any claims and liabilities resulting from such use.

## **ARTICLE XIII – SUSPENSION OR TERMINATION OF AGREEMENT**

- A. The Local Agency may, without being in breach hereof, suspend or terminate the Engineer's services under this Agreement, or any part of them, for cause or for the convenience of the Local Agency, upon giving to the Engineer at least fifteen (15) days' prior written notice of the effective date thereof. The Engineer shall not accelerate performance of services during the fifteen (15) day period without the express written request of the Local Agency.
- B. Should the Agreement be suspended or terminated for the convenience of the Local Agency, the Local Agency will pay to the Engineer its costs as set forth in Attachment B including actual hours expended prior to such suspension or termination and direct costs as defined in this Agreement for services performed by the Engineer, a proportional amount of the fixed fee based upon an estimated percentage of Agreement completion, plus reasonable costs incurred by the Engineer in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Engineer's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.
- C. The Engineer shall remain liable to the Local Agency for any claims or damages occasioned by any failure, default, or negligent errors and/or omission in carrying out the provisions of this Agreement during its life, including those giving rise to a

termination for non-performance or breach by Engineer. This liability shall survive and shall not be waived, or estopped by final payment under this Agreement.

- D. The Engineer shall not be liable for any errors or omissions contained in deliverables which are incomplete as a result of a suspension or termination where the Engineer is deprived of the opportunity to complete the Engineer's services.
- E. Upon the occurrence of any of the following events, the Engineer may suspend performance hereunder by giving the Local Agency 30 days advance written notice and may continue such suspension until the condition is satisfactorily remedied by the Local Agency. In the event the condition is not remedied within 120 days of the Engineer's original notice, the Engineer may terminate this agreement.
  - 1. Receipt of written notice from the Local Agency that funds are no longer available to continue performance.
  - 2. The Local Agency's persistent failure to make payment to the Engineer in a timely manner.
  - 3. Any material contract breach by the Local Agency.

#### **ARTICLE XIV - DECISIONS UNDER THIS CONTRACT**

The Local Agency will determine the acceptability of work performed under this contract, and will decide all questions which may arise concerning the project. The Local Agency's decision shall be final and conclusive.

#### **ARTICLE XV - SUCCESSORS AND ASSIGNS**

The Local Agency and the Engineer agree that this contract and all contracts entered into under the provisions of this contract shall be binding upon the parties hereto and their successors and assigns.

#### **ARTICLE XVI - COMPLIANCE WITH LAWS**

The Engineer shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the work, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d, 2000e), as well as with any applicable titles of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) and non-discrimination clauses incorporated herein, and shall procure all licenses and permits necessary for the fulfillment of obligations under this contract.

#### **ARTICLE XVII - RESPONSIBILITY FOR CLAIMS AND LIABILITY**

The Engineer agrees to save harmless the Local Agency, MoDOT and FHWA from all claims and liability due to his negligent acts or the negligent acts of his employees, agents or subcontractors.

## **ARTICLE XVIII - NONDISCRIMINATION**

The Engineer, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color or national origin in the selection and retention of subcontractors. The Engineer will comply with state and federal related to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d, 2000e), as well as with any applicable titles of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.). More specifically, the Engineer will comply with the regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation, as contained in 49 CFR 21 through Appendix H and 23 CFR 710.405 which are herein incorporated by reference and made a part of this contract. In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Engineer's obligations under this contract and the regulations relative to non-discrimination on the ground of color, race or national origin.

## **ARTICLE XIX – LOBBY CERTIFICATION**

CERTIFICATION ON LOBBYING: Since federal funds are being used for this agreement, the Engineer's signature on this agreement constitutes the execution of all certifications on lobbying which are required by 49 C.F.R. Part 20 including Appendix A and B to Part 20. Engineer agrees to abide by all certification or disclosure requirements in 49 C.F.R. Part 20 which are incorporated herein by reference.

## **ARTICLE XX – INSURANCE**

- A. The Engineer shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Engineer from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Engineer and its employees, agents, and Subconsultants in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.
- B. The Engineer shall also maintain professional liability insurance to protect the Engineer against the negligent acts, errors, or omissions of the Engineer and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.
- C. The Engineer's insurance coverage shall be for not less than the following limits of liability:

1. Commercial General Liability: \$500,000 per person up to \$3,000,000 per occurrence;
  2. Automobile Liability: \$500,000 per person up to \$3,000,000 per occurrence;
  3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000; and
  4. Professional ("Errors and Omissions") Liability: \$1,000,000, each claim and in the annual aggregate.
- D. The Engineer shall, upon request at any time, provide the Local Agency with certificates of insurance evidencing the Engineer's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance are in effect as to the services under this Agreement.
- E. Any insurance policy required as specified in (ARTICLE XX) shall be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri.

## **ARTICLE XXI - ATTACHMENTS**

The following exhibits are attached hereto and are hereby made part of this contract:

Attachment A – Scope of Service

Attachment B - Estimate of Cost

Attachment C - Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions.

Attachment D - Certification Regarding Debarment, Suspension, and Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.

Attachment E – DBE Contract Provisions

Attachment F – Fig. 136.4.15 Conflict of Interest Disclosure Form

Executed by the Engineer this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Executed by the County/City this \_\_ day of \_\_\_\_\_, 20\_\_.

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

**THE CITY OF NIXA, MISSOURI**

By: \_\_\_\_\_  
Brian Steele, Mayor

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

**ATTEST**

By: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_

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, Financial Officer

**ATTACHMENT A**

**Scope of Services**

## **ATTACHMENT B**

### **ESTIMATE OF COST**

## **ATTACHMENT C**

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS**

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#### **INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion--Lower Tier Covered Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the Nonprocurement List at the Excluded Parties List System.  
<https://www.epls.gov/eplsearch.do?page=A&status=current&agency=69#A>.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

#### **Certification Regarding Debarment, Suspension, and Other Responsibility Matters -Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.



## ATTACHMENT D

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

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#### INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List at the Excluded Parties List System.  
<https://www.epls.gov/eplsearch.do?page=A&status=current&agency=69#A>.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The

knowledge and information of a participant is not required to exceed that which normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **Attachment E**

### **Disadvantage Business Enterprise Contract Provisions**

1. Policy: It is the policy of the U.S. Department of Transportation and the Local Agency that businesses owned by socially and economically disadvantaged individuals (DBE's) as defined in 49 C.F.R. Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Thus, the requirements of 49 C.F.R. Part 26 and Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21) apply to this Agreement.

2. Obligation of the Engineer to DBE's: The Engineer agrees to assure that DBEs have the maximum opportunity to participate in the performance of this Agreement and any subconsultant agreement financed in whole or in part with federal funds. In this regard the Engineer shall take all necessary and reasonable steps to assure that DBEs have the maximum opportunity to compete for and perform services. The Engineer shall not discriminate on the basis of race, color, religion, creed, disability, sex, age, or national origin in the performance of this Agreement or in the award of any subsequent subconsultant agreement.

3. Geographic Area for Solicitation of DBEs: The Engineer shall seek DBEs in the same geographic area in which the solicitation for other subconsultants is made. If the Engineer cannot meet the DBE goal using DBEs from that geographic area, the Engineer shall, as a part of the effort to meet the goal, expand the search to a reasonably wider geographic area.

4. Determination of Participation Toward Meeting the DBE Goal: DBE participation shall be counted toward meeting the goal as follows:

A. Once a firm is determined to be a certified DBE, the total dollar value of the subconsultant agreement awarded to that DBE is counted toward the DBE goal set forth above.

B. The Engineer may count toward the DBE goal a portion of the total dollar value of a subconsultant agreement with a joint venture eligible under the DBE standards, equal to the percentage of the ownership and control of the DBE partner in the joint venture.

C. The Engineer may count toward the DBE goal expenditures to DBEs who perform a commercially useful function in the completion of services required in this Agreement. A DBE is considered to perform a commercially useful function when the DBE is responsible for the execution of a distinct element of the services specified in the Agreement and the carrying out of those responsibilities by actually performing, managing and supervising the services involved and providing the desired product.

D. A Engineer may count toward the DBE goal its expenditures to DBE firms consisting of fees or commissions charged for providing a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of this Agreement, provided that the fee or commission is determined by MoDOT's External Civil Rights Division to be reasonable and not excessive as compared with fees customarily allowed for similar services.

E. The Engineer is encouraged to use the services of banks owned

and controlled by socially and economically disadvantaged individuals.

5. Replacement of DBE Subconsultants: The Engineer shall make good faith efforts to replace a DBE Subconsultant, who is unable to perform satisfactorily, with another DBE Subconsultant. Replacement firms must be approved by MoDOT's External Civil Rights Division.

6. Verification of DBE Participation: Prior to final payment by the Local Agency, the Engineer shall file a list with the Local Agency showing the DBEs used and the services performed. The list shall show the actual dollar amount paid to each DBE that is applicable to the percentage participation established in this Agreement. Failure on the part of the Engineer to achieve the DBE participation specified in this Agreement may result in sanctions being imposed on the Commission for noncompliance with 49 C.F.R. Part 26 and/or Section 1101(b) of TEA-21. If the total DBE participation is less than the goal amount stated by the MoDOT's External Civil Rights Division, liquidated damages may be assessed to the Engineer.

Therefore, in order to liquidate such damages, the monetary difference between the amount of the DBE goal dollar amount and the amount actually paid to the DBEs for performing a commercially useful function will be deducted from the Engineer's payments as liquidated damages. If this Agreement is awarded with less than the goal amount stated above by MoDOT's External Civil Rights Division, that lesser amount shall become the goal amount and shall be used to determine liquidated damages. No such deduction will be made when, for reasons beyond the control of the Engineer, the DBE goal amount is not met.

7. Documentation of Good Faith Efforts to Meet the DBE Goal: The Agreement goal is established by MoDOT's External Civil Rights Division. The Engineer must document the good faith efforts it made to achieve that DBE goal, if the agreed percentage specified is less than the percentage stated. The Good Faith Efforts documentation shall illustrate reasonable efforts to obtain DBE Participation. Good faith efforts to meet this DBE goal amount may include such items as, but are not limited to, the following:

A. Attended a meeting scheduled by the Department to inform DBEs of contracting or consulting opportunities.

B. Advertised in general circulation trade association and socially and economically disadvantaged business directed media concerning DBE subcontracting opportunities.

C. Provided written notices to a reasonable number of specific DBEs that their interest in a subconsultant agreement is solicited in sufficient time to allow the DBEs to participate effectively.

D. Followed up on initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in subconsulting work for this Agreement.

E. Selected portions of the services to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down subconsultant agreements into economically feasible units to facilitate DBE participation).

F. Provided interested DBEs with adequate information about

plans, specifications and requirements of this Agreement.

G. Negotiated in good faith with interested DBEs, and not rejecting DBEs as unqualified without sound reasons, based on a thorough investigation of their capabilities.

H. Made efforts to assist interested DBEs in obtaining any bonding, lines of credit or insurance required by the Commission or by the Engineer.

I. Made effective use of the services of available disadvantaged business organizations, minority contractors' groups, disadvantaged business assistance offices, and other organizations that provide assistance in the recruitment and placement of DBE firms.

8. Good Faith Efforts to Obtain DBE Participation: If the Engineer's agreed DBE goal amount as specified is less than the established DBE goal given, then the Engineer certifies that good faith efforts were taken by Engineer in an attempt to obtain the level of DBE participation set by MoDOT's External Civil Rights.

**Attachment F – Fig. 136.4.15**  
**Conflict of Interest Disclosure Form for LPA/Consultants**  
Local Federal-aid Transportation Projects

**Firm Name (Consultant):** CJW Transportation Consultants, LLC

**Project Owner (LPA):** City of Nixa

**Project Name:** North Street Widening Project

**Project Number:** STBG-9901(833)

As the LPA and/or consultant for the above local federal-aid transportation project, I have:

1. Reviewed the conflict of interest information found in Missouri's Local Public Agency Manual (EPG 136.4)
2. Reviewed the Conflict of Interest laws, including 23 CFR § 1.33, 49 CFR 18.36.

And, to the best of my knowledge, determined that, for myself, any owner, partner or employee, with my firm or any of my sub-consulting firms providing services for this project, including family members and personal interests of the above persons, there are:

☐ No real or potential conflicts of interest  
If no conflicts have been identified, complete and sign this form and submit to LPA

☐ Real conflicts of interest or the potential for conflicts of interest  
If a real or potential conflict has been identified, describe on an attached sheet the nature of the conflict, and provide a detailed description of Consultant's proposed mitigation measures (if possible). Complete and sign this form and send it, along with all attachments, to the appropriate MoDOT District Representative, along with the executed engineering services contract.

LPA

Consultant

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

The North Street widening project will construct approximately 1 mile of a three lane roadway with pedestrian facilities. The project will include the evaluation of, and planning for a roundabout at the intersection of North Street and Cheyenne road. Services to be provided include environmental assessment, public meeting, utility coordination, and production of construction plans. The Engineer will serve as an extension of City staff to provide assistance in the procurement and delivery of the project designated as "North Street widening" with Federal No. STBG-9901(833) hereinafter referred to as the PROJECT.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### Task 1.0 Project Management

1. Engineer will provide project management for engineering tasks, including development of a detailed milestone schedule all phases of the PROJECT including meeting dates, deliverable dates and procurement milestones for inclusion in RFQ/RFP documents with post-proposal and construction administration management
2. Engineer will provide monthly project updates describing completed and upcoming tasks, including distribution of a regular look ahead calendar of tasks.
3. Engineer will prepare monthly reporting on budget, status, pending changes, and schedule.
4. Engineer will prepare invoices using the MoDOT Engineer Services Invoice template found in the MoDOT Engineering Policy Guide. Progress reports will include brief narrative descriptions describing activities during the preceding month with documentation needed for DBE and diversity workforce requirements. Invoices and progress reports will be submitted electronically, monthly.

#### Project Records & Administration

1. Engineer will provide internal systems and communication for the internal and external administration of the project working as a partner with the City of Nixa, and MoDOT.
2. Engineer will maintain a record of project documents, meetings, correspondence, comments, and other pertinent material throughout the course of the project. The materials shall be assimilated



into an electronic Project Record at the completion of the project. The Project Record will include editable copies of raw material, such as AutoCAD and Word files for the project deliverables

3. The Engineer will provide a project closeout and provide electronic copies of the project records shall be forwarded to the City at the completion of the project.

#### Quality Management

1. Engineer will provide quality assurance to develop and evaluate project delivery process and discipline collaboration throughout all phases of the PROJECT.
2. Engineer will provide quality control in accordance with the internal project Quality Plan to ensure technical adequacy for each deliverable as part of this contract.

#### Project Scheduling

1. Engineer will provide and maintain scheduling for all phases of the PROJECT.

#### Project Coordination

1. The Engineer's Project Manager or designee will coordinate work activities with the City's Project Manager and others.
2. The Engineer's Project Manager or designee will coordinate daily work activities of the subcontractors and provide oversight and overall project management.
3. The Engineer's Project Manager or designee will participate in a weekly teleconference or video conference to keep the City's Project Manager abreast of the progress. The meeting should last 30 minutes to an hour on average. The frequency of the meeting will be expected for the first four (12) months of this PROJECT. Meeting frequencies may be adjusted at any time as the City's Project Manager deems necessary.

#### Task 2.0 Public Involvement

- A. Engineer shall conduct a public input meeting with assistance from the city of Nixa. The public input meeting shall illustrate the planned improvements for the roadway and gather feedback for those planned improvements. The meeting shall be held at a time and location that is convenient for the public to meet.

#### Task 3.0 Conceptual Phase

- A. Engineer shall:
  1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.

If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions. Options will be discussed and agreed to by Engineer at scoping meeting.

2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
  3. Study and evaluate three potential solution(s) to meet Owner's Project requirements.
  4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
  5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.
  6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
  7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
  8. Prepare a conceptual plan which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
  9. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
  10. Perform or provide the following other Study and Report Phase tasks or deliverables:  
Traffic Study evaluating the needed traffic control at Cheyenne and North Street
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

#### Task 4.0 Topographical Survey

1. Consultant shall perform a detailed topographical survey within the limits shown on Exhibit B and shall include physical improvements such as:

- i. Edge and centerline of pavement
  - ii. Curb
  - iii. Sidewalk
  - iv. Retaining wall
  - v. Sanitary sewer and Storm sewer
    - 1. Structure (location and rim elevation)
    - 2. Inverts (in and out)
    - 3. Pipe type and size
  - vi. Box culvert
  - vii. Concrete channel
  - viii. Fence
  - ix. Buildings (including lowest opening and finish floor elevations; lowest ground elevation adjacent to the structure)
  - x. Utilities above ground including but not limited to overhead electric, water meters, fire hydrants, pull boxes, and other utility appurtenances
  - xi. Underground utilities marked after notification to Missouri One-Call
  - xii. Monuments, signs, mailboxes, and any other features potentially affected by the project
  - xiii. Cross-sections that will be critical during design
2. Consultant shall survey the location of trees and record the type, size. Consultant shall survey the location of other landscape areas that may be impacted by the project.
  3. Consultant shall survey top of bank, toe of bank, flowline, ground shots and other areas necessary to accurately depict contours at a 1 foot vertical interval.
  4. Consultant shall reference benchmark and reference and establish a minimum of two control points and two temporary benchmarks on site that are in areas that will not be disturbed by construction and show locations and provide a description on the plans.
  5. Surveys shall be tied vertically to the NAVD 1988 Vertical Datum and horizontally to the Missouri State Plane Coordinate System NAD 83 – Central Zone – US Survey Foot.

#### Right of Way and Property Determinations

1. Consultant will locate property corners in the area and research plats, deeds, easements, and any other documents required to establish right of way, property lines, and easements within the limits of the project.
2. In situations where existing City right of way is being determined, consultant shall coordinate with the City during the research phase of the survey for information regarding previous right of way determinations.
3. Engineer will provide easements and right of way descriptions for 12 parcels.

#### Task 5.0 *Utility Coordination*

- A. Engineer shall conduct utility coordination meetings and subsequent follow up with utility providers along the corridor service provided shall include the following
1. Engineer will coordinate with the Local Agency on necessary utility relocation requirements.
  2. Develop list of utility contacts in project area
  3. Conduct records research for existing utilities within the project limits
  4. Coordinate for underground locates
  5. Submit existing utilities plans for utility review
  6. Notice to Utilities and Initial kick-off meeting to determine utility possibilities and possible cost ranges
  7. Utility Meetings for relocations/conflict identification
  8. Determine utilities that are not desired within the corridor
  9. Develop utility corridors where possible
  10. Determine utility easement needs
  11. Determine new service utility costs: lighting, signals, fountains, irrigation, signing.
  12. Work with Utilities to determine conceptual utility relocation costs
  13. Coordination of identified potential conflicts and determination of possible resolutions
  14. Conceptual utility plans of adjustment
  15. Draft utility agreements including requirements per City for maintenance of utilities
  16. Coordinate for pothole investigation

#### Task 6.0 *Environmental Coordination*

- A. This scope of services represents tasks to be performed in completion of the Environmental Assessment (EA), hereinafter called the Study, for the North Street widening Project from Taylor Way and North Street to a point 500 feet east of Cheyenne Road, Limits will also include Cheyenne Road 500 feet north and south of North Street.

The order in which the tasks are completed may or may not correspond to the sequence of the task numbers in the scope of services. In fact, many tasks listed within the scope of services will be prepared concurrently by the Engineer in order to expedite the preparation of the Study. Items of work, which may be listed in more than one task in the scope of services, are listed solely for the purpose of clarification. It should not be assumed that this is an indication that the items of work must be performed multiple times. However, the results from any item of work may be incorporated into multiple tasks within the scope of services.

- ii. Water Resources (Surface Waters, Streams and Wetlands) The Engineer will collect and review applicable National Wetland Inventory Maps and USGS map(s) for the project area. In addition, the Engineer will perform a field review to verify the presence and approximate size of vegetated wetlands and other aquatic sites in the Project Corridor, including surface waters, streams, and any other jurisdictional or non-jurisdictional Water of the United States.

No wetlands are anticipated to be present in the project area. If wetlands or streams are identified, a supplement agreement will be required to delineate their boundaries according to the procedures in the US Army Corps of Engineers (USACE) 1987 Wetland Delineation Manual and appropriate regional supplement and in accordance with the definitions of Waters of the US in the Navigable Waters Rule. Qualitative analysis of any regulated surface water features will be conducted to facilitate permitting.

The Engineer will document the analysis and results in the EA. An Only Practicable Alternative Finding regarding wetland impacts in accordance with Executive Order 11990 will be prepared and included within the environmental document. This Scope of Services does not include obtaining any potential CWA Section 404/401 dredge or fill permits for the proposed project, nor a Pre-Application Conference with the USACE.

- iii. Wildlife & Habitat

The Engineer will review the Missouri Department of Conservation's (MDC) database for the project area related to wildlife and woodland habitat. The Engineer will also conduct any necessary wildlife and habitat field reviews in the Study Corridor, including grasslands and woodland habitat.

The Engineer will utilize the data to identify potential impacts to wildlife and habitat. The Engineer will document all findings, coordination, and results related to potential impacts to wildlife and habitat in the EA.

- iv. Threatened and Endangered Species

The Engineer will complete the following activities to address impacts to Threatened and Endangered (T&E) species:

- Review the U.S. Fish and Wildlife Service (FWS) IPaC database for listed plant and animal species with a known or historical range in the county.
- For those listed species, identify and describe the typical habitat for each species.
- Perform a field assessment for the presence of suitable habitats for listed species. This includes the evaluation of individual suitable potential roost trees for the Indiana or northern long-eared bat. Suitable roost trees will be documented in accordance with MoDOT's procedures.

- Prepare a written assessment of project impacts on each species listed in the IPaC.
- Prepare a written assessment of project impacts on MDC listed species (endangered or species of conservation concern).
- If no effects are anticipated for a particular species (state and federal), the reasons will be documented.
- Provide a technical memo to MoDOT for their coordination with USFWS as necessary or for their concurrence with the effects determinations.

No presence/absence surveys are anticipated to be necessary.

The Engineer will document all findings, coordination, and results related to potential impacts to threatened and endangered species in the EA.

v. Secondary Impacts

The Engineer will conduct secondary impacts analyses. Evaluation of secondary impacts will include consideration of encroachment-alteration effects, access-alteration effects (induced growth), and effects to the environment related to access-alteration effects. The evaluation will be based upon information regarding environmental features, land use, and demographics, developed in the scoping and data collection tasks; travel demand forecasts and traffic studies social and economic studies; and the community involvement program. Close coordination with the community involvement program will be conducted to ensure consideration of community needs and viewpoints. The secondary effects evaluation will be conducted in accordance with established guidance including the FHWA Position Paper on Secondary and Cumulative Impact Assessment (1992), and NCHRP Report 403, Guidance for Estimating the Indirect Effects of Proposed Transportation Projects, (Transportation Research Board, 1998).

Project specific considerations will include access-alteration effects and the role of access management in limiting secondary impacts.

Results of secondary impacts analysis, including regional access-alteration effects, will be summarized in a standalone technical memorandum in addition to being incorporated into the EA

vi. Noise Impacts

Based on the MoDOT Request for Environmental Review (RER) it is assumed that this is a Type III project and a noise analysis is not required.

vii. Air Quality Assessment

Air quality impacts will be addressed in the EA on a qualitative basis since the project is located in an air quality attainment area.

viii. Water Quality

The Engineer will review the EPA's Watershed database, as well as the Missouri Department of Natural Resource's 303(d) List for Missouri Streams and Lakes, regarding water quality within the geographic region for the Project Corridor. EPA's 303(d) program also assists with developing Total Maximum Daily Loads (TMDLs) plans, which establish the maximum amount of a pollutant allowed in a water body. These will also be identified. The information will be summarized in narrative form to characterize the general background conditions of the Project Corridor.

The Engineer will identify significant water resources such as high-quality streams, watersheds, impaired waters, and wellhead areas that may require special protection measures during or after construction. This information will be used in combination with other environmental and engineering constraints to select the NEPA alternatives. The Engineer will document this information and assess potential impacts or threats to water quality in the EA.

ix. Floodplains

The Engineer will review applicable Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) for the project area. For each of the Reasonable Alternatives with potential floodplain encroachments, the Engineer will assess and evaluate the risk or significance of the environmental impacts including:

- The risks associated with the implementation of the action;
- The impacts on natural and beneficial floodplain values;
- The support of probable incompatible floodplain development;
- The measures to minimize floodplain impacts associated with the alternative;
- The measures to restore and preserve the natural and beneficial floodplain values impacted by the alternative; and
- Identify any FEMA buyout properties in project area.

For each Reasonable Alternative encroaching on a designated or proposed regulatory floodway, based on the level of encroachment, the Engineer shall document the consistency with the National Flood Insurance Program (NFIP) standards and coordinate with FEMA, State Emergency Management Agency (SEMA) and local agencies.

For encroachments identified by FHWA to be significant, the EA shall include a finding that the proposed encroachment of the Preferred Alternative is the only practicable alternative in accordance with Executive Order 11988.

x. Farmland

According to the MoDOT RER the project is located in a designated urbanized area as indicated on the U.S. Census Bureau Urbanized Area Reference Map. Therefore, the project is not subject to the Farmland Protection Policy Act.

xi. Hazardous Waste Assessment

The Engineer will review and use appropriate EPA and Missouri Department of Natural Resources (DNR) lists of major known hazardous waste, hazardous material, or solid waste disposal locations within the project area as needed.

A limited amount of non-intrusive fieldwork (windshield surveys) may be required to determine the exact location and obvious limits of contamination to be shown on the constraints map. After the Reasonable Alternatives have been selected, the Engineer shall identify all sites that impact these alternatives.

The Engineer shall then prepare a summary comparing the relative ease (e.g., low, medium or high) of avoiding the hazardous waste sites within each of the alternative corridors and the relative clean-up effort (e.g., low, medium or high) for each site.

xii. Cultural Resources - Archival Review

The Engineer will conduct a cultural resource study of the proposed North Street widening improvements. This study will be conducted in accordance to the Missouri Department of Transportation (MoDOT); Missouri Department of Natural Resources State Historic Preservation Office (SHPO), the City of Nixa, various tribes, and other state, and federal regulations guiding this research. An area of study will be determined with a consultation with MoDOT. A detailed archival review will be conducted on the Conceptual Alternatives study area and will include:

- Review of the local environmental setting. The topography, geology, and underlying soils will be reviewed. This could indicate the potential for Pre contact sites or early historical sites.
- Document the Precontact cultural sequence. This will be prepared from books that summarize Missouri Precontact cultures and from recent cultural resource management studies.
- Review and summarize previous cultural resource studies. Previously documented cultural resource studies will be verified by contacting SHPO in Jefferson City.
- Review and summarize archaeological sites identified. SHPO site files will be consulted to be certain that all archaeological sites within the study area have been identified. The present condition



of previously recorded sites will be determined by visiting the sites before completion of the draft document.

- Review and summarize the existing architectural records. This includes all properties listed on the National Register of Historic Places (NRHP), properties determined eligible by SHPO, or designated as local landmarks.
- Review and summarize all bridges or culverts. Bridges or culverts listed or determined as being eligible by SHPO will be reviewed. Fraser's 1996 draft Missouri Historic Bridge Inventory and the 2003 Missouri Historic Bridge List will be consulted to provide this information, along with other information supplied by the MoDOT, Historic Preservation Section.
- Review and summarize all burial grounds and cemeteries that once existed or still exist within the study area. This information will be obtained during the historical archival review.
- Conduct a thorough and specific historic archival search. This review will identify historical themes that have been identified or new themes suggested by the archival review for this area. Resources at the Missouri Historical Society and local archives will be used as needed.

Task 7.0 Preliminary Design Phase - (30 percent plans)

At conclusion of the concept design phase, and with clear direction from the City, Consultant shall prepare Preliminary Plans

- a. The preliminary plans shall include the following sheets:
  - i. Cover
  - ii. Striping and Signing Plan
  - iii. Right of Way Plan
  - iv. Typical Section Sheet
  - v. Concept Traffic Control
  - vi. Plan and Profile
  - vii. Storm Plans
  - viii. Intersection Detail Sheet
  - ix. Cross-sections at critical locations
- b. Comments from the City and other agencies regarding the concept design shall be incorporated into the preliminary plans.
- c. One set of full size paper plans will be provided to the City for review and comment as well as one electronic set in pdf format. Plans shall be approximately thirty (30) percent complete.
- d. The Consultant shall identify any potential utility impacts. The Owner will send electronic copy of plans to impacted utilities and other City departments for their review. Potential utility relocation

location will be shown on plans. The approximate locations will be provided by the Utility providers.

- e. Each parcel, for which an easement or right of way is required, shall be identified on the Right of Way plan sheet by a number surrounded by a circle. This parcel number will be unique to that parcel and shall be referenced in all easement and right of way documents.
- f. Consultant shall prepare an opinion of probable construction costs. City will provide consultant with bid tabulations from recent construction projects. Engineer shall use this information along with their own experience for determining unit costs.
- g. The Consultant will attend one meeting with the City to review preliminary plans and discuss comments. Following meeting Consultant shall accompany City staff to project site to review design in the field.

Task 8.0 Right of Way Plan Phase – 60 percent plans

- A. After acceptance by Owner of the Preliminary Design Phase documents, opinion of probable Construction Cost as determined in the Preliminary Design Phase, and/or any other Right of Way plan documents, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

- 1. Prepare Right of Way Drawings.
- 2. Visit the Site as needed to assist in preparing the Right of Way Drawings and Specifications.
- 3. The preliminary plans shall include the following sheets:

- Cover
- Striping and Signing Plan
- Right of Way Plan
- Typical Section Sheet
- Concept Traffic Control
- Plan and Profile
- Storm Plan
- Intersection Detail Sheet
- Cross-sections at critical locations

Comments from the City and other agencies regarding the concept design shall be incorporated into the preliminary plans.

- h. One set of full size paper plans will be provided to the City for review and comment as well as one electronic set in pdf format. Plans shall be approximately sixty (60) percent complete.
- i. The Consultant shall identify any potential utility impacts. The Owner will send electronic copy of plans to impacted utilities and other City departments for their

review. Potential utility relocation location will be shown on plans. The approximate locations will be provided by the Utility providers.

- j. Each parcel, for which an easement or right of way is required, shall be identified on the Right of Way plan sheet by a number surrounded by a circle. This parcel number will be unique to that parcel and shall be referenced in all easement and right of way documents.
  - k. Consultant shall prepare an opinion of probable construction costs. City will provide consultant with bid tabulations from recent construction projects. Engineer shall use this information along with their own experience for determining unit costs.
  - l. The Consultant will attend one meeting with the City to review right of way plans and discuss comments. Following meeting Consultant shall accompany City staff to project site to review design in the field.
  - m. Consultant will provide easements and right of way documents for acquisition as the conclusion of right of way plans
- B. Engineer's services under the Right of Way Plan Phase will be considered complete on the date when Engineer has delivered to Owner the Right of Way Plan Phase documents, revised opinion of probable Construction Cost, and any other Right of Way Plan Phase deliverables.

#### Task 9.0 Permits

- A. Engineer shall prepare a SWPPP and land disturbance permit for the project. All agency fees shall be reimbursed by the City of Nixa.

#### Task 10.0 Final Design Phase – 100 percent plans

- A. After acceptance by Owner of the Right of Way Plan Phase documents, revised opinion of probable Construction Cost as determined in the Right of Way Plan Design Phase, and/or any other Right of Way plan documents, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

The final plans shall include the following sheets:

- i. Cover
- ii. Striping and Signing Plan
- iii. Existing Features Plan
- iv. Right of Way Plan
- v. Demolition Plan
- vi. Signal Improvement Plan
- vii. Erosion Control Plan
- viii. Traffic Control Plan (with phasing)
- ix. Tree Preservation Plan
- x. Storm Plan and Profiles
- xi. Intersection Detail Sheets
- xii. Plan and Profile
- xiii. Cross Sections – min. 25 foot spacing
- xiv. Details

- a. Comments from the City and other agencies regarding the right of way plans shall be incorporated into the final plans.
  - b. One set of full size paper plans will be provided to the City for review and comment as well as one electronic set in pdf format. Plans shall be final for review.
  - c. The Project Manager for the City will send electronic copy of plans to impacted utilities and other City departments for their review.
  - d. A consultant provided QA/QC checklist shall be included verifying the plans, calculations, opinion of probable construction costs, quantity takeoff drawings, and other submittals have been reviewed by the project principal, project manager, or other professional.
  - e. Consultant shall prepare an opinion of probable construction costs.
  - f. The Consultant will meet with City staff to review the plans and obtain comments.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts.

Task 11.0      *Bidding Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
- 1. Advertise for and obtain bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
  - 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
  - 3. Provide information or assistance needed by Owner in the course of any review of proposals with prospective contractors.
  - 4. If Federal funding is involved, set up prequalification's for contractor.

5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
  6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents
  7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
- B. The Bidding Phase will be considered complete upon commencement of the Construction Phase.

## **PART 2 – ADDITIONAL SERVICES**

### **A2.01    *Additional Services Requiring Owner's Written Authorization***

- C. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
  4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.

5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Furnishing services of Consultants for other than Basic Services.
7. Providing the following services:
  - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
  - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
8. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
9. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A.
10. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
11. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
12. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
13. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
14. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
15. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
16. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

### A3.01 *Exclusions and Assumptions*

#### A. Exclusions:

1. Waterline design is not included in this Contract
2. Right of way services including property appraisals, negotiations, and acquisitions will be handled by others and are not included in this Contract.
3. Landscape and irrigation design services are not included in the Contract.
4. Environmental services other than those explicitly defined in the scope and beyond the normal services to fulfill the requirements of a Categorical Exclusion are not included in the Contract. This includes, but is not limited to, the exclusion of a traffic noise study.
5. Stormwater detention and water quality design services are not included in the Contract.
6. Temporary traffic signal design.
7. CLOMR or LOMRs are not included in the Contract.
8. Printing contract documents and plans during bidding.
9. Construction administration services other than those explicitly defined in the scope are not included in the Contract.
10. As-built drawing preparation is not included in the Contract.

#### A. Assumptions:

1. A total of three (3) concepts will be investigated as part of this scope.
2. Right of way services including property appraisals, negotiations, and acquisitions will be handled by the city.
3. Plans and contractual documents assume 1 bid package and construction duration of 1 year. If project is constructed in multiple phases requiring a longer duration, a supplement will be required.
4. Right of Way Revisions after approved Right of Way plans shall be considered additional services.
5. Title work will be provided by the City of Nixa
6. Revisions to any stage of plans shall be considered additional services after approval by owner.

**Attachment B**  
**Total Project Fee**  
**North Street Widening**

<b>Task No.</b>	<b>Task Description</b>		<b>Fee Estimate</b>
1	Project Management		\$ 30,576.51
2	Public Involvement		\$ 13,512.86
3	Conceptual Phase		\$ 47,589.69
4	Survey		\$ 60,824.80
6	Utility Coordination		\$ 9,802.33
7	Environmental/Historical Review		\$ 18,301.10
8	Preliminary Design Phase (30 percent plans)		\$ 145,520.05
9	Right of Way Plan Phase (60 percent plans)		\$ 60,137.96
10	Permits		\$ 2,222.69
11	Final Design Phase (100 percent plans)		\$ 130,433.17
12	Bidding Phase		\$ 3,532.56
	Expenses		\$ 15,488.75
		<b>Total Project Cost</b>	<b>\$ 537,942.48</b>



MAN-HOUR ESTIMATE - NORTH STREET WIDENING PROJECT																												
Task No.	Description of Work Items / Tasks	CJW Transportation Consultants								Bartlett & West							Shaffer & Hines							Total Manhours	Total Labor Fee	Total CJW Fee	Total B&W Fee	Total S&H Fee
		Principal	Senior Engineer	Project Engineer	Engineer Intern	Senior Designer	2 Person Survey Crew	Surveyor	Technican	Project Manager	Engineering Technician	Lead Engineer	Project Engineer	Surveyor	2 Person Survey Crew	Administrative Assistant	Principal	Engineering Tech	Survey Department Mangr.	Surveyor, PLS	Surv Tech	Assistant Survey Tech	Administrative Assistant					
		\$ 60.25	\$ 46.03	\$ 34.32	\$ 31.29	\$ 26.62	\$ 43.00	\$ 28.00	\$ 26.70	\$ 65.00	\$ 30.00	\$ 45.00	\$ 35.00	\$ 45.00	\$ 35.00	\$ 25.00	\$ 41.95	\$ 30.10	\$ 41.95	\$ 32.03	\$ 22.00	\$ 14.00						
1	Project Management																											
	Project Management		48							16		8				16												
	Coordination with Others		40	20		20				24		8	4															
	Design Memorandum		8	16						2		2	4															
2	Public Involvement																											
	Public Meetings/ Meetings with Coordinating Agencies		40	20		16				16																		
	Attend Meetings w/Commission and Provide Exhibits		8	8		4																						
3	Conceptual Phase																											
	Prepare Alternatives		8	40	20	100				20	32	8	100															
	Prepare Report		4	20	8	16				2		2	8															
	Prepare Traffic Analysis Report		8	40	40																							
4	Survey																											
	Topographical Survey		2	8			140	20																				
	Base Map Preparation		2	8				20	80										24	24								
	Horizontal Control																		24		20	8						
	Vertical Control																		24		21	8						
	Locate Section Corners																		20		20							
	Bench Level Run																		20		20							
	Utility Locates																		32	32								
	Right of Way Descriptions and Easements																											
5	Utility Coordination																											
	Utility Location / Verification			16		8																						
	Utility Plan Submittal			16		8																						
	Utility Review Meetings / Coordination		16	32		8																						
6	Environmental/Historical Review																											
	NEPA Environmental Review		40	12																								
	Hazardous Material Review		4																									
	Wetlands and Habitat Investigation		4																									
	Wetland Permitting		4																									
	Historical / Archeological Investigation		16																									
	Impacts to Misc. Environmental Resources		8																									
	Prepare Draft Environmental Review		32	16																								
	Endangered Species Review		8																									
	Public Land Impacts (4F or 6F)		8																									

MAN-HOUR ESTIMATE - NORTH STREET WIDENING PROJECT																												
Task No.	Description of Work Items / Tasks	CJW Transportation Consultants								Bartlett & West							Shaffer & Hines							Total Manhours	Total Labor Fee	Total CJW Fee	Total B&W Fee	Total S&H Fee
		Principal	Senior Engineer	Project Engineer	Engineer Intern	Senior Designer	2 Person Survey Crew	Surveyor	Technican	Project Manager	Engineering Technician	Lead Engineer	Project Engineer	Surveyor	2 Person Survey Crew	Administrative Assistant	Principal	Engineering Tech	Survey Department Mangr.	Surveyor, PLS	Surv Tech	Assistant Survey Tech	Administrative Assistant					
7	Preliminary Design Phase (30 percent plans)																											
	Review Preliminary Design		16	16					16	8	8	16												80	\$ 3,485.60	\$ 1,285.60	\$ 2,200.00	\$ -
	Identify any Variances to Design Criteria		4	4					1		1	4											14	\$ 571.40	\$ 321.40	\$ 250.00	\$ -	
	Preliminary Estimates and Construction Costs		4	16		16			1	16	2	16											71	\$ 2,354.16	\$ 1,159.16	\$ 1,195.00	\$ -	
	Hydrologic studies and Drainage Plans		8	60	20	40			2	32	8	60											230	\$ 7,668.04	\$ 4,118.04	\$ 3,550.00	\$ -	
	Conceptual Traffic Control Plan		2													20	30						52	\$ 1,834.06	\$ 92.06	\$ -	\$ 1,742.00	
	Preliminary Design		40	100		100			3	40	12	120											415	\$ 14,070.20	\$ 7,935.20	\$ 6,135.00	\$ -	
	Title Sheet		2	16																			18	\$ 641.18	\$ 641.18	\$ -	\$ -	
	Typical Sheet			2		40				8	1	2											53	\$ 1,488.44	\$ 1,133.44	\$ 355.00	\$ -	
	Plan Sheets			4		32			1	16	1	4											58	\$ 1,719.12	\$ 989.12	\$ 730.00	\$ -	
	Profile Sheets			4		32			1	16	1	4											58	\$ 1,719.12	\$ 989.12	\$ 730.00	\$ -	
	Special Sheets			4		8				16	1	4											33	\$ 1,015.24	\$ 350.24	\$ 665.00	\$ -	
	Traffic Control and Staging Concept		2													20	10						32	\$ 1,232.06	\$ 92.06	\$ -	\$ 1,140.00	
	Preliminary Culvert Sections		4	8		4			1	32	1	8											58	\$ 1,915.16	\$ 565.16	\$ 1,350.00	\$ -	
	Preliminary Cross Sections at 25 foot intervals		8	40		40			1	8	1	40											138	\$ 4,555.84	\$ 2,805.84	\$ 1,750.00	\$ -	
	Tentative Easements and Right of Way Limits		2	4		36			1	16	1	4											64	\$ 1,917.66	\$ 1,187.66	\$ 730.00	\$ -	
	QA/QC		16	6		8			12		8	6											56	\$ 2,505.36	\$ 1,155.36	\$ 1,350.00	\$ -	
8	Right of Way Plan Phase (60 percent plans)																											
	R.O.W Design		16	32		40			1	16	2	32											139	\$ 4,654.52	\$ 2,899.52	\$ 1,755.00	\$ -	
	Title Sheet		2	8		2																	12	\$ 419.86	\$ 419.86	\$ -	\$ -	
	Typical Sheet					8				1	1	0											10	\$ 287.96	\$ 212.96	\$ 75.00	\$ -	
	Plan/Profile Sheets			8		16				12	1	8											45	\$ 1,385.48	\$ 700.48	\$ 685.00	\$ -	
	Special Sheets		4	2		8				4	1	1											20	\$ 665.72	\$ 465.72	\$ 200.00	\$ -	
	Cross Sections			2		16				8	1	1											28	\$ 814.56	\$ 494.56	\$ 320.00	\$ -	
	R.O.W. and Easement Plan Sheets		4	16		32			1	24	1	16											94	\$ 2,975.08	\$ 1,585.08	\$ 1,390.00	\$ -	
	Construction Limits			2		2				4	1	2											11	\$ 356.88	\$ 121.88	\$ 235.00	\$ -	
	Design Field Check and R.O.W Revisions			16		16			10	16	1	16											75	\$ 2,710.04	\$ 975.04	\$ 1,735.00	\$ -	
	R.O.W Revisions due to Owner Negotiations		2	8		32			4	40	1	8											95	\$ 3,003.46	\$ 1,218.46	\$ 1,785.00	\$ -	
	Construction Cost Estimate		2	8					1	8	1	8											28	\$ 996.62	\$ 366.62	\$ 630.00	\$ -	
	QA/QC		16	16		8			8	0	0	0											48	\$ 2,018.56	\$ 1,498.56	\$ 520.00	\$ -	
9	Permits																											
	SWPPP		2		16																		18	\$ 592.70	\$ 592.70	\$ -	\$ -	
	Land Disturbance Permit		2		4																		6	\$ 217.22	\$ 217.22	\$ -	\$ -	

MAN-HOUR ESTIMATE - NORTH STREET WIDENING PROJECT																											
Task No.	Description of Work Items / Tasks	CJW Transportation Consultants							Bartlett & West							Shaffer & Hines							Total Manhours	Total Labor Fee	Total CJW Fee	Total B&W Fee	Total S&H Fee
		Principal	Senior Engineer	Project Engineer	Engineer Intern	Senior Designer	2 Person Survey Crew	Surveyor	Technician	Project Manager	Engineering Technician	Lead Engineer	Project Engineer	Surveyor	2 Person Survey Crew	Administrative Assistant	Principal	Engineering Tech	Survey Department Mangr.	Surveyor, PLS	Surv Tech	Assistant Survey Tech					
10	Final Design Phase (100 percent plans)																										
	Cover Sheet		2	8																							
	Summary of Quantities Sheet		2	8					1	24	0	8					24										
	Typical Section Sheets			2						4	1	2															
	General Notes Sheet		4	16																							
	Detail Sheets			4					2	8	0	4															
	Horizontal/Vertical Control Sheets			4																							
	Construction Phasing		2	2		8			2	16	0	2															
	Traffic Control Sheets																30	40									
	Geometric Sheets			2		16			1	8	0	2															
	Joints and Grades Sheets		4	16		40			0	4	1	16															
	Roadway Plan and Profile Sheets			2		40			0	24	1	2															
	Removal Sheets			4		36			1	12	1	4															
	Retaining Wall Plan and Profile Sheets			8		8			1	40	1	16															
	Retaining Wall Details			8		24			0	16	8	24															
	Storm Drainage Plan and Profile Sheets			16		24			0	24	1	2															
	Culvert/Channel Cross-Section Sheets			8		24			1	24	1	4															
	Sediment and Erosion Control Sheets			8		24			0	8	1	4															
	Pavement Marking & Signing Sheets			12		24			1	0	1	12															
	Lighting Plan Sheets		20	40		24			1	40	32	20															
	Right-of-Way Sheets		2	4		16			0	4	1	0															
	Roadway Cross-Section Sheets		2	4		60			1	12	0	4															
	Cost Estimates		8	16		8			1	12	2	16															
	Special Provisions		8	32					1	0	4	16															
	QA/QC		8	6		8			16	0	8	6															
11	Bidding Phase																										
	Prepare Bid Package for issuance to public		32	16																							
	Advertise for and obtain bids for the proposed work		8																								
	Attend Pre-Bid Meeting		4																								
	Answer Design Questions		4	8																							
	Prepare Addenda		4																								
	Attend Bid Opening		2																								
	Total Manhours	0	582	928	108	1100	140	40	80	175	653	149	660	0	0	16	94	80	144	56	81	16	0	5102			
	Total Labor	\$ -	\$ 26,789.46	\$ 31,848.96	\$ 3,379.32	\$ 29,282.00	\$ 6,020.00	\$ 1,120.00	\$ 2,136.00	\$ 11,375.00	\$ 19,590.00	\$ 6,705.00	\$ 23,100.00	\$ -	\$ -	\$ 400.00	\$ 3,943.30	\$ 2,408.00	\$ 6,040.80	\$ 1,793.68	\$ 1,782.00	\$ 224.00	\$ -	\$ 177,937.52	\$ 98,553.66	\$ 61,170.00	\$ 16,191.78
	Total Labor and Expenses																							\$ 193,426.27			

CJW FEE SUMMARY

B & W FEE SUMMARY

S & H FEE SUMMARY

Task	Labor Costs	Payroll Overhead	General & Admin. Overhead	Fixed Fee	Total Cost	Labor Costs	Payroll Overhead	General & Admin. Overhead	Fixed Fee	Total Cost	Labor Costs	Payroll Overhead	General & Admin. Overhead	Fixed Fee	Total Cost
		64.71%	80.32%	12.00%			42.97%	144.73%	12.00%				202.65%	12.00%	
1 Project Management	\$ 6,186.80	\$ 4,003.48	\$ 4,969.24	\$ 1,819.14	\$ 16,978.66	\$ 4,220.00	\$ 1,813.33	\$ 6,107.61	\$ 1,456.91	\$ 13,597.85	\$ -	\$ -	\$ -	\$ -	\$ -
2 Public Involvement	\$ 3,702.80	\$ 2,396.08	\$ 2,974.09	\$ 1,088.76	\$ 10,161.73	\$ 1,040.00	\$ 446.89	\$ 1,505.19	\$ 359.05	\$ 3,351.13	\$ -	\$ -	\$ -	\$ -	\$ -
3 Conceptual Phase	\$ 9,568.24	\$ 6,191.61	\$ 7,685.21	\$ 2,813.41	\$ 26,258.47	\$ 6,620.00	\$ 2,844.61	\$ 9,581.13	\$ 2,285.49	\$ 21,331.23	\$ -	\$ -	\$ -	\$ -	\$ -
4 Survey	\$ 10,009.24	\$ 6,476.98	\$ 8,039.42	\$ 2,943.08	\$ 27,468.72	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,840.48	\$ -	\$ 19,941.73	\$ 3,573.87	\$ 33,356.08
5 Utility Coordination	\$ 3,571.84	\$ 2,311.34	\$ 2,868.90	\$ 1,050.25	\$ 9,802.33	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6 Environmental/Historical Review	\$ 6,668.68	\$ 4,315.30	\$ 5,356.28	\$ 1,960.83	\$ 18,301.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
7 Preliminary Design Phase (30 percent plans)	\$ 24,820.64	\$ 16,061.44	\$ 19,935.94	\$ 7,298.16	\$ 68,116.18	\$ 20,990.00	\$ 9,019.40	\$ 30,378.83	\$ 7,246.59	\$ 67,634.82	\$ 2,882.00	\$ -	\$ 5,840.37	\$ 1,046.68	\$ 9,769.06
8 Right of Way Plan Phase (60 percent plans)	\$ 10,958.74	\$ 7,091.40	\$ 8,802.06	\$ 3,222.26	\$ 30,074.46	\$ 9,330.00	\$ 4,009.10	\$ 13,503.31	\$ 3,221.09	\$ 30,063.50	\$ -	\$ -	\$ -	\$ -	\$ -
9 Permits	\$ 809.92	\$ 524.10	\$ 650.53	\$ 238.15	\$ 2,222.69	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
10 Final Design Phase (100 percent plans)	\$ 20,969.54	\$ 13,569.39	\$ 16,842.73	\$ 6,165.80	\$ 57,547.46	\$ 18,970.00	\$ 8,151.41	\$ 27,455.28	\$ 6,549.20	\$ 61,125.89	\$ 3,469.30	\$ -	\$ 7,030.54	\$ 1,259.98	\$ 11,759.82
11 Bidding Phase	\$ 1,287.22	\$ 832.96	\$ 1,033.90	\$ 378.49	\$ 3,532.56	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL	\$ 98,553.66	\$ 63,774.07	\$ 79,158.30	\$ 28,978.32	\$ 270,464.36	TOTAL	\$ 61,170.00	\$ 26,284.75	\$ 88,531.34	\$ 21,118.33	TOTAL	\$ 16,191.78	\$ -	\$ 32,812.64	\$ 5,880.53

TOTAL EXPENSES					
Expenses	Amount		\$ Ea.		Cost
<b>Design</b>					
Travel, mile (car)	625	MILES	\$ 0.56		\$ 350.00
Travel, mile (survey vehicle)	185	MILES	\$ 0.75		\$ 138.75
Environmental Documentation (lump sum)	0	L.S.	\$ -		\$ -
Aerial Mapping (DTM)	0	L.S.	\$ -		\$ -
Miscellaneous Expenses(Plots, Copies, Reports, etc.)	1	L.S.	\$ 1,500.00		\$ 1,500.00
Geotechnical Borings and Report	1	L.S.	\$ 13,500.00		\$ 13,500.00
			<b>Sub Total</b>		<b>\$ 15,488.75</b>
<b>Survey Expenses</b>					
<b>Public Involvement Expenses</b>					
			<b>Total</b>		<b>\$ 15,488.75</b>

## **Assumptions**

1. Construction Phase Services are not included as part of the fee schedule.
2. Storm sewer shall be designed using StormCAD, Pipe Networks, or Hydraflow
3. All CAD files shall be created using AutoCAD
4. ROW services including property appraisals, negotiations, and acquisitions will be handled by the city.
5. Utility relocation plans will be completed by their respective utilities
6. City will provide Title work for properties located along the project



**Issue:** **AN ORDINANCE OF THE CITY COUNCIL FO THE CITY OF NIXA, MISSOURI AMENDING CHAPTER 117, ARTICLE VII OF THE NIXA CITY CODE TO MODIFY THE CITY’S DENSITY AND DIMENSIONAL REGULATIONS**

**Date:** May 10, 2021

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

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## **Background**

The City’s current zoning regulations concerning density and dimensional requirements, such as minimum lot area, minimum yards, maximum building heights, etc., are structured in a way that causes confusion. In particular, the building setback requirements are structured such that in certain commercial districts, depending on how you interpret the language, the setback distances would be prohibitive to development on smaller tracts (especially if located at street intersections). Additionally, the same regulations contain multiple errors and omissions that also make the regulations difficult to apply.

## **Analysis**

The result of the confusion and difficulty caused by the many errors and confusing language is that interested persons are likely to not feel confident that they are applying the regulations correctly. Upon an initial reading of the regulations, one is likely to assume (perhaps correctly) that commercial setback distances are unusually large and making certain commercial zones of the City relatively unattractive for improvement.

Because real property in Nixa exists within a broader regional market for land, it should be assumed that there are many substitute “products” available. If Nixa’s dimensional standards are confusing or unnecessarily prohibitive, it is likely that land affected by the problematic regulations may be less competitive within that market.

To address that concern, one must consider whether the dimensional standards are serving an important public interest. In the case of building setbacks and other dimensional standards, there are now many other regulatory provisions contained in the building and fire codes that are likely to require setbacks as large or larger than zoning setbacks. In the case of the dimensional standards that Nixa applies, staff believes that many of the setbacks can be appropriately reduced while still serving the fundamental purposes of the regulations as set forth in state statute and elsewhere.

The bill that is the subject of this memorandum restructures, simplifies and significantly reduces certain setback dimensions (particularly in the commercial and industrial districts). One of the goals in drafting this amendment was to not make a change that would cause non-conformities, so no dimensional standards were enlarged.



A comparison of the existing and proposed setback distances to each other as well as other municipalities in the local region and other areas of the state is included below for reference.

City	Residential			General Commercial			Light Industrial			Heavy Industrial		
	Front	Side	Rear	Front	Side	Rear	Front	Side	Rear	Front	Side	Rear
<i>Nixa (current)</i>	<i>25</i>	<i>5</i>	<i>20</i>	<i>40</i>	<i>15</i>	<i>20</i>	<i>30</i>	<i>10</i>	<i>25</i>	<i>40</i>	<i>25</i>	<i>25</i>
Ozark	25	7	20	25	5	30	35	20	35	-	-	-
Republic*	25	6	25	15	6	15	15	15	15	15	15	30
Springfield*	15	5	10-20	20	0	0	15 or 25	10	10	15 or 25	0	0
Columbia	25	6	25	25	0	0	25	0	10	-	-	-
Independence*	25	5	20	15	0	0	25	0	0	25	35	35
Blue Springs	25	8	15	20	20	25	0-45	10	10	40	20	20
Fenton	30	6	30	20	10	10	50	15	15	-	-	-
<i>Nixa (proposed)</i>	<i>25</i>	<i>5</i>	<i>20</i>	<i>20</i>	<i>10</i>	<i>20</i>	<i>20</i>	<i>10</i>	<i>20</i>	<i>25</i>	<i>25</i>	<i>25</i>
* measured to "drip edge"												

## **Recommendation**

Staff recommends the approval and passage of this bill. The Planning and Zoning Commission voted unanimously to recommend the approval and passage of this bill.

2  
3 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA  
4 AMENDING CHAPTER 117, ARTICLE VII OF THE NIXA CITY CODE TO  
5 MODIFY THE CITY'S DENSITY AND DIMENSIONAL REGULATIONS.  
6  
7

8 WHEREAS City staff has proposed certain amendments to Chapter 117, Article  
9 VII of the Nixa City Code related to the City's density and dimensional regulations; and  
10

11 WHEREAS density and dimensional regulations include requirements such as  
12 minimum lot area, minimum yard size, maximum building heights, and established  
13 certain setbacks; and  
14

15 WHEREAS upon review of the regulations set forth in Chapter 117, Article VII  
16 staff has determined that the current regulations are confusing and difficult to apply; and  
17

18 WHEREAS the Planning and Zoning Commission, at their May 3, 2021 meeting,  
19 considered the revisions proposed by staff and recommend approval of said revisions;  
20 and  
21

22 WHEREAS City Council, having considered the revisions, desires to implement  
23 these revisions and adopt an Ordinance accordingly.  
24

25 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
26 NIXA, AS FOLLOWS, THAT:  
27

28 SECTION 1: Chapter 117, Article VII of the Nixa City Code is hereby amended  
29 by repealing Article VII and adopting in lieu thereof a new Article VII. Said Article shall  
30 read as follows:  
31

32 (Note: Language to be added is underlined. Language to be removed is stricken.)  
33

34 ARTICLE VII. – DENSITY AND DIMENSIONAL REGULATIONS  
35

36 Sec. 177-275 – Applicability of Article.  
37

38 The requirements and conditions set forth in this article shall apply to the subdivision of  
39 land and the construction of buildings and structures. No subdivision, building, or  
40 structure shall be approved by the City except in compliance with this article.  
41

42 Sec. 117-276 – Buildings set back from street centerlines.  
43

44 To ensure the full development of public transportation thoroughfares, buildings shall be  
45 set back from the centerline of all streets adjoining the lot in which the building is



located as based on the classification of that street as indicated in the City Council's adopted transportation plan as set forth in the table provided below.

<u>Local</u>	<u>Collector</u>	<u>Secondary Arterial</u>	<u>Primary Arterial</u>	<u>Expressway</u>	<u>Freeway</u>
<u>25 feet</u>	<u>35 feet</u>	<u>40 feet</u>	<u>55 feet</u>	<u>90 feet</u>	<u>125 feet</u>

Sec. 117-277 – Minimum Dimensional Standards.

(a) The following minimum dimensional standards shall apply in each respective zoning district:

(1) Lots zoned as AG district (agricultural) shall comply with the following dimensional requirements:

- a. The minimum lot area shall be no less than 20,000 square feet,
- b. The minimum lot width shall be no less than 100 feet,
- c. No building shall be constructed or placed which exceeds 35 feet in height,
- d. Buildings constructed or placed shall have a front yard setback of at least 25 feet,
- e. Buildings constructed or placed shall have a rear yard setback of at least 25 feet,
- f. Buildings constructed or placed shall have a side yard setback of at least 5 feet as measured from the nearest point on the foundation wall to the property line,
- g. When the side yard of any building on a lot is adjacent to a street the building shall be setback at least 12 feet from the property line adjacent to the street,
- h. The maximum allowed number of dwelling units shall not exceed 2.18 dwelling units per acre.

(2) Lots zoned as R-1 district (single-family residential) shall comply with the following dimensional requirements:

- a. The minimum lot area shall be no less than 6,600 square feet,
- b. The minimum lot width shall be no less than 60 feet,
- c. No building shall be constructed or placed which exceeds 35 feet in height,
- d. Buildings constructed or placed shall have a front yard setback of at least 25 feet,
- e. Buildings constructed or placed shall have a rear yard setback of at least 20 feet,
- f. Buildings constructed or placed shall have a side yard setback of at least 5 feet as measured from the nearest point on the foundation wall to the property line,
- g. When the side yard of any building on a lot is adjacent to a street the building shall be setback at least 12 feet from the property line adjacent to the street,

88        h. The maximum allowed number of dwelling units shall not exceed 6.60  
89        dwelling units per acre.

90  
91        (3) Lots zoned as R-4 district (two-family) shall comply with the following  
92        dimensional requirements:

93  
94        a. The minimum lot area shall be no less than 8,000 square feet for two-family  
95        residential dwellings (“duplexes”) and no less than 4,000 square feet for  
96        attached single-family residential dwellings (“townhomes” or “zero lot line”).

97        b. The minimum lot width shall be no less than 60 feet.

98        c. No building shall be constructed or placed which exceeds 35 feet in height.

99        d. Buildings constructed or placed shall have a front yard setback of at least 20  
100       feet.

101       e. Buildings constructed or placed shall have a rear yard setback of at least 15  
102       feet.

103       f. Buildings constructed or placed shall have a side yard setback of at least 6  
104       feet as measured from the nearest point on the foundation wall to the property  
105       line.

106       g. When the side yard of any building on a lot is adjacent to a street the building  
107       shall be setback at least 12 feet from the property line adjacent to the street.

108       h. The maximum allowed number of dwelling units shall not exceed 5.45  
109       dwelling units per acre.

110  
111       (4) Lots zoned as R-5 district (medium density multifamily) shall comply with the  
112       following dimensional requirements:

113  
114       a. No building shall be constructed or placed which exceeds 35 feet in height.

115       b. Buildings constructed or placed shall have a front yard setback of at least 20  
116       feet.

117       c. Buildings constructed or placed shall have a rear yard setback of at least 12  
118       feet.

119       d. Buildings constructed or placed shall have a side yard setback of at least 8  
120       feet as measured from the nearest point on the foundation wall to the  
121       property line.

122       e. When the side yard of any building on a lot is adjacent to a street the building  
123       shall be setback at least 12 feet from the property line adjacent to the street.

124       f. The maximum allowed number of dwelling units shall not exceed 8.71  
125       dwelling units per acre.

126  
127       (5) Lots zoned as R-3 district (multifamily) shall comply with the following  
128       dimensional requirements:

129  
130       a. No building shall be constructed or placed which exceeds 35 feet in height.

131       b. Buildings constructed or placed shall have a front yard setback of at least 20  
132       feet.

- c. Buildings constructed or placed shall have a rear yard setback of at least 12 feet.
- d. Buildings constructed or placed shall have a side yard setback of at least 8 feet as measured from the nearest point on the foundation wall to the property line.
- e. When the side yard of any building on a lot is adjacent to a street the building shall be setback at least 12 feet from the property line adjacent to the street.
- f. The maximum allowed number of dwelling units shall not exceed 14.52 dwelling units per acre.

(6) Lots zoned as R-MHS district (residential modular home) shall comply with the following dimensional requirements:

- a. The minimum lot area shall be no less than 6,000 square feet.
- b. The minimum lot width shall be no less than 60 feet.
- c. The minimum lot depth shall be no less than 100 feet.
- d. No building shall be constructed or placed which exceeds 35 feet in height.
- e. Buildings constructed or placed shall have a front yard setback of at least 6 feet.
- f. Buildings constructed or placed shall have a rear yard setback of at least 6 feet.
- g. Buildings constructed or placed shall have a side yard setback of at least 6 feet.
- h. When the side yard of any building on a lot is adjacent to a street the building shall be setback at least 12 feet from the property line adjacent to the street.
- i. The maximum allowed number of dwelling units shall not exceed 7.26 dwelling units per acre.

(7) Lots zoned as R-MHC district (residential manufactured home community) shall comply with the following dimensional requirements:

- a. The minimum lot area shall be no less than 4,000 square feet.
- b. The minimum lot width shall be no less than 40 feet.
- c. No building shall be constructed or placed which exceeds 35 feet in height.
- d. Buildings constructed or placed shall have a front yard setback of at least 6 feet.
- e. Buildings constructed or placed shall have a rear yard setback of at least 6 feet.
- f. Buildings constructed or placed shall have a side yard setback of at least 6 feet.
- g. When the side yard of any building on a lot is adjacent to a street the building shall be setback at least 12 feet from the property line adjacent to the street.
- h. The maximum allowed number of dwelling units shall not exceed 10.89 dwelling units per acre.
- i. dwelling units per acre.

179 (8) Lots zoned as CC district (center city commercial) shall comply with the following  
180 dimensional requirements:

- 181
- 182 a. Buildings constructed or placed shall have a front yard setback of at least 25  
183 feet.
- 184 b. Buildings constructed or placed shall have a rear yard setback of at least 20  
185 feet.
- 186 c. Buildings constructed or placed shall have a side yard setback of at least 10  
187 feet.
- 188 d. When the side yard of any building on a lot is adjacent to a street the  
189 building shall be setback at least 15 feet from the property line adjacent to  
190 the street.

191

192 (9) Lots zoned as O district (transitional office) shall comply with the following  
193 dimensional requirements:

- 194
- 195 a. Buildings constructed or placed shall have a front yard setback of at least 15  
196 feet.
- 197 b. Buildings constructed or placed shall have a rear yard setback of at least 15  
198 feet.
- 199 c. Buildings constructed or placed shall have a side yard setback of at least 10  
200 feet.
- 201 d. When the side yard of any building on a lot is adjacent to a street the  
202 building shall be setback at least 15 feet from the property line adjacent to  
203 the street.

204

205 (10) Lots zoned as NC district (neighborhood commercial) shall comply with  
206 the following dimensional requirements:

- 207
- 208 a. Buildings constructed or placed shall have a front yard setback of at least 15  
209 feet.
- 210 b. Buildings constructed or placed shall have a rear yard setback of at least 15  
211 feet.
- 212 c. Buildings constructed or placed shall have a side yard setback of at least 10  
213 feet.
- 214 d. When the side yard of any building on a lot is adjacent to a street the  
215 building shall be setback at least 15 feet from the property line adjacent to  
216 the street.

217

218 (11) Lots zoned as GC district (general commercial) shall comply with the  
219 following dimensional requirements:

- 220
- 221 a. Buildings constructed or placed shall have a front yard setback of at least 20  
222 feet.
- 223 b. Buildings constructed or placed shall have a rear yard setback of at least 20  
224 feet.

- 225        c. Buildings constructed or placed shall have a side yard setback of at least 10  
226        feet.  
227        d. When the side yard of any building on a lot is adjacent to a street the  
228        building shall be setback at least 15 feet from the property line adjacent to  
229        the street.

230  
231        (12)        Lots zoned as HC district (highway commercial) shall comply with the  
232        following dimensional requirements:

- 233  
234        a. Buildings constructed or placed shall have a front yard setback of at least 20  
235        feet.  
236        b. Buildings constructed or placed shall have a rear yard setback of at least 20  
237        feet.  
238        c. Buildings constructed or placed shall have a side yard setback of at least 10  
239        feet.  
240        d. When the side yard of any building on a lot is adjacent to a street the  
241        building shall be setback at least 20 feet from the property line adjacent to  
242        the street.

243  
244        (13)        Lots zoned as M-1 district shall comply with the following dimensional  
245        requirements:

- 246  
247        a. Buildings constructed or placed shall have a front yard setback of at least 20  
248        feet.  
249        b. Buildings constructed or placed shall have a rear yard setback of at least 20  
250        feet.  
251        c. Buildings constructed or placed shall have a side yard setback of at least 10  
252        feet.  
253        d. When the side yard of any building on a lot is adjacent to a street the  
254        building shall be setback at least 10 feet from the property line adjacent to  
255        the street.

256  
257        (14)        Lots zoned as M-2 district shall comply with the following dimensional  
258        requirements:

- 259  
260        a. Buildings constructed or placed shall have a front yard setback of at least 25  
261        feet.  
262        b. Buildings constructed or placed shall have a rear yard setback of at least 25  
263        feet.  
264        c. Buildings constructed or placed shall have a side yard setback of at least 25  
265        feet.  
266        d. d. When the side yard of any building on a lot is adjacent to a street the  
267        building shall be setback at least 25 feet from the property line adjacent to  
268        the street.

(b) Residential side yards adjacent to a collector, arterial, expressway or freeway class thoroughfare shall be setback 20 feet.

(c) Bulk Regulations. No building or structure shall be placed in an M-1 or M-2 district such that the height of said building or structure is greater than the slope measured from a 45-degree angle from any property line adjoining a residential district.

(d) Whenever a lot in a nonresidential district has a common boundary line with a lot in a residential district, and the property line setback requirement applicable to the residential lot is greater than that applicable to the nonresidential lot, then the lot in the nonresidential district shall be required to observe the property line setback requirement applicable to the adjoining residential lot.

(e) Structural features normally located on the roof of a building and not intended or used as places of occupancy or storage are exempt from the height limitations provided for in this section.

#### Section 117-278 – Accessory structure setback requirements.

(a) All accessory structures shall comply with the applicable setback requirements of this article except that rear yard setbacks shall only be a minimum of six feet unless a greater distance is required by Section 117-278(b).

(b) Where the high point of the roof or any appurtenance of an accessory building exceeds 12 feet in height, the accessory building shall be set back from any boundary line adjoining another residential lot by an additional two feet for every foot of height exceeding 12 feet.

(c) The total area of all accessory buildings located on a single lot shall not cause the total area of building coverage on the lot to exceed 40 percent of the total lot area.

(d) Unenclosed decks with no roof and structures which are flat surfaces shall not be subject to the accessory structure setback requirements established herein. For purposes of this section, structures which are considered flat surfaces include, without limitation, patios, walkways, sidewalks, foundations, driveways, and other similar structures.

(e) Notwithstanding any other provision to the contrary, swimming pools shall be setback at least 5 feet from the principal building.

#### Section 117-279 – Density on lots where portion dedicated to city.

(a) Subject to other provisions of this section, if any portion of a tract lies within an area designated on an officially adopted city plan as part of a proposed public park, greenway, or bikeway, and before the tract is developed, the owner of the tract, with the concurrence of the city, dedicates to the city that portion of the tract so

designated, then, when the remainder of the tract is developed for residential purposes, the permissible density at which the remainder may be developed shall be calculated in accordance with the provisions of this section.

(b) If the proposed use of the remainder is a single-family detached residential subdivision, then the lots in such subdivision may be reduced in accordance with the provisions of article VI of this chapter except that as equivalent amount of land has previously been dedicated to the city in accordance with subsection (a) of this section.

(c) If the proposed use of the remainder is a two-family or multifamily project, then the approved use density at which the remainder may be developed shall be calculated by regarding the dedicated portion of the original lot as if it were still part of the lot proposed for development.

(d) If the portion of the tract that remains after dedication as provided in subsection (a) of this section is divided in such a way that the resultant parcels are intended for future subdivision or development, then each of the resultant parcels shall be entitled to its pro rata share of the "density bonus" provided for in subsections (b) and (c) of this section.

**Sec. 117-275. - Minimum lot size.**

~~Subject to the provisions of article VI of this chapter (planned unit developments), all lots in the following zones shall have at least the amount of square footage indicated in the following table:~~

<del>Zone</del>	<del>Minimum Square Feet</del>
<del>R-3</del>	<del>3,000</del>
<del>R-4</del>	<del>4,000</del>
<del>R-5</del>	<del>5,000</del>
<del>R-1</del>	<del>6,600</del>
<del>AG</del>	<del>20,000</del>
<del>CC</del>	<del>No minimum</del>
<del>NG</del>	<del>No minimum</del>
<del>O</del>	<del>No minimum</del>
<del>GC</del>	<del>No minimum</del>
<del>HC</del>	<del>No minimum</del>

M-1	No minimum
M-2	No minimum

~~Sec. 117-276. -- Residential density.~~

- ~~(a) Subject to subsection (b) of this section and the provisions of article VI of this chapter, every lot developed for residential purposes shall have the number of square feet per dwelling unit indicated in the following table. In determining the number of dwelling units permissible on a tract of land, fractions shall be rounded to the nearest whole number.~~

Zone	Lot Minimum Square Feet Per Dwelling Unit
R-3	3,000
R-4	4,000
R-1	6,600
AG	20,000
CG	N/A
NC	N/A
O	N/A

- ~~(b) Two-family conversions and primary residences with an accessory apartment shall be allowed only on lots having at least 150 percent of the minimum square footage required for one dwelling unit on a lot in such district. With respect to multifamily conversions into three- or four- dwelling units, the minimum lot size shall be 200 percent and 250 percent respectively of the minimum required for one dwelling unit.~~

~~Sec. 117-277. -- Minimum lot widths.~~

- ~~(a) -- No lot may be created that is so narrow or otherwise so irregularly shaped that it would be impracticable to construct on it a building that:~~

- ~~(1) -- Could be used for purposes that are permissible in that zoning district; and~~
- ~~(2) -- Could satisfy any applicable setback requirements for that district.~~

- ~~(b) Without limiting the generality of the foregoing standard, the following table indicates minimum lot widths that are recommended and are deemed presumptively to satisfy the standard set forth in subsection (a) of this section. The lot width shall be measured along a straight line connecting the points at which a line that demarcates the required setback from the street at which a line that demarcates the required setback from the street intersects with lot boundary lines at opposite side of the lot.~~



372

Zone	Lot Width (in feet)
R-1	60
R-4	60
R-3	50
AG	100
CG	None
NG	None
O	None
GC	None
HG	None
M-1	None
M-2	None

373

374 ~~(c) No lot created after the effective date of the ordinance from which this chapter is~~  
 375 ~~derived that is less than the recommended width shall be entitled to a variance from~~  
 376 ~~any building setback requirement.~~

377

378 ~~Sec. 117-278. -- Building setback requirements.~~

379

380 ~~(a) The following table shows the building setback requirements for the various zones of~~  
 381 ~~the city:~~

382

Minimum Distance From						
	Street Right-of-Way Line (in feet)		Street Centerline (in feet)		Lot Boundary Line Building & Free-standing Sign (in feet)	
Zone	Building	Free-standing sign	Building	Free-standing sign	Rear	Side*
AG	25	10	55	50	25	5*
R-1	25	10	50	40	20	5*
R-4	20	10	50	40	15	6*
R-3	20	10	50	40	12	8*
CG	25	10	30	30	20	15

NG	15	7.5	45	37.5	15	15
O	15	7.5	45	37.5	15	15
GG	40	10	70	50	20	15
HC	60	15	90	60	20	20
M-1	30	10	60	45	25	10
M-2	40	15	70	50	25	25

\* ~~Setback shall be measured from the property line to the foundation wall.~~

\* ~~Residential side yards with local street frontage must retain a 12-foot building setback from property line.~~

\* ~~Residential side yards with local street frontage must retain a 12-foot building setback from property line.~~

\* ~~Residential side yard with collector frontage must retain a 20-foot side yard building setback from property line.~~

(b) ~~Subject to sections 117-279 and 117-281 and the other provisions of this section, no portion of any building or any freestanding sign may be located on any lot closer to any lot line or to the street right-of-way line or centerline than is authorized in the table set forth in this section.~~

(1) ~~If the street right-of-way line is readily determinable (by reference to a recorded map, set irons, or other means), the setback shall be measured from such right-of-way line. If the right-of-way line is not so determinable, the setback line shall be measured from the street centerline.~~

(2) ~~As used in this section, the term "lot boundary line" refers to lot boundaries other than those that abut streets.~~

(3) ~~As used in this section, the term "building" includes any substantial structure which by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. Without limiting the generality of the foregoing, the following structures shall be deemed to fall within this description:~~

a. ~~Gas pumps and overhead canopies or roofs; and~~

b. ~~Privacy fences running along lot boundaries adjacent to public street rights-of-way.~~

(4) ~~Reverse setbacks 30 feet if parking in rear. All front yards are to be landscaped.~~

~~(c) Whenever a lot in a nonresidential district has a common boundary line with a lot in a residential district, and the property line setback requirement applicable to the residential lot is greater than that applicable to the nonresidential lot, then the lot in the nonresidential district shall be required to observe the property line setback requirement applicable to the adjoining residential lot.~~

~~(d) Setback distances shall be measured from the property line or street right-of-way line to a point on the lot that is directly below the nearest extension of any part of the building that is substantially a part of the building itself and not a mere appendage to it (such as a flagpole, etc.)~~

~~(e) Whenever a private road that serves more than three lots or more than three dwelling units or that serves any nonresidential use tending to generate traffic equivalent to more than three dwelling units is located along a lot boundary, then:~~

~~(1) If the lot is not also bordered by a public street, buildings and freestanding signs shall be set back from the centerline of the private road just as if such road were a public street.~~

~~(2) If the lot is also bordered by a public street, then the setback distance on lots used for residential purposes (as set forth above in the column labeled "Minimum Distance from Lot Boundary Line") shall be measured from the inside boundary of the traveled portion of the private road.~~

~~(f) Adjacent collector streets.~~

~~(1) For lots that are adjacent to a collector street or greater, the minimum side yard setback shall be 20 feet from the street right-of-way line to the closest point of the house.~~

~~(2) For lots that back up to a collector street or greater, the setback must be 40 feet from the street right-of-way to the closest point of the house.~~

~~(g) Whenever a utility easement, including overhead electric lines that poses a life safety potential, is included on a lot, the setback from the easement line shall be a minimum of ten feet or the established setback for the zoning district, whichever is greater.~~

~~Sec. 117-279. -- Accessory building setback requirements.~~

~~(a) All accessory buildings in residential districts, i.e., those established by section 117-23, must comply with the street right-of-way and side lot boundary setbacks set forth in section 117-278, but (subject to the remaining provisions of this subsection) shall be required to observe only a six-foot setback from rear lot boundary lines on local streets.~~

~~(b) Where the high point of the roof or any appurtenance of an accessory building exceeds 12 feet in height, the accessory building shall be set back from rear lot boundary lines an additional two feet for every foot of height exceeding 12 feet except if located along street frontage.~~

~~(c) Maximum lot coverage of principal and accessory buildings shall not exceed 40 percent of the lot.~~

~~Sec. 117-280. -- Building height limitations.~~

~~(a) For purposes of this section:~~

~~(1) The height of a building shall be the vertical distance measured from the mean elevation of the finished grade at the front of the building to the highest point of the building.~~

~~(2) A point of access to a roof shall be the top of any parapet wall or the lowest point of a roof's surface, whichever is greater. Roofs with slopes greater than 75 percent are regarded as walls.~~

~~(b) Subject to the remaining provisions of this section, building height limitations in the various zoning districts shall be as follows:~~

Zone	Height Limitation (in feet)
AG	35
R-1, R-MHS, R-MHC	35
R-4	30
R-3	35
CC	40
NC, O	35
GC, HG	50
M-1, M-2	40

~~(c) Subject to subsection (d) of this section, the following features are exempt from the district height limitations set forth in subsection (b) of this section:~~

~~(1) Chimneys, church spires, elevator shafts, and similar structural appendages not intended as places of occupancy or storage,~~

~~(2) Flagpoles and similar devices,~~

~~(3) Heating and air conditioning equipment, solar collectors, and similar equipment, fixtures, and devices.~~

~~(d) The features listed in subsection (c) of this section are exempt from the height limitations set forth subsection (b) of this section if they conform to the following requirements:~~

~~(1) Not more than one third of the total roof area may be consumed by such features.~~

~~(2) The features described in subsection (c)(3) of this section must be set back from the edge of the roof at least one foot for every foot by which such features extend above the roof surface of the principal building to which they are attached.~~

~~(3) The permit-issuing authority may authorize or require that parapet walls be constructed (up to a height not exceeding that of the features screened) to shield features listed in subsections (c)(1) and (2) of this section from view.~~

~~(e) Notwithstanding subsection (b) of this section, in any zoning district the vertical distance from the ground to a point of access to a roof surface of any nonresidential building or any multifamily residential building containing four or more dwelling units may not exceed 35 feet unless the fire chief certifies to the permit-issuing authority that such building is designed to provide adequate access for firefighting personnel or the building inspector certifies that the building is otherwise designed or equipped to provide adequate protection against the dangers of fire.~~

~~(f) Towers and antennas are allowed in all zoning districts to the extent authorized in the table of approved uses.~~

~~Sec. 117-281. -- Density on lots where portion dedicated to city.~~

~~(a) Subject to other provisions of this section, if any portion of a tract lies within an area designated on an officially adopted city plan as part of a proposed public park, greenway, or bikeway, and before the tract is developed, the owner of the tract, with the concurrence of the city, dedicates to the city that portion of the tract so designated, then, when the remainder of the tract is developed for residential purposes, the permissible density at which the remainder may be developed shall be calculated in accordance with the provisions of this section.~~

~~(b) If the proposed use of the remainder is a single-family detached residential subdivision, then the lots in such subdivision may be reduced in accordance with the provisions of article VI of this chapter except that as equivalent amount of land has previously been dedicated to the city in accordance with subsection (a) of this section.~~

~~(c) If the proposed use of the remainder is a two-family or multifamily project, then the approved use density at which the remainder may be developed shall be calculated by regarding the dedicated portion of the original lot as if it were still part of the lot proposed for development.~~

~~(d) If the portion of the tract that remains after dedication as provided in subsection (a) of this section is divided in such a way that the resultant parcels are intended for future subdivision or development, then each of the resultant parcels shall be entitled to its pro rata share of the "density bonus" provided for in subsections (b) and (c) of this section.~~

**SECTION 2:** 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 3:** 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 4:** 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, clause, or phrases be declared invalid.

**SECTION 5:** 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 COUNCIL OF THE CITY OF NIXA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

ATTEST:

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

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

585 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

586

587

588 **ATTEST:**

589

590 \_\_\_\_\_

591 **CITY CLERK**

592

593

594 **APPROVED AS TO FORM:**

595

596 \_\_\_\_\_

597 **CITY ATTORNEY**

\_\_\_\_\_  
**MAYOR**



**Issue:** **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NIXA, MISSOURI CHANGING THE ZONING CLASSIFICATION OF APPROXIMATELY 18 ACRES OF LAND LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF MAIN STREET AND TRACKER ROAD FROM THE R-1 AND GC ZONING DISTRICTS TO THE R-3 AND R-1 ZONING DISTRICTS.**

**Date:** May 10, 2021

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

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### Background

Morelock Builders has submitted an application to the City of Nixa's Planning and Development Department requesting the rezoning of approximately 18 acres of land located at the SE corner of the intersection of Main St. and Tracker Rd. The subject property presently contains a combination of R-1 and GC zoning classifications as shown in Map 1A accompanying this memo. The application requests the entire property to be rezoned to a combination of R-3 and R-1 as shown on Map 1B and described in Bill #2021-054.

### Analysis

#### **Land Use**

The site subject to this application is surrounded by an arrangement of land uses and zoning comparable to those included in the applications. The overall proposal zoning arrangement is not only consistent with the pattern of development in the vicinity of the subject property but it also generally conforming to the recommendations of the City's land use plans. Variation from the specific arrangement shown in the adopted land use plan does not appear to be problematic and is, furthermore, reasonably justified by the impact of karst topography on the site.

#### **Transportation**

The subject property is primarily served by Main Street (collector) and Tracker Road (secondary arterial). Traffic flows are to and from the subject property will most likely flow to/from nearby Massey Boulevard (expressway), which serves as a regional arterial. The transportation facilities serving the subject property for collection and arterial purposes have sufficient capacity to support residential and commercial traffic likely to be generated from the proposed zoning arrangement. Improvements to the intersection of Main/Tracker were recently completed and more improvements are planned along North Main Street in the vicinity of the subject properties.

Where the subject property will intersect with Main and Tracker, as required by the provisions of the Nixa City Code, there will need to be a study of the probable traffic impacts at the time of development.





That study will inform the nature and extent of physical improvements that will be needed to ensure the safe and efficient flow of traffic at these intersections.

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

The subject property enjoys immediate access to both water and wastewater facilities. These facilities have adequate capacity to serve the proposed residential and commercial uses. The site is subject to the Northwest Regional Lift Station agreement, requiring reimbursement of \$208,132.49.

Electric facilities are also available to the subject properties and capable of serving the proposed residential and commercial uses.

### **Stormwater Management**

The development of the subject property will require the management of stormwater runoff to prevent flooding hazards as well as to promote water quality (both during construction and afterward). The subject properties contain multiple sinkholes, which will need to be avoided and protected throughout development and use of the properties.

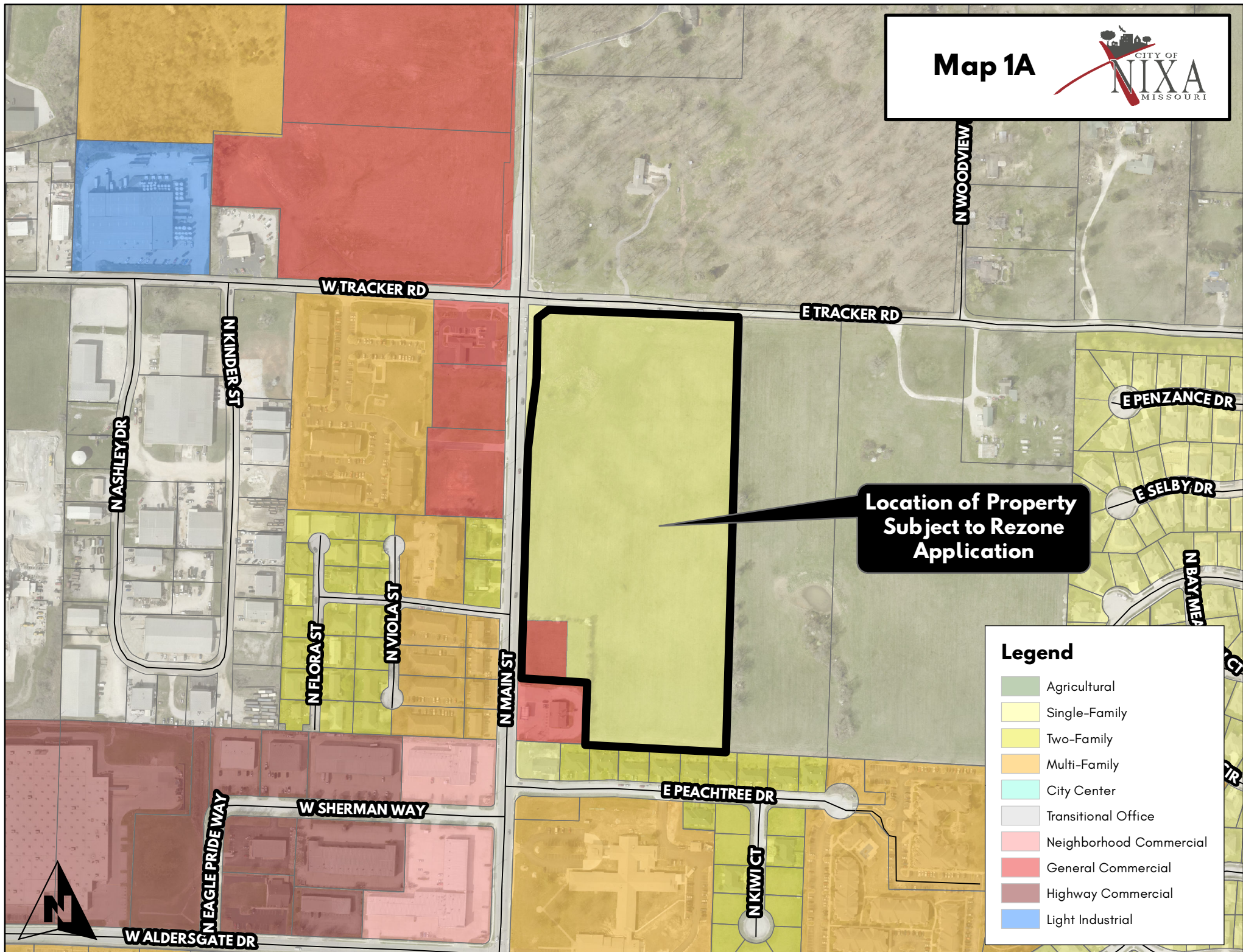
### **Other Public Services**

The proposed zoning arrangement will add traffic and population to the City's jurisdiction, which will impact a variety of public services in proportion to those increases. Ideally, the impact of these additional residents and 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 and passage of this bill. The Planning and Zoning Commission voted unanimously to recommend the approval and passage of this bill.

# Map 1A



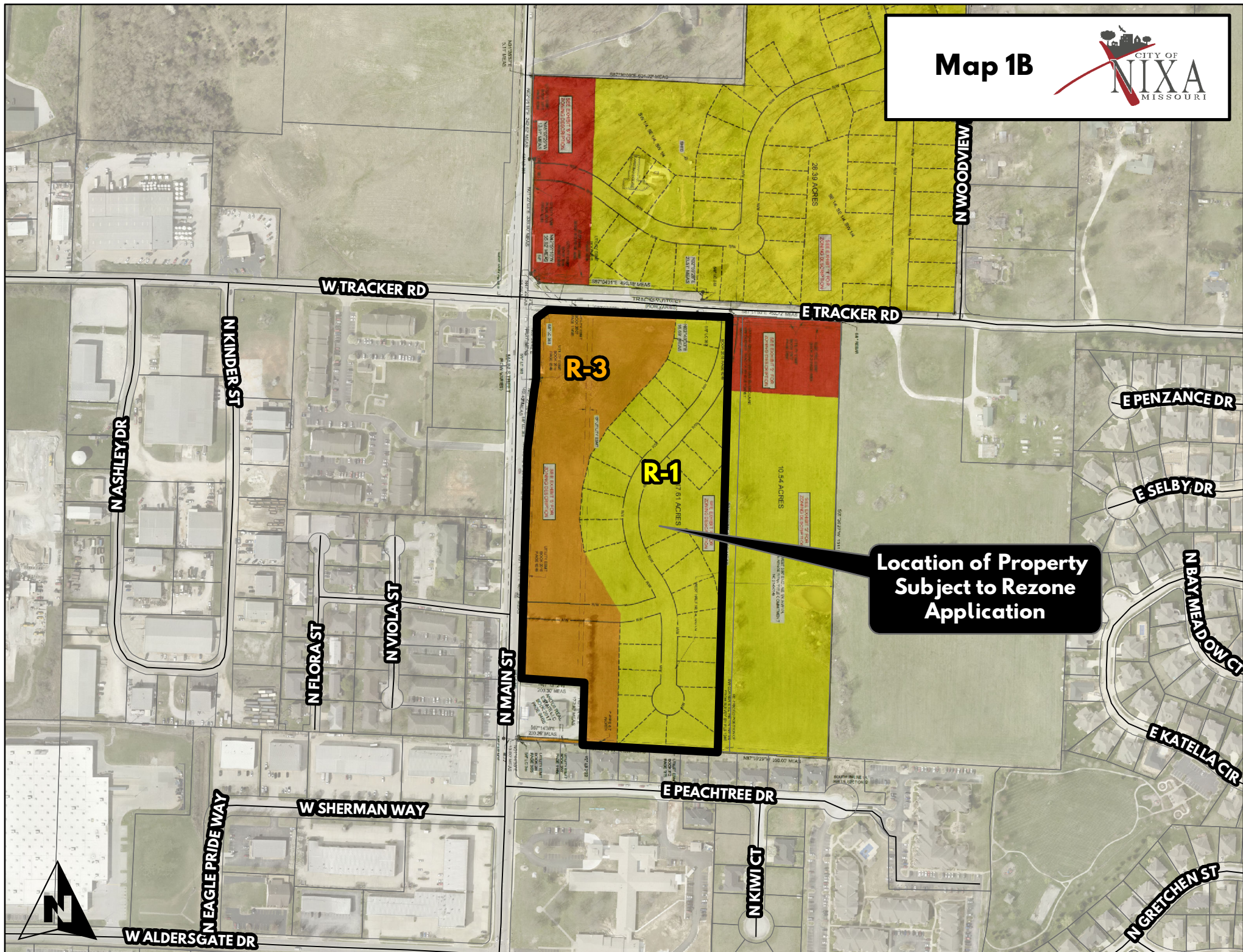
Location of Property  
Subject to Rezone  
Application

## Legend

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



# Map 1B





2  
3 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA REZONING 18**  
4 **ACRES OF PROPERTY GENERALLY LOCATED AT THE SOUTHEAST CORNER**  
5 **OF THE MAIN STREET AND TRACKER ROAD INTERSECTION FROM R-1 AND GC**  
6 **ZONING DISTRICTS TO R-1 AND R-3 ZONING DISTRICTS.**  
7  
8

---

9 **WHEREAS** an application has been filed for a zoning change of the property  
10 generally located at the southeast corner of the Main Street and Tracker Road  
11 intersection; and  
12

13 **WHEREAS** said application requests that the City Council rezone said property  
14 from R-1 and GC districts to R-1 and R-3 zoning districts; and  
15

16 **WHEREAS** the Planning and Zoning Commission considered the application and  
17 has recommended approval of the requested rezoning; and  
18

19 **WHEREAS** the City Council, now having considered the requested rezoning,  
20 desires to rezone said property and amend the City's official zoning map to be  
21 consistent with this action.  
22

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

26 **SECTION 1:** The property described on "Council Bill Exhibit A," which is attached  
27 hereto and incorporated herein by this reference is hereby rezoned from its previous  
28 zoning classification to the R-1 zoning district, and the regulations of the R-1 district, as  
29 established in the Nixa City Code, shall hereafter apply to said property.  
30

31 **SECTION 2:** The property described on "Council Bill Exhibit B," which is attached  
32 hereto and incorporated herein by this reference is hereby rezoned from its previous  
33 zoning classification to the R-3 zoning district, and the regulations of the R-3 district, as  
34 established in the Nixa City Code, shall hereafter apply to said property.  
35

36 **SECTION 3:** The City Planner, pursuant to section 117-57 of the Nixa City Code,  
37 shall amend the City's official zoning map, said map being established pursuant to  
38 section 117-56 of the Nixa City Code, to reflect the action contemplated by this  
39 Ordinance.  
40

41 **SECTION 4:** This Ordinance shall be in full force and effect from and after its  
42 final passage by the City Council and after its approval by the Mayor, subject to the  
43 provisions of section 3.11(g) of the City Charter.  
44  
45

46 **ADOPTED BY THE COUNCIL OF THE CITY OF NIXA THIS \_\_\_\_\_ DAY OF**  
47 **\_\_\_\_\_ 2021.**

48  
49  
50 **ATTEST:**

51  
52 \_\_\_\_\_  
53 **CITY CLERK**

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

54  
55  
56 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

57  
58  
59 **ATTEST:**

60  
61 \_\_\_\_\_  
62 **CITY CLERK**

\_\_\_\_\_ **MAYOR**

63  
64  
65 **APPROVED AS TO FORM:**

66  
67 \_\_\_\_\_  
68 **CITY ATTORNEY**

ALL THAT PART OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CHRISTIAN COUNTY, STATE OF MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER AND THENCE MEASURE SOUTH ALONG THE EAST LINE THEREOF A DISTANCE OF 19.23 FEET TO THE SOUTH RIGHT OF WAY LINE OF TRACKER STREET, FOR THE POINT OF BEGINNING; THENCE N87°11'50"W ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 102.78 FEET TO A REBAR; THENCE S02°49'33"W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 16.69 FEET TO A REBAR; THENCE N87°03'09"W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 65.56 FEET TO A POINT; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE OF TRACKER STREET THE FOLLOWING: THENCE S05°37'30"W 65.96 FEET, THENCE S19°45'21"W 65.06 FEET, THENCE S35°53'20"W 65.18 FEET, THENCE S43°43'01"W 140.00 FEET, THENCE S42°42'57"W 76.36 FEET, THENCE S32°21'16"W 98.75 FEET, THENCE S14°06'04"W 98.55 FEET, THENCE S05°08'24"W 97.13 FEET, THENCE S08°26'49"E 96.84 FEET, THENCE S31°54'56"E 216.43 FEET, THENCE S01°23'58"W 395.20 FEET TO A POINT ON THE SOUTH LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE S87°09'29"E ALONG SAID SOUTH LINE THEREOF A DISTANCE OF 314.27 FEET TO THE SOUTHEAST CORNER OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE N01°36'35"E ALONG THE EAST LINE THEREOF A DISTANCE OF 1311.66 FEET TO THE POINT OF BEGINNING, CONTAINING A TOTAL OF 10.08 ACRES. (DESCRIPTION PREPARED BY SURVEYOR JOSEPH R. PULLIAM, MO PLS 2006016641, TOT & ASSOCIATES, 03/22/2021)

ALL THAT PART OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CHRISTIAN COUNTY, STATE OF MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER AND THENCE MEASURE S87°09'29"E ALONG THE SOUTH LINE THEREOF A DISTANCE OF 46.72 FEET TO A REBAR ON THE EAST RIGHT OF WAY LINE OF MAIN STREET FOR, FOR THE POINT OF BEGINNING; THENCE N01°44'33"E A DISTANCE OF 10.00 FEET TO A REBAR MARKING THE SOUTHWEST CORNER OF THAT TRACT OF LAND DESCRIBED IN BOOK 2017 ON PAGE 9466 OF THE CHRISTIAN COUNTY LAND RECORDS; THENCE S87°14'38"E ALONG THE SOUTH LINE THEREOF A DISTANCE OF 200.29 FEET TO A REBAR MARKING THE SOUTHEAST CORNER THEREOF; THENCE N01°44'45"E ALONG THE EAST LINE THEREOF A DISTANCE OF 172.00 FEET TO A REBAR MARKING THE NORTHEAST CORNER THEREOF; THENCE N87°13'12"W ALONG THE NORTH LINE THEREOF A DISTANCE OF 200.30 FEET TO A REBAR ON THE EAST RIGHT OF WAY LINE OF MAIN STREET; THENCE ALONG SAID EAST RIGHT OF WAY LINE THE FOLLOWING: THENCE N01°44'41"E 487.33 FEET TO A REBAR, THENCE N01°45'40"E 271.99 FEET TO A REBAR, THENCE N07°27'19"E 140.43 FEET TO A REBAR, THENCE N02°24'42"E 189.27 FEET TO A REBAR, THENCE DEPARTING SAID EAST RIGHT OF WAY LINE OF MAIN STREET N47°20'09"E 35.05 FEET TO A REBAR ON THE SOUTH RIGHT OF WAY LINE OF TRACKER STREET; THENCE S87°03'09"E ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 410.50 FEET TO A POINT; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE OF TRACKER STREET THE FOLLOWING: THENCE S05°37'30"W 65.96 FEET, THENCE S19°45'21"W 65.06 FEET, THENCE S35°53'20"W 65.18 FEET, THENCE S43°43'01"W 140.00 FEET, THENCE S42°42'57"W 76.36 FEET, THENCE S32°21'16"W 98.75 FEET, THENCE S14°06'04"W 98.55 FEET, THENCE S05°08'24"W 97.13 FEET, THENCE S08°26'49"E 96.84 FEET, THENCE S31°54'56"E 216.43 FEET, THENCE S01°23'58"W 395.20 FEET TO A POINT ON THE SOUTH LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE N87°09'29"W ALONG SAID SOUTH LINE THEREOF A DISTANCE OF 309.25 FEET TO THE POINT OF BEGINNING, CONTAINING A TOTAL OF 7.55 ACRES. (DESCRIPTION PREPARED BY SURVEYOR JOSEPH R. PULLIAM, MO PLS 2006016641, TOTH & ASSOCIATES, 03/22/2021)



**Issue:** **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NIXA, MISSOURI ANNEXING APPROXIMATELY 10 ACRES OF LAND LOCATED ALONG THE 100 BLOCK OF EAST TRACKER ROAD AND CLASSIFYING IT WITHIN THE R-1 AND GC ZONING DISTRICTS.**

**Date:** May 10, 2021

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

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### Background

Morelock Builders has submitted an voluntary petition for annexation and an application for zoning of approximately 10 acres of land located along the 100 block of E. Tracker Rd. The application requests the entire property to be rezoned to a combination of R-1 and GC as shown on Map 2A and described in Bill #2021-055.

### Analysis

#### **Land Use**

The site subject to this application is surrounded by an arrangement of land uses and zoning comparable to those included in the applications. The overall proposal zoning arrangement is not only consistent with the pattern of development in the vicinity of the subject property but it also generally conforming to the recommendations of the City's land use plans. Variation from the specific arrangement shown in the adopted land use plan does not appear to be problematic and is, furthermore, reasonably justified by the impact of karst topography on the site.

#### **Transportation**

The subject property is primarily served by Main Street (collector) and Tracker Road (secondary arterial). Traffic flows are to and from the subject property will most likely flow to/from nearby Massey Boulevard (expressway), which serves as a regional arterial. The transportation facilities serving the subject property for collection and arterial purposes have sufficient capacity to support residential and commercial traffic likely to be generated from the proposed zoning arrangement. Improvements to the intersection of Main/Tracker were recently completed and more improvements are planned along North Main Street in the vicinity of the subject properties.

Where the subject property will intersect with Main and Tracker, as required by the provisions of the Nixa City Code, there will need to be a study of the probable traffic impacts at the time of development. That study will inform the nature and extent of physical improvements that will be needed to ensure the safe and efficient flow of traffic at these intersections.





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

The subject property enjoys immediate access to both water and wastewater facilities. These facilities have adequate capacity to serve the proposed residential and commercial uses. The site is subject to the Northwest Regional Lift Station agreement, requiring reimbursement of \$208,132.49.

Electric facilities are also available to the subject properties and capable of serving the proposed residential and commercial uses.

### **Stormwater Management**

The development of the subject property will require the management of stormwater runoff to prevent flooding hazards as well as to promote water quality (both during construction and afterward). The subject properties contain multiple sinkholes, which will need to be avoided and protected throughout development and use of the properties.

### **Other Public Services**

The proposed zoning arrangement will add traffic and population to the City's jurisdiction, which will impact a variety of public services in proportion to those increases. Ideally, the impact of these additional residents and 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 and passage of this bill. The Planning and Zoning Commission voted unanimously to recommend the approval and passage of this bill.



# Map 2A



W TRACKER RD

N WOODVIEW RD

E TRACKER RD

E PENZANCE DR

N SANDY CREEK CIR

Location of Property  
Subject to Annexation  
Petition and Zoning  
Application

N BAY MEADOW CT

E KATELLA CIR

N ARLINGTON ST

N GRETCHEN ST

E PEACHTREE DR

N KIWI CT

W SHERMAN WAY

N FLORA ST

N VIOLA ST

N MAIN ST

N KINDER ST

NEAS - PRIDEWAY

R-1

CC

10.54 ACRES

17.61 ACRES

28.39 ACRES



2  
3 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA ANNEXING 10**  
4 **ACRES OF PROPERTY GENERALLY LOCATED AT THE 100 BLOCK OF EAST**  
5 **TRACKER ROAD AND ZONING SAID PROPERTY TO R-1 AND GC ZONING**  
6 **DISTRICTS.**  
7

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8  
9 **WHEREAS** a verified petition requesting annexation into the City of Nixa has been  
10 submitted by the owners of all fee interests of record of the property located in the area  
11 proposed to be annexed in said petition, said area being generally located at the 100 block  
12 of East Tracker Road; and  
13

14 **WHEREAS** said petition was received by the City more than fourteen but less than  
15 sixty days prior to the public hearing thereon; and  
16

17 **WHEREAS** notice of said public hearing was published at least seven days prior to  
18 the public hearing; and  
19

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

26 **WHEREAS** an application has been filed for a zoning change of the property  
27 generally located at the 100 block of East Tracker Road; and  
28

29 **WHEREAS** said application requests that the City Council zone said property to the  
30 R-1 and GC zoning districts; and  
31

32 **WHEREAS** the Planning and Zoning Commission considered the application and  
33 has recommended approval of the requested rezoning; and  
34

35 **WHEREAS** the City Council, now having considered the requested rezoning, desires  
36 to rezone said property and amend the City's official zoning map to be consistent with this  
37 action.  
38

39 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
40 **NIXA, AS FOLLOWS, THAT:**  
41

42 **SECTION 1:** City Council, after holding a public hearing, hereby determines that the  
43 annexation of the property described in the "Annexation Petition," which is attached hereto  
44 as "Council Bill Exhibit A" and is incorporated herein by this reference, is reasonable and  
45 necessary to the proper development of the City, the City is able to furnish normal municipal  
46 services to the area annexed within a reasonable time after annexation, and that the area is  
47 contiguous and compact to the existing boundaries of the City.  
48

49 **SECTION 2:** Pursuant to the provisions of § 71.012 RSMo., the property described  
50 in "Council Bill Exhibit A" is hereby annexed into the City of Nixa, Missouri. The boundaries

of the City of Nixa are hereby altered to encompass the property described in "Council Bill Exhibit A."

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

**SECTION 4:** The property described on "Council Bill Exhibit B," which is attached hereto and incorporated herein by this reference is hereby zoned to a GC zoning district, and the regulations of the GC district, as established in the Nixa City Code, shall hereafter apply to said property.

**SECTION 5:** The property described on "Council Bill Exhibit C," which is attached hereto and incorporated herein by this reference is hereby zoned to a R-1 zoning district, and the regulations of the R-1 district, as established in the Nixa City Code, shall hereafter apply to said property.

**SECTION 6:** The City Planner, pursuant to section 117-57 of the Nixa City Code, shall amend the City's official zoning map, said map being established pursuant to section 117-56 of the Nixa City Code, to reflect the action contemplated by this Ordinance.

**SECTION 7:** 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 COUNCIL OF THE CITY OF NIXA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

ATTEST:

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

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

**APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

ATTEST:

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

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

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

## VOLUNTARY PETITION FOR ANNEXATION

TO: THE CITY OF NIXA, MISSOURI, A MUNICIPAL CORPORATION

We, the undersigned petitioner(s), submit to the City Council of the City of Nixa, Missouri this petition for voluntary annexation, and state as follows:

1. The undersigned are owner(s) of all fee interest of record of the real estate in Christian County, Missouri more fully described in Exhibit A, and
2. The owner(s) hereby request and petition the City Council of the City of Nixa, Missouri to annex the land described in Exhibit A, and
3. The land described in Exhibit A is contiguous to the existing corporate limits of the City of Nixa, Missouri, and
4. This request and petition is voluntarily made and is submitted under the provisions of Section 71.012 RSMo. 1986, as amended.

SIGNED: Amanda J Walker TTEE  
AMANDA J. WALKER

SIGNED: \_\_\_\_\_

## ACKNOWLEDGMENT BY OWNER, TRUSTEE(S)

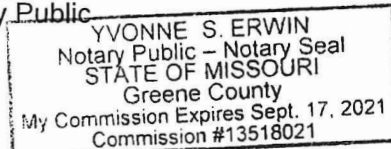
STATE OF MISSOURI )  
 ) SS  
COUNTY OF Greene )

On this 29th day of March, 2021, before me appeared Amanda J. Walker, to me personally known, who, being by me duly sworn did say that he/she is the Trustee of Walker Family Trust, and that the seal affixed to foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and state aforesaid the day and year first above written.

Yvonne S. Erwin  
Notary Public

My commission expires: 9-17-2021



**EXHIBIT 'A'**

ALL OF THE WEST 350 FEET OF THE FOLLOWING DESCRIBED PROPERTY: ALL THAT PART OF THE EAST HALF OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) AND THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST, THENCE N 90°00'00": E, 2006.81 FEET ALONG THE NORTH LINE OF SECTION 12, FOR A POINT OF BEGINNING; THENCE CONTINUING ALONG LAST DESCRIBED COURSE, 1003.40 FEET; THENCE S 00°49'48" E, 1327.70 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 12: THENCE S 89°54'14" W, 997.15 FEET ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) AND THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 12, THENCE N 01°05'55" W, 1329.48 FEET ALONG WEST LINE OF THE EAST HALF (E 1/2) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 12 TO THE POINT OF BEGINNING. SUBJECT TO ANY RIGHTS OR WAY OF RECORD, CHRISTIAN COUNTY, MISSOURI.

ALL THAT PART OF THE WEST 350 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CHRISTIAN COUNTY, STATE OF MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER AND THENCE MEASURE SOUTH ALONG THE WEST LINE THEREOF A DISTANCE OF 19.23 FEET TO THE SOUTH RIGHT OF WAY LINE OF TRACKER STREET, FOR THE POINT OF BEGINNING; THENCE S87°11'50E ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 349.95 FEET TO A REBAR; THENCE S01°36'27"W ALONG THE EAST LINE OF SAID WEST 350 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER A DISTANCE OF 230.05 FEET TO A POINT; THENCE N87°11'50"W PARALLEL TO SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 349.95 FEET TO A POINT ON THE WEST LINE OF SAID EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE N01°36'35"E ALONG SAID WEST LINE THEREOF A DISTANCE OF 230.05 FEET TO THE POINT OF BEGINNING, CONTAINING A TOTAL OF 1.85 ACRES. (DESCRIPTION PREPARED BY SURVEYOR JOSEPH R. PULLIAM, MO PLS 2006016641, TOTH & ASSOCIATES, 03/22/2021)

ALL THAT PART OF THE WEST 350 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CHRISTIAN COUNTY, STATE OF MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER AND THENCE MEASURE SOUTH ALONG THE WEST LINE THEREOF A DISTANCE OF 249.28 FEET TO A POINT 230.05 FEET SOUTH OF THE SOUTH RIGHT OF WAY LINE OF TRACKER STREET, FOR THE POINT OF BEGINNING; THENCE S87°11'50"E PARALLEL TO SAID SOUTH RIGHT OF WAY LINE 349.95 FEET TO A POINT; THENCE S01°36'27"W ALONG THE EAST LINE OF SAID WEST 350 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER A DISTANCE OF 1081.85 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE N87°09'29"W ALONG THE SOUTH LINE THEREOF A DISTANCE OF 350.00 FEET TO THE SOUTHWEST CORNER OF SAID EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE N01°36'35"E ALONG THE WEST LINE THEREOF A DISTANCE OF 1081.61 FEET TO THE POINT OF BEGINNING, CONTAINING A TOTAL OF 8.69 ACRES. (DESCRIPTION PREPARED BY SURVEYOR JOSEPH R. PULLIAM, MO PLS 2006016641, TOTH & ASSOCIATES, 03/22/2021)





**Issue:** **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NIXA, MISSOURI ANNEXING APPROXIMATELY 28 ACRES OF LAND LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF MAIN STREET AND TRACKER ROAD AND CLASSIFYING IT WITHIN THE R-1 AND GC ZONING DISTRICTS.**

**Date:** May 10, 2021

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

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### Background

Morelock Builders has submitted a voluntary petition for annexation and an application for zoning of approximately 28 acres of land located at the NE corner of the intersection of Main St. and Tracker Rd. The application requests the entire property to be rezoned to a combination of R-1 and GC as shown on Map 3A and described in Bill #2021-056.

### Analysis

#### **Land Use**

The site subject to this application is surrounded by an arrangement of land uses and zoning comparable to those included in the applications. The overall proposal zoning arrangement is not only consistent with the pattern of development in the vicinity of the subject property but it also generally conforming to the recommendations of the City's land use plans. Variation from the specific arrangement shown in the adopted land use plan does not appear to be problematic and is, furthermore, reasonably justified by the impact of karst topography on the site.

#### **Transportation**

The subject property is primarily served by Main Street (collector) and Tracker Road (secondary arterial). Traffic flows are to and from the subject property will most likely flow to/from nearby Massey Boulevard (expressway), which serves as a regional arterial. The transportation facilities serving the subject property for collection and arterial purposes have sufficient capacity to support residential and commercial traffic likely to be generated from the proposed zoning arrangement. Improvements to the intersection of Main/Tracker were recently completed and more improvements are planned along North Main Street in the vicinity of the subject properties.

Where the subject property will intersect with Main and Tracker, as required by the provisions of the Nixa City Code, there will need to be a study of the probable traffic impacts at the time of development. That study will inform the nature and extent of physical improvements that will be needed to ensure the safe and efficient flow of traffic at these intersections.



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

The subject property enjoys immediate access to both water and wastewater facilities. These facilities have adequate capacity to serve the proposed residential and commercial uses. The site is subject to the Northwest Regional Lift Station agreement, requiring reimbursement of \$208,132.49.

Electric facilities are also available to the subject properties and capable of serving the proposed residential and commercial uses.

### **Stormwater Management**

The development of the subject property will require the management of stormwater runoff to prevent flooding hazards as well as to promote water quality (both during construction and afterward). The subject properties contain multiple sinkholes, which will need to be avoided and protected throughout development and use of the properties. The property contains Flood Hazard Area (Zone A), which will also need to be considered when designing stormwater management for the site.

### **Other Public Services**

The proposed zoning arrangement will add traffic and population to the City's jurisdiction, which will impact a variety of public services in proportion to those increases. Ideally, the impact of these additional residents and 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 and passage of this bill. The Planning and Zoning Commission voted unanimously to recommend the approval and passage of this bill.



# Map 3A



N MAIN ST



Location of Property  
Subject to Annexation  
Petition and Zoning  
Application

W TRACKER RD

E TRACKER RD

N KINDER ST

E PENZANCE DR

E SELBY DR

N SANDY CREEK CIR





**AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA ANNEXING 28 ACRES OF PROPERTY GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE MAIN STREET AND TRACKER ROAD INTERSECTION AND ZONING SAID PROPERTY TO R-1 AND GC ZONING DISTRICTS.**

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**WHEREAS** a verified petition requesting annexation into the City of Nixa has been submitted by the owners of all fee interests of record of the property located in the area proposed to be annexed in said petition, said area being generally located at the northeast corner of the Main Street and Tracker Road intersection; and

**WHEREAS** said petition was received by the City more than fourteen but less than sixty days prior to the public hearing thereon; and

**WHEREAS** notice of said public hearing was published at least seven days prior to the public hearing; and

**WHEREAS** City Council finds and determines that said annexation is reasonable and necessary to the proper development of the City; the City is able to furnish normal municipal services to the area annexed herein within a reasonable time after annexation; and the area annexed herein is contiguous and compact to the existing boundaries of the City; and

**WHEREAS** an application has been filed for a zoning change of the property generally located at the northeast corner of the Main Street and Tracker Road intersection; and

**WHEREAS** said application requests that the City Council zone said property to the R-1 and GC zoning districts; and

**WHEREAS** the Planning and Zoning Commission considered the application and has recommended approval of the requested rezoning; and

**WHEREAS** the City Council, now having considered the requested rezoning, desires to rezone said property and amend the City's official zoning map to be consistent with this action.

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

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

**SECTION 2:** Pursuant to the provisions of § 71.012 RSMo., the property described in "Council Bill Exhibit A" is hereby annexed into the City of Nixa, Missouri. The boundaries of the City of Nixa are hereby altered to encompass the property described in "Council Bill Exhibit A."

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

**SECTION 4:** The property described on "Council Bill Exhibit B," which is attached hereto and incorporated herein by this reference is hereby zoned to a GC zoning district, and the regulations of the GC district, as established in the Nixa City Code, shall hereafter apply to said property.

**SECTION 5:** The property described on "Council Bill Exhibit C," which is attached hereto and incorporated herein by this reference is hereby zoned to a R-1 zoning district, and the regulations of the R-1 district, as established in the Nixa City Code, shall hereafter apply to said property.

**SECTION 6:** The City Planner, pursuant to section 117-57 of the Nixa City Code, shall amend the City's official zoning map, said map being established pursuant to section 117-56 of the Nixa City Code, to reflect the action contemplated by this Ordinance.

**SECTION 7:** 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 COUNCIL OF THE CITY OF NIXA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

ATTEST:

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

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

**APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

ATTEST:

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

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

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

## VOLUNTARY PETITION FOR ANNEXATION

TO: THE CITY OF NIXA, MISSOURI, A MUNICIPAL CORPORATION

We, the undersigned petitioner(s), submit to the City Council of the City of Nixa, Missouri this petition for voluntary annexation, and state as follows:

1. The undersigned are owner(s) of all fee interest of record of the real estate in Christian County, Missouri more fully described in Exhibit A, and
2. The owner(s) hereby request and petition the City Council of the City of Nixa, Missouri to annex the land described in Exhibit A, and
3. The land described in Exhibit A is contiguous to the existing corporate limits of the City of Nixa, Missouri, and
4. This request and petition is voluntarily made and is submitted under the provisions of Section 71.012 RSMo. 1986, as amended.

SIGNED: Amanda J. Walker, TRUSTEE  
AMANDA J. WALKER

SIGNED: \_\_\_\_\_

## ACKNOWLEDGMENT BY OWNER, TRUSTEE(S)

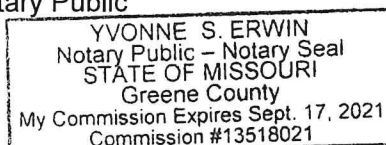
STATE OF MISSOURI )  
 ) SS  
COUNTY OF Greene )

On this 29th day of March, 2021, before me appeared Amanda J. Walker, to me personally known, who, being by me duly sworn did say that he/she is the Trustee of Walker Family Trust, and that the seal affixed to foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and state aforesaid the day and year first above written.

Yvonne S. Erwin  
Notary Public

My commission expires: 9-17-2021



**EXHIBIT 'A'**

ALL OF THEIR UNDIVIDED INTEREST IN AND TO THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, LESS AND EXCEPT: COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NE 1/4); THENCE ALONG THE WEST LINE THEREOF N02°29'30"E 10.00 FEET; THENCE S86°17'38"E 37.00 FEET TO THE EAST RIGHT-OF-WAY OF MAIN STREET FOR A TRUE POINT OF BEGINNING; THENCE ALONG SAID RIGHT-OF-WAY N02°29'30"E, 172.00 FEET; THENCE S86°17'38"E, 210.00 FEET; THENCE S02°29'30"W, 172.00 FEET; THENCE N86°17'38"W, 210.00 FEET TO THE POINT OF BEGINNING, AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER, EXCEPT TEN ACRES OUT OF THE NORTHWEST CORNER DESCRIBED AS THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, ALL IN TOWNSHIP 27, RANGE 22.

ALL THAT PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CHRISTIAN COUNTY, STATE OF MISSOURI, DESCRIBED AS FOLLOWS: BEGINNING AT A REBAR ON THE EAST RIGHT OF WAY LINE OF MAIN STREET AT THE INTERSECTION WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER, THENCE S87°30'09" ALONG THE NORTH LINE THEREOF A DISTANCE OF 186.58 FEET TO A POINT; THENCE S01°27'03"W A DISTANCE OF 613.82 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF TRACKER STREET; THENCE N87°04'01"W ALONG SAID NORTH RIGHT OF WAY LINE A DISTANCE OF 150.04 FEET TO A REBAR; THENCE N42°51'10"W LEAVING THE NORTH RIGHT OF WAY LINE OF TRACKER STREET A DISTANCE OF 35.82 FEET TO A REBAR ON THE EAST RIGHT OF WAY LINE OF MAIN STREET; THENCE N01°27'03"E ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 339.90 FEET TO A REBAR; THENCE N88°07'29"W A DISTANCE OF 13.97 FEET TO A REBAR; THENCE N02°01'18"E ALONG SAID EAST RIGHT OF WAY LINE OF MAIN STREET A DISTANCE OF 242.62 FEET TO A RIGHT OF WAY MARKER; THENCE N01°35'57"E A DISTANCE OF 5.11 FEET TO THE POINT OF BEGINNING, CONTAINING 2.53 ACRES. (DESCRIPTION PREPARED BY SURVEYOR JOSEPH R. PULLIAM, MO PLS 2006016641, TOTH & ASSOCIATES, 04/08/2021)



ALL THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CHRISTIAN COUNTY, STATE OF MISSOURI, LYING NORTH OF THE EXISTING NORTH RIGHT OF WAY LINE OF TRACKER STREET AND EAST OF THE EXISTING EAST RIGHT OF WAY LINE OF MAIN STREET; LESS AND EXCEPT THEREFROM THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND ALSO LESS AND EXCEPT THE EAST 15 FEET OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER DESCRIBED IN BOOK 367 ON PAGE 177 OF THE CHRISTIAN COUNTY LAND RECORDS; FURTHER EXCEPTING THE FOLLOWING DESCRIBED TRACT, ALL THAT PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CHRISTIAN COUNTY STATE OF MISSOURI, DESCRIBED AS FOLLOWS: BEGINNING AT A REBAR ON THE EAST RIGHT OF WAY LINE OF MAIN STREET AT THE INTERSECTION WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER, THENCE S87°30'09" ALONG THE NORTH LINE THEREOF A DISTANCE OF 186.58 FEET TO A POINT; THENCE S01°27'03"W A DISTANCE OF 613.82 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF TRACKER STREET; THENCE N87°04'01"W ALONG SAID NORTH RIGHT OF WAY LINE A DISTANCE OF 150.04 FEET TO A REBAR; THENCE N42°51'10"W LEAVING THE NORTH RIGHT OF WAY LINE OF TRACKER STREET A DISTANCE OF 35.82 FEET TO A REBAR ON THE EAST RIGHT OF WAY LINE OF MAIN STREET; THENCE N01°27'03"E ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 339.90 FEET TO A REBAR; THENCE N88°07'29"W A DISTANCE OF 13.97 FEET TO A REBAR; THENCE N02°01'18"E ALONG SAID EAST RIGHT OF WAY LINE OF MAIN STREET A DISTANCE OF 242.62 FEET TO A RIGHT OF WAY MARKER; THENCE N01°35'57"E A DISTANCE OF 5.11 FEET TO THE POINT OF BEGINNING; CONTAINING A TOTAL OF 25.86 ACRES. (DESCRIPTION PREPARED BY SURVEYOR JOSEPH R. PULLIAM, MO PLS 2006016641, TOTH & ASSOCIATES, 04/08/2021)

**Finance Department**

715 W. Mt. Vernon

P.O. Box 395

Nixa, MO 65714

Phone (417) 724-5625

Fax (417) 724-5723

To: Mayor and Council

Cc: Jimmy Liles, City Administrator

From: Jennifer Evans, Director of Finance

Date: April 20, 2021

Re: Participation in Tax Free Weekend

Participation in Missouri's Back to School Sales Tax Holiday was Action Plan #5 under the Sustainable Economy section of the City of Nixa's Strategic Plan. In order for the City to participate, we must enact an ordinance and provide that ordinance to the Department of Revenue not less than 45 days prior to the beginning date of the next sales tax holiday. This holiday is effective during a 3 day period beginning at 12:01 am on the first Friday in August and ending at midnight on the Sunday following. The sales tax exemption is limited to:

- **Clothing** – any article having a taxable value of \$100 or less
- **School supplies** – not to exceed \$50 per purchase
- **Computer software** – taxable value of \$350 or less
- **Personal computers** – not to exceed \$1,500
- **Computer peripheral devices** – not to exceed \$1,500
- **Graphing calculators** - not to exceed \$150

It is staff's recommendation to adopt an Ordinance to opt in to Missouri's Back To School Sales Tax Holiday in order to align with the City of Nixa's Strategic Plan.

2  
3 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA REPEALING**  
4 **ORDINANCE NO. 1388 FOR THE PURPOSE OF OPTING IN TO THE SALES TAX**  
5 **HOLDIAY ESTABLISHED BY SECTION 144.049 RSMO.**  
6  
7

---

8 **WHEREAS**, section 144.049 RSMo specifically exempts from state sales tax law  
9 the retail sales of certain items during a three-day period beginning at 12:01 a.m. on the  
10 first Friday in August and ending at midnight on the Sunday following; and  
11

12 **WHEREAS**, section 144.049 RSMo authorizes the governing body of any  
13 political subdivision to adopt an ordinance to prohibit the provisions of § 144.049 RSMo  
14 from applying to the political subdivision's sales tax; and  
15

16 **WHEREAS**, the City, by Council's adoption of and the Mayor's approval of  
17 Ordinance No. 1388, has elected to prohibit the provisions of § 144.049 RSMo from  
18 applying to the City's sales tax; and  
19

20 **WHEREAS**, section 144.049 RSMo authorizes the City to allow the provisions of  
21 said section to apply to the City's sales tax by rescinding its prior Ordinance; and  
22

23 **WHEREAS**, the City Council now desires include the City's sales tax within the  
24 operation of the sales tax holiday established by § 144.049 RSMo.  
25

26 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
27 **NIXA, AS FOLLOWS, THAT:**  
28

29 **SECTION 1:** Ordinance No. 1388 is hereby repealed. The City's local sales taxes  
30 shall hereafter be included within the exemption from the state sales tax law established  
31 by § 144.049 RSMo during the three-day period beginning at 12:01 a.m. on the first  
32 Friday in August and ending at midnight on the Sunday following.  
33

34 **SECTION 2:** The City Administrator, or designee, shall notify the Missouri  
35 Department of Revenue of this action. Such notification shall occur as soon as  
36 practicable but shall not occur later than 45 calendar days prior to the beginning date of  
37 the sales tax holiday established by § 144.049 RSMo.  
38

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

43  
44 **ADOPTED BY THE COUNCIL OF THE CITY OF NIXA THIS 10<sup>TH</sup> DAY OF MAY 2021.**  
45  
46

47 ATTEST:

48

49 \_\_\_\_\_

50 CITY CLERK

51

52

53 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

54

55

56 ATTEST:

57

58 \_\_\_\_\_

59 CITY CLERK

60

61

62 APPROVED AS TO FORM:

63

64 \_\_\_\_\_

65 CITY ATTORNEY

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

\_\_\_\_\_  
MAYOR



**Issue:** **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NIXA, MISSOURI AMENDING CHAPTER 6 – ANIMAL REGULATIONS TO ALLOW FOR THE KEEPING OF CHICKENS IN RESIDENTIAL DISTRICTS OF THE CITY.**

**Date:** May 10, 2021

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

---

## **Background**

At the direction of City Council, staff has prepared an ordinance that amend the Nixa City Code to remove the prohibition and to appropriately regulate the keeping and husbandry of chickens in residential districts of the City.

## **Analysis**

The proposed amendment would allow for the keeping of not more than six chickens on a single lot or parcel of land within a residential district of the City of Nixa. Only female chickens are allowed under the proposed regulation. The chickens would need to be kept in an enclosure or fenced area and in a henhouse or chicken tractor. Any enclosures, henhouses, chicken tractors, etc. would conform to the other applicable requirements of the City as an accessory structure. Additionally, all other animal and nuisance regulations would be applicable.

The amended regulations will not affect the keeping of chickens on school property, though the new regulations are similar in many respects.

## **Recommendation**

Staff recommends the approval and passage of this bill.

2  
3 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA  
4 AMENDING SECTION 6-13 OF THE NIXA CITY CODE TO  
5 ALLOW FOR THE KEEPING OF CHICKENS.  
6  
7

---

8 WHEREAS, City Council, after hearing from citizens about the desire in the  
9 community to keep chickens in an urban setting, directed staff to propose amendments  
10 to the Nixa City Code to authorize the keeping of chickens; and  
11

12 WHEREAS, staff has proposed amending section 6-13 of the Nixa City Code to  
13 allow for the keeping of up to 6 female chickens within the City; and  
14

15 WHEREAS, the City Council desires to implement the modifications to the Nixa  
16 City Code contained herein.  
17

18 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
19 NIXA, AS FOLLOWS, THAT:  
20

21 SECTION 1: Chapter 6, Article I, of the Nixa City Code is hereby amended by  
22 repealing section 6-13 and adopting in lieu thereof a new section 6-13, which said  
23 section shall read as follows:  
24

25 (Note: Language to be added is underlined. Language to be removed is stricken.)  
26

27 Sec. 6-13. - Prohibited animals.  
28

29 (a) It shall be unlawful to keep or maintain any prohibited animal on any land or parcel  
30 which is not herein defined as agricultural property. Any prohibited animals kept on  
31 agricultural property must be kept in accord with the requirements set forth in  
32 subsection (c) of this section.  
33

34 (b) *Prohibited animal* means any animal classified as livestock, fowl, poultry, swine,  
35 sheep, goats, llama, camel, ostrich, wild game, nondomestic animal, or a  
36 domesticated animal when such an animal creates a noise or odor offensive to the  
37 public.  
38

39 (c) *Agricultural property* means any property designated or zoned by the city as  
40 agricultural, including property grandfathered as previously being agricultural or  
41 currently possessing prohibited animals on November 9, 2009. Animals kept on any  
42 agricultural property that was not previously zoned agricultural (or grandfathered) on  
43 November 9, 2009, must meet the following requirements:  
44

45 (1) The property owner must keep any animals 100 feet away from the property line  
46 of any dwelling other than the property owner's dwelling.

- 47 (2) Property owners must keep any animals 50 feet away from the property line of  
48 any church, school, or business.  
49
- 50 (3) A property owner must live on the property with the animals or within one mile  
51 of the property where the animals are kept.  
52
- 53 (4) Property owners with animals on the property must provide the state-  
54 recommended amount of pasture or space per animal.  
55
- 56 (5) Property owner must also comply with section 6-7 (nuisance animals).  
57
- 58 (6) Property owners must provide proof of property insurance, owner name, phone  
59 number, address, and emergency contact information to the city animal control  
60 officer.  
61
- 62 (7) Property and animals must be maintained according to this Code and state  
63 statutes.  
64
- 65 (d) Any property that is permitted to maintain a prohibited animal as a result of being  
66 grandfathered through the adoption of this section may only replace an animal after  
67 receiving authorization from the city council.  
68
- 69 (e) Nothing in this section ~~will~~ shall prohibit schools, day care centers, vocational  
70 educational programs, and other public or private educational programs from  
71 possessing up to 20 female chickens on any lot five acres or more in size if any  
72 such chickens are maintained for educational purposes. Nothing in this section shall  
73 prohibit the possession of up to 6 female chickens on any lot used for residential  
74 purposes.  
75
- 76 (f) If any chickens are kept pursuant to subsection (e) of this section, the chickens shall  
77 be kept in accordance with the following:  
78
- 79 (1) ~~The wings of chickens shall be clipped to ensure that they do not escape their~~  
80 ~~enclosure.~~  
81
- 82 (2) It shall be unlawful to engage in chicken breeding, the sale of chicken meat or  
83 byproducts, or fertilizer production. Unless otherwise prohibited by state or  
84 federal law, sale of eggs from these chickens shall be permitted under this  
85 section.  
86
- 87 (3)(2) Slaughter may occur provided that it is conducted in a sanitary manner, does  
88 not generate noise that creates a nuisance, and is not visible from adjacent  
89 properties or any public area or right-of-way.  
90

91 ~~(4)~~(3) Chickens shall be kept in a secured enclosure or fenced area at all times,  
92 herein referred to as "enclosure." ~~Chickens shall be secured within a henhouse~~  
93 ~~or chicken tractor during non-daylight hours.~~

94  
95 ~~(5) At a minimum, four square feet per chicken enclosure space and ten square~~  
96 ~~feet per chicken of outside run space shall be provided.~~

97  
98 ~~(6)~~(4) Enclosures shall be kept in a clean, dry, odor-free, neat, and sanitary  
99 condition at all times.

100  
101 ~~(7)~~(5) ~~Henhouses, chicken tractors and chicken pens~~ Enclosures shall provide  
102 adequate ventilation and adequate sun and shade and shall be impermeable to  
103 rodents, wild birds, and predators; including dogs and cats.

104  
105 ~~(8)~~(6) ~~Henhouses and chicken tractors~~ Enclosures shall be designed to provide safe  
106 and healthy living conditions for the chickens while minimizing adverse impacts  
107 to other residents in the neighborhood.

108  
109 a. ~~A henhouse or chicken tractor~~ Enclosures shall be enclosed on all sides  
110 and shall have a roof and doors. ~~Access doors shall be able to be shut and~~  
111 ~~locked at night.~~ Openings, windows, and vents shall be covered with sturdy  
112 wiring or other predator and bird proof material ~~wire of less than one-inch~~  
113 ~~openings.~~

114  
115 b. ~~Henhouses, chicken tractors, and chicken pens~~ Enclosures shall only be  
116 located ~~to~~ in the defined rear of the property.

117  
118 c. ~~Henhouses, chicken tractors, and chicken pens~~ Enclosures shall be located  
119 at least six feet from the rear property line and five feet from the side  
120 property line ~~(12 feet adjacent to a street)~~ in accordance with the setback  
121 requirements as provided in section 117-279 of the Nixa City Code  
122 ~~(accessory building setback requirements).~~

123  
124 d. ~~Henhouses, chicken tractors, and chicken pens~~ Enclosures shall be located  
125 at least 25 feet from any adjacent residential dwelling, church, school, or  
126 place of business.

127  
128 ~~(9) Any enclosed chicken pen shall consist of sturdy wire or wooden fencing. The~~  
129 ~~pen shall be covered with wire, aviary netting, or solid roofing.~~

130  
131 ~~(10) Odors from chickens, chicken manure, or other chicken related substances~~  
132 ~~shall not be detectable at the property boundaries.~~

133  
134 ~~(11)~~(7) All uses shall operate in accordance with the standards contained in section  
135 6-7 of the Nixa City Code ~~Code of Ordinances.~~



~~(12) The chicken owner shall take necessary action to reduce the attraction of predators and rodents and the potential infestation of insects and parasites. Chickens found to be infested with insects and parasites that may result in unhealthy conditions to human habitation may be removed by the animal control officer.~~

~~(13) The chickens shall have access to feed and clean water at all times. The feed and water shall be unavailable to rodents, wild birds, and predators.~~

~~(14) All stored manure shall be covered by a fully enclosed structure with a roof or lid over the entire structure. No more than three cubic feet of manure shall be stored. All other manure not used for composting or fertilizing shall be removed. The henhouse, chicken tractor, chicken pen, and surrounding area shall be kept free from trash and accumulated droppings.~~

~~(15) No dog or cat which kills a chicken shall, for that reason alone, be considered a dangerous or aggressive animal.~~

~~(16)~~(8) It shall be unlawful for any person or entity to keep chickens in violation of any provision of this subsection.

~~(17)~~(9) Any violation of this subsection that constitutes a health hazard or that interferes with the use or enjoyment of neighboring property is a nuisance and may be abated under general nuisance abatement provisions of the city.

~~(18)~~(10) Each day that a violation of this section continues is a separate offense.

~~(19)~~(11) All other applicable city ordinances ~~codes~~ shall apply.

(g) *Miniature Pigs*. For purposes of this Section, miniature pig shall refer to swine which are bred to be domesticated pets, which are kept as pets in a residentially zoned area of the City, and which weigh no more than 120 pounds. A miniature pig shall not be considered a prohibited animal, as such term is defined in Section 6-13(b) of the City Code, provided that the keeping of said miniature pig is in full compliance with the following regulations and any other applicable provisions of the City Code:

(1) No person shall own, keep, or harbor at any time more than one miniature pig per residential dwelling unit within the City.

(2) No person shall cause or allow a miniature pig to become pregnant.

(3) The owner of a miniature pig shall trim and maintained all tusks in such a manner that no tusk shall appear outside of the mouth of the miniature pig when the mouth is closed.

(4) Every owner of a miniature pig shall register said animal with the City once the animal reaches four months of age. Such registration shall be renewed and updated annually. Registration shall not be transferable from one miniature pig to another. Applications to register a miniature pig shall contain at least the following:

- a. Provide the name and address of the owner of the miniature pig;
- b. Provide the color, age, and sex of the miniature pig;
- c. The information required by section 6-13(g)(5);
- d. Provide additional information as may identify the miniature pig; and
- e. The applicant shall certify that the information contained in such application is truthful and accurate.

(5) In addition to the registration required in section 6-13(g)(4), every owner of a miniature pig shall have their miniature pig microchipped and they shall submit proof of microchipping by a licensed veterinarian as well as documentation evidencing the content of the microchip, as part of their annual license application. The microchip required by this section shall contain the following information:

- a. Name of the animal;
- b. Name of the owner of the animal;
- c. Physical address of the owner;
- d. Primary and secondary telephone number of the owner;
- e. Secondary contact, including contact information for said contact; and
- f. Primary veterinarian for the animal.

**SECTION 2:** 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 3:** 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 4:** 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, clause, or phrases be declared invalid.

**SECTION 5:** 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 COUNCIL OF THE CITY OF NIXA THIS 10<sup>TH</sup> DAY OF MAY 2021.**

ATTEST:

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

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

**APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

ATTEST:

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

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

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



**JIMMY LILES**  
**CITY ADMINISTRATOR**  
P.O. Box 395  
715 W. Mt. Vernon  
Nixa, Missouri 65714  
Phone: 417-725-3785  
Email: jliles@nixa.com

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Date: 05/03/2021

To: Mayor Steele, City Council

From: Jimmy Liles, C.A.

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

---

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

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

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

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

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

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

---

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

5. CITY'S OBLIGATIONS.

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

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

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



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

The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City, which shall not be unreasonably withheld. It shall be the responsibility of Chamber to maintain the aforementioned insurance coverage at all times during the term of this Agreement. Failure of Chamber to maintain the aforementioned coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under this Agreement. The certificates of insurance, including evidence of the required endorsements hereunder or the policies shall be filed with the City within ten (10) days after the date of the execution of this Agreement. All insurance policies shall require that the insurance company in question provide thirty (30) days written notice prior to modification or cancellation of such insurance. In the event the scope or extent of the City's tort liability as a governmental entity, as described in Section 537.600 through 537.650 RSMo., is broadened or increased during the term of this agreement by legislative or judicial action, the City may require Chamber, upon ten (10) days written notice, to execute a contract addendum whereby the Chamber agrees to provide additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by a certificate of insurance and shall take effect within the time set forth in the addendum.

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

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

If to City to:

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

If to Chamber to:

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

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

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

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

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

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

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

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

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

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

CITY OF NIXA, MISSOURI

NIXA AREA CHAMBER OF  
COMMERCE

By: \_\_\_\_\_  
Name: Jimmy Liles  
Title: City Administrator

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBITS:

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

## **EXHIBIT A**

### **Artist's Agreement**

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

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

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

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

FOR ARTIST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_

WITNESS FOR ARTIST SIGNATURE:

By: \_\_\_\_\_  
Name: \_\_\_\_\_

FOR CITY:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

### Attachment 1

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

City of Nixa, MO  
Budget Amendment

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

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

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

\_\_\_\_\_  
Jimmy Liles, City Administrator

Authorized by Passage of Ordinance No. \_\_\_\_\_

Date of Passage: \_\_\_\_\_





City of Nixa  
Parks and Recreation  
PO BOX 395  
701 N. Taylor Way  
Nixa, MO 65714

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**To: Mayor Brian Steele, Nixa City Council**  
**CC: Jimmy Liles, City Administrator**  
**From:** Matt Crouse, Director Parks and Recreation  
**Re: MOU Nixa Public Schools- Ballfield Space**

May 5, 2021

As introduced in April this memorandum of understanding with Nixa Public Schools will establish a documented agreement for field usage on school property. Through this MOU the city will agree to use the newly renovated baseball field at Summit Intermediate and the city created baseball field at High Pointe Elementary School for parks department programming. The MOU will be evaluated annually to ensure both parties are able to address any concerns with the current field usage.

If there are any questions or comments staff is happy to answer, if approved this MOU will go into effect once signed by both parties.

Respectfully,

Matt Crouse  
Director, Parks and Recreation

1 COUNCIL BILL NO. 2021-046

ORDINANCE NO.

2  
3 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING**  
4 **THE CITY ADMINISTRATOR TO EXECUTE ON BEHALF OF THE CITY A**  
5 **MEMORANDUM OF UNDERSTANDING WITH NIXA PUBLIC SCHOOLS**  
6 **REGARDING THE SHARED USE OF CERTAIN BASEBALL FIELDS.**  
7  
8

9 **WHEREAS**, the City and Nixa Public Schools desire to clarify their shared use of  
10 certain baseball fields located at Century Elementary School and High Pointe  
11 Elementary School; and  
12

13 **WHEREAS**, to that end, a Memorandum of Understanding has been drafted,  
14 which is attached hereto as "Council Bill Exhibit A," which establishes clear lines of  
15 shared use of said baseball fields by the City and Nixa Public Schools.  
16

17 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
18 **NIXA, AS FOLLOWS, THAT:**  
19

20 **SECTION 1:** The City Administrator, or designee, is hereby authorized to  
21 execute, on behalf of the City, the Memorandum of Understanding, attached hereto and  
22 incorporated herein by this reference as "Council Bill Exhibit A." Said Memorandum of  
23 Understanding shall be in substantially similar form as the document attached hereto as  
24 "Council Bill Exhibit A." The City Administrator is further authorized to do all things  
25 necessary or convenient to carry out the terms of this Ordinance provided that such  
26 actions are consistent with the terms and intent of this Ordinance.  
27

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

32 **ADOPTED BY THE COUNCIL OF THE CITY OF NIXA THIS 10<sup>TH</sup> DAY OF MAY 2021.**  
33  
34  
35

36 ATTEST:  
37

38  
39 CITY CLERK

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

47 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**  
48  
49

50 **ATTEST:**  
51

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

\_\_\_\_\_  
MAYOR

54  
55  
56 **APPROVED AS TO FORM:**  
57

58 \_\_\_\_\_  
59 CITY ATTORNEY  
60

## Memorandum of Understanding

### Memorandum of Understanding

Between

Nixa Public Schools

and

City of Nixa

This Memorandum of Understanding (MOU) sets the understanding between Nixa Public schools and City of Nixa regarding the shared use of Century baseball field between the City of Nixa and Nixa Public Schools.

#### **Background**

Over ten years ago, Nixa Parks invested funds and resources into the Century baseball field in order to, among other things, share the space for school use and Nixa Park's Recreational Baseball/T-ball. Since that time, Nixa Public Schools has developed several competitive sports programs including a youth baseball program. Due to scheduling conflicts between Nixa Schools Youth Baseball and Nixa Parks Recreational Baseball/T-ball it is the intent among the parties that this MOU assist in the organized coordination of each parties' use of the Century baseball field.

#### **Purpose**

This MOU is intended to establish clear lines of baseball field use for Nixa Public Schools and Nixa Parks.

The above goals will be accomplished by undertaking the following activities:

1. Assigning fields for specific use. Nixa Parks will use Summit and High Pointe fields for their baseball and t-ball season outside of school hours.
2. Developing scheduling that meets the needs of both parties.
3. Communicating needs/concerns throughout the season.

#### **Reporting**

The Nixa Schools Assistant Superintendent for Operations and the Nixa Parks Director of Parks and Recreation will evaluate the effectiveness of the MOU and reconvene at the close of the baseball season to monitor and make any necessary adjustments.

This MOU is at-will and may be modified by mutual consent of authorized officials from Nixa Public Schools and City of Nixa This MOU shall become effective upon signature by the authorized officials and will remain in effect until terminated by any one of the parties. use will evaluate the effectiveness of the MOU and reconvene a the close of baseball season to monitor and make any necessary adjustments.

### **Funding**

This MOU is not a commitment of funds.

### **Duration**

This MOU is at-will and may be modified by mutual consent of authorized officials from Nixa Public Schools and City of Nixa This MOU shall become effective upon signature by the authorized officials and will remain in effect until terminated by any one of the parties.

### **Contact Information**

City of Nixa  
Matt Crouse  
Director of Parks and Recreation  
701 N. Taylor Way, Nixa, MO, 65714  
417-725-5486  
mcrouse@nixaparks.com

Nixa Public Schools  
Kevin Kopp  
Assistant Superintendent  
301 S. Main Street, Nixa, MO, 65714  
417-724-6240  
kevinkopp@nixaschools.net

\_\_\_\_\_  
Date:  
(Partner signature)  
(Partner name, organization, position)

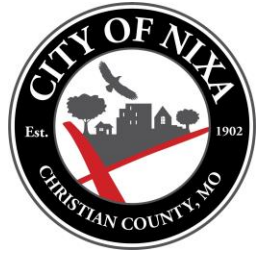
\_\_\_\_\_  
Date:  
(Partner signature)  
(Partner name, organization, position)



# Nixa Police Department

P.O. Box 395  
715 W. Center Circle  
Nixa, Missouri 65714

Emergency: 911  
Office: 417-725-2510  
Fax: 417-725-0915



To: Cindy Robbins, Jimmy Liles, City Council, Mayor Steele

From: Joe Campbell

Date: 05/5/2021

Ref: 2<sup>nd</sup> reading ordinance for 2021 Bulletproof Vest Partnership Grant application and acceptance

Annually the police department applies for the Bulletproof Vest Partnership (BVP) grant through the Bureau of Justice Assistance. This grant will reimburse our department for up to 50% of the cost of bulletproof vests that are purchased for our officers.

For fiscal year 2021, the total amount that will be requested under this grant is \$9,065. We anticipate a reimbursement amount of \$4,532.50.

These vests will include purchases for new officers as well as replacement of vests that have expired. I am requesting Council approval to apply for and accept this grant.

Respectfully,

Chief Campbell

1 COUNCIL BILL NO. 2021-047

ORDINANCE NO.

2  
3 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING**  
4 **THE CITY ADMINISTRATOR TO APPLY FOR AND ACCEPT A 2021**  
5 **BULLETPROOF VEST PARTNERSHIP GRANT IN THE AMOUNT OF \$9,065.00**  
6 **WHICH INCLUDES A MATCHING REQUIREMENT.**  
7  
8

9 **WHEREAS**, the City has the opportunity to apply for a 2021 Bulletproof Vest  
10 Partnership Grant through the Bureau of Justice Assistance; and  
11

12 **WHEREAS**, the City desires to seek \$9,065 worth of grant funding to reimburse  
13 the cost of bulletproof vest purchases for Nixa police officers; and  
14

15 **WHEREAS**, if awarded, this grant will require the City to provide a 50% match.  
16

17 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
18 **NIXA, AS FOLLOWS, THAT:**  
19

20 **SECTION 1:** The City Administrator, or designee, is hereby authorized to apply  
21 for and accept a 2021 Bulletproof Vest Partnership Grant through the Bureau of Justice  
22 Assistance in the amount of up to \$9,065.00, to allow for the funding of bulletproof vest  
23 purchases for Nixa police officers. The City Administrator is authorized to do all things  
24 necessary or convenient to apply for said funding and to carry out the terms of this  
25 Resolution. City Council recognizes that said grant includes a 50% match requirement.  
26

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

31  
32 **ADOPTED BY THE COUNCIL OF THE CITY OF NIXA THIS 10<sup>TH</sup> DAY OF MAY 2021.**  
33  
34  
35

36 ATTEST:  
37

38  
39 CITY CLERK

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

47 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**  
48  
49

50 **ATTEST:**  
51

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

\_\_\_\_\_  
MAYOR

54  
55  
56 **APPROVED AS TO FORM:**  
57

58 \_\_\_\_\_  
59 CITY ATTORNEY  
60





**ADMINISTRATION**  
P.O. Box 395  
715 W. Mt. Vernon  
Nixa, Missouri 65714  
Phone: 417-725-3785  
Fax: 417-725-6394

May 6, 2021

To: Mayor and Council  
From: Cindy Robbins  
Subject: Assignment of Council Liaisons

During the last Council meeting, Mayor Steele asked Council to begin thinking about the upcoming liaison assignments to be determined at the next meeting.

To assist you with some historical assignments I am including the following information: 2017 liaison assignments were: Aron Peterson-Police, Chris Russell-Planning and Development/City Administrator, Justin Orf-Public Works, Ryan Keating-Parks, Darlene Graham-Administration/Court/Communications, and Jimmy Ledbetter-Finance/Human Resources.

2018 liaison assignments were: Aron Peterson-Administration, Justin Orf-Planning and Development, Jimmy Ledbetter, Jr.- Police, Matt Barker-Finance, Darlene Graham-Park, and Scott Perryman-Public Works.

2019- All Council members decided to stay with their previously assigned liaisons for the upcoming year.

2020- the appointments were chosen by order of seniority. Aron Peterson-Park, Justin Orf-Administration/Court/Communications, Darlene Graham-Police, Matt Barker-Finance/HR, Scott Perryman-Public Works and Jarad Giddens-Planning and Development.

Please let me know if you have any questions.

Respectfully,  
Cindy Robbins