



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

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

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

Proclamation:

World Down Syndrome Day

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

None Scheduled

Presentations:

Anna Evans	Show Me Christian County Update
Joe Campbell	Police Department Annual Report

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

Council Bill #2022-031 Authorizing the Mayor to Execute a Franchise Agreement, Lease Agreement, an Operations and Maintenance Agreement, and Other Related Agreements with the Missouri Joint Municipal Electric Utility Corporation to Facilitate the Transfer of Certain Electric Transmission Assets to Said Corporation

Council Bill #2022- 032 Granting a Franchise to Operate a Natural Gas Distribution System Within the City to Spire Missouri Inc.

Council Bill #2022-033 Authorizing the City Administrator to Execute a Contract with the Missouri Highways and Transportation Commission to Provide Federal Surface Transportation Block Grant Funding for Certain Improvements on North Main Street

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

Council Bill #2022--027 Amending Chapter 2 of the Nixa City Code to Add Provisions Related to the Procedures of the City Council

Council Bill #2022-028 Amending the 2022 Annual Budget to Appropriate Funds for the Lease of Police Vehicles

Council Bill #2022-029 Establishing a Charter Review Commission to Review the City's Charter and Recommend Any Proposed Amendments Thereto

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

Resolution #2022-031 Authorizing the Sale or Distribution of Alcohol on City Property and Authorizing a Multi-Day Event for the Proposed 2022 Sucker Days Special Event

Resolution #2022-032 Authorizing the City Administrator to Execute a Contract with Ewing Signal Construction, LLC, for Certain Traffic Signal Improvements at the Intersection of Main Street and Aldersgate

Resolution #2022-033 Authorizing the City Administrator to Execute a Contract with D&E Plumbing & Heating, Inc, for the Replacement of Stormwater Infrastructure Along Morning Drive

Mayor and Council Member Reports:

Adjournment:

Council/ Staff Liaisons

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

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

PROCLAMATION

WHEREAS, World Down Syndrome Day has been observed on March 21st since 2012. March 21st was selected to signify the uniqueness of the triplication of the 21st chromosome which causes Down Syndrome; and

WHEREAS, Down Syndrome is the most common chromosomal condition diagnosed in the United States – each year about 6,000 babies are born with Down Syndrome; and

WHEREAS, individuals with Down Syndrome have tremendous potential to live full and fulfilling lives as contributing members of our community; and

WHEREAS, quality educational programs, stimulating home environments, good health care, and positive support from family, friends, and the community, enable people with Down Syndrome to lead fulfilling and productive lives; and

WHEREAS, the City of Nixa values our citizens with Down Syndrome and their families; and

WHEREAS, at this time we take an opportunity to highlight the unique abilities, strengths, and needs of our community members with Down Syndrome.

NOW, THEREFORE, I, Brian Steele, Mayor of the City of Nixa, Missouri, do hereby proclaim the month of March 21, 2022, as

"World Down Syndrome Day"

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Nixa, this 14th day of March 2022.

Mayor

ATTEST:

City Clerk

a) BUSINESS DEVELOPMENT AND ATTRACTION

- i) Project Spin
 - (1) Funding secured and money is in the bank! Be on the lookout for a public announcement soon. Owners want to secure all materials / subcontractors for construction before publicly announcing.
- ii) Project Genesis
 - (1) Project is currently focused on establishing a temporary location in the region, and plans to resume plans for a permanent facility location search after February. Permanent location very likely to end up in Christian County. They remain positively engaged with SMCC.
- iii) Project Eli
 - (1) Development continues, options for public improvement collaboration progress.
- iv) PROSPECTS:
 - (1) Potential project lead submitted through a local planning and development office.
 - (2) UNABLE TO RESPOND - Received state-level lead from SREP for advanced manufacturing project. All sites that would meet the requirements are occupied.

b) BUSINESS RETENTION AND EXPANSION

- i) County Recovery & Resiliency Committee meetings concluded
 - (1) Anna Evans to serve on SMCOG CEDS subcommittee for regional recovery/resiliency (Feb 2022)
- ii) Virtual Course - completed 1/13/22
 - (1) Planning for Economic Recovery - ICMA / FEMA
 - (a) FEMA accredited course focused on creating economic recovery plans to address a disaster or disruptive event, including business continuity, re-entry plans, crisis communication, and more
- iii) Continuing Education
 - (1) Anna will attend Disaster Recovery International's annual conference in February. Conference participation will confer more than 30 hours of continuing education credit and count toward additional certification.

c) WORKFORCE DEVELOPMENT AND ATTRACTION

- i) Worked in collaboration with the Springfield Jobs Center on application for a regional workforce development grant

d) REGIONALISM AND ALIGNMENT

- i) Met with City of Ozark and SMCOG to discuss potential collaboration on grants, corridor study, economic incentive market research and communications

- ii) Springfield Transportation Committee Meeting
- iii) Participated in regional infrastructure planning meeting, to continue as an advisory member

e) PREPARED COMMUNITIES / NETWORKING

- i) Clever Chamber of Commerce meeting
- ii) Ozark Chamber monthly meeting
- iii) Nixa Chamber monthly meeting
- iv) American Airlines ribbon cutting in partnership with the Springfield Chamber

f) COMMUNITY/LEGISLATIVE RELATIONS

- i) Nixa monthly economic development update
- ii) Ozark monthly economic development update
- iii) Nixa Joint Meeting
- iv) SMCC Government Relations committee
- v) County Commission meeting - Jan. 6
(1) Annual Review - SMCC economic development activity
- vi) Meetings held to review Ozark PAC structure, preview coming legislative priorities
- vii) Preview of ARPA potential for economic development, hosted by MO DED

g) OPERATIONS / ADMINISTRATIVE / MARKETING

- i) Our first SMCC billboard completed its 4-week run in Springfield. It was on display from Dec. 6 through the end of the year.
- ii) County marketing video is in post-production, pending changes.
- iii) Andrea Sitzes exited as President/CEO, effective Jan 1, 2022
- iv) Staff meeting with members of the CEO search committee for refining of position priorities

h) UPCOMING EVENTS

- i) SMCC Board Strategic Action Planning Retreat - Friday, Jan. 21
(1) 9:00 am - 3:00 pm
(2) Nixa City Hall

a) BUSINESS DEVELOPMENT AND ATTRACTION

- i) Project Crane
(1) Project in early stages of development, more details to come.
- ii) Project Spin
(1) Funding secured and money is in the bank! Be on the lookout for a public announcement soon. Owners want to secure all materials / subcontractors for construction before publicly announcing.
- iii) Project Genesis
(1) Project is currently focused on establishing a temporary location in the region, and plans to resume plans for a permanent facility location search after February. Christian County has not presented ideal options for a short-term solution, though the permanent location is very likely to end up in Christian County. They remain positively engaged with SMCC.
- iv) Project Eli
(1) Development continues, ribbon cutting is on the horizon.
- v) PROSPECTS:

b) BUSINESS RETENTION AND EXPANSION

- i) County Recovery & Resiliency Committee meetings concluded
(1) Anna Evans to serve on SMCOG CEDS subcommittee for regional recovery/resiliency (Feb 2022)
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(a) FEMA accredited course focused on creating economic recovery plans to address a disaster or disruptive event, including business continuity, re-entry plans, crisis communication, and more
- iii) Continuing Education
(1) Anna is currently attending Disaster Recovery International's annual conference (Feb. 13-16). Conference participation will confer more than 30 hours of continuing education credit and count toward additional certification.

c) WORKFORCE DEVELOPMENT AND ATTRACTION

- i) EDA Good Jobs Challenge regional collaborative grant application to establish a Southern Missouri [digital workforce training system](#).
- ii) Participated in Department of Higher Education & Workforce Development "Inside the Issues" meeting, targeted at tackling post-pandemic workforce shortages.

d) REGIONALISM AND ALIGNMENT

- i) Springfield Transportation Committee meeting
- ii) SMCOG monthly board meeting

- iii) Christian County Comprehensive Plan meeting
- iv) Participated in regional infrastructure planning meeting, to be a monthly endeavor.

e) PREPARED COMMUNITIES / NETWORKING

- i) Nixa Chamber monthly meeting
- ii) Clever Chamber monthly meeting
- iii) Sparta Chamber monthly meeting

f) COMMUNITY/LEGISLATIVE RELATIONS

- i) Monthly municipal economic development updates
- ii) Nixa Joint Meeting
- iii) SMCC Government Relations committee
 - (1) Exploring more refined annual structure of County's legislative
- iv) Meetings held to review Ozark PAC structure, preview coming legislative priorities
- v) Meeting with DED to discuss international trade, state practices, and county export data.

g) OPERATIONS / ADMINISTRATIVE / MARKETING

- i) County marketing video is complete, pending suggested changes.
- ii) Call held with community growth strategies for update concerning position progress
- iii) Annual CCBDC census report completed

h) UPCOMING EVENTS

- i) SMCC Board Strategic Action Planning Retreat - Friday, March 24
 - (1) 9:00 am - 3:00 pm
 - (2) Nixa City Hall

ANNUAL REPORT

2021



NIXA POLICE DEPARTMENT



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MESSAGE FROM THE CHIEF

The last year could be described as a year of transition. As we saw a return to some normalcy, our officers resumed a more proactive approach to police work. Their renewed efforts are reflected in several of our yearly statistics. We resumed some of our community-oriented police programs and we were able to pursue several training opportunities which had previously been stifled by the pandemic.

As we reflect on 2021, it is apparent the demand for police services has never been greater. We had a record setting year with 41,215 for calls for service. Despite this demand, we improved in several key metrics our department uses to measure success and we made great strides in accomplishing our goals outlined in our strategic plan.

However lingering effects of the pandemic remained, a surge of new variants, and supply chain issues for goods and services presented a whole new set of challenges. Officers battled new rounds of sickness causing staffing issues. Unfortunately, some projects were significantly delayed or stalled completely as we saw shortages in materials and services. All of this made organizational progress challenging to say the least.

Through it all, the men and women of this department carried out their duties and served this community faithfully. We saw some amazing acts of courage, kindness, and professionalism by our officers. Their efforts proved our officers really do care about the community they serve.

I would be remiss if I didn't mention our incredible support staff and the role, they played in our day-to-day operations. The valuable work they performed kept the organization moving forward.

Our 2021 annual report provides an opportunity to learn an array of facts, statistics, and information I hope the public will find informative. This document communicates the scope and depth of the service we have provided over the course of the last year and provides organizational transparency by giving the reader a look inside the department.

Enjoy our 2021 annual report.

Respectfully,



Joe Campbell
Chief of Police



OUR BELIEFS

Mission Statement

The Nixa Police Department exists to enforce the laws of the United States of America, the State of Missouri, and the City of Nixa. We will investigate crime and apprehend offenders. The Nixa Police Department will proactively work to prevent crime, maintain peace, and serve the needs of our community.

Vision

The Nixa Police Department will endeavor to be leaders in public service. Our commitment to excellence will be the driving force in all we do. Through our efforts, we will serve our community by providing the best possible law enforcement service to the community.

Core Values

Our core values are the guiding principles to which we adhere to fulfill our commitments we have pledged in our mission statement. Our core values are:

Service- The selfless concern for others.

Courage- The strength to overcome our fears.

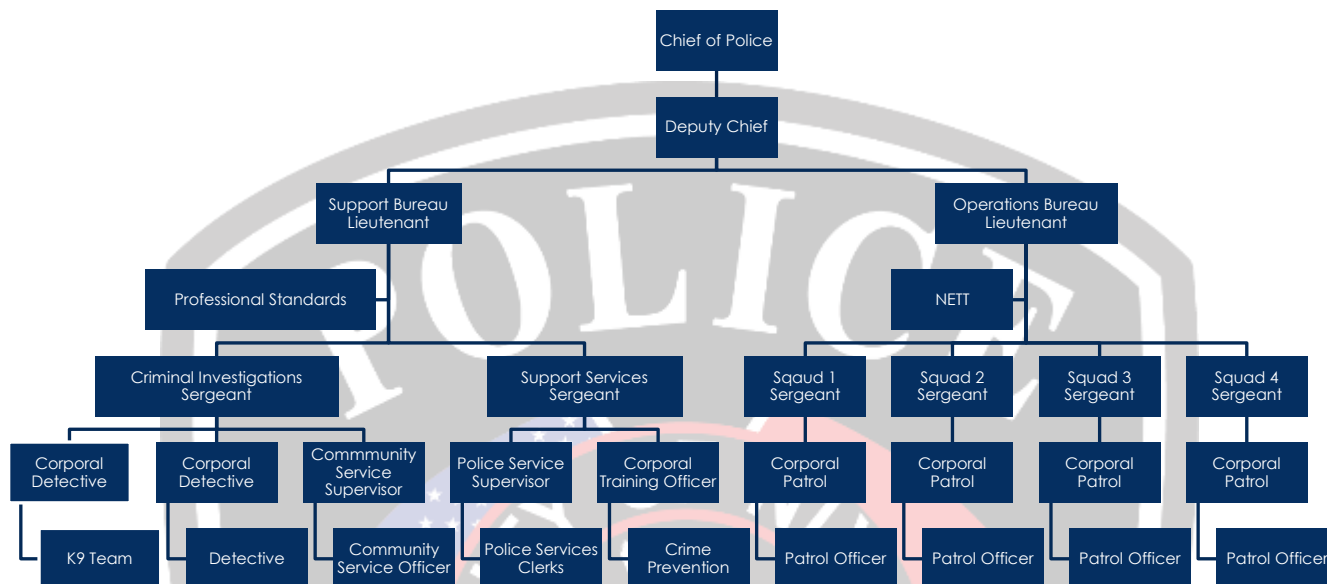
Integrity- Honest and moral behavior.

Pride- Satisfaction derived from our excellent performance.

Professionalism- Competence in our skill, knowledge, and expertise of law enforcement.



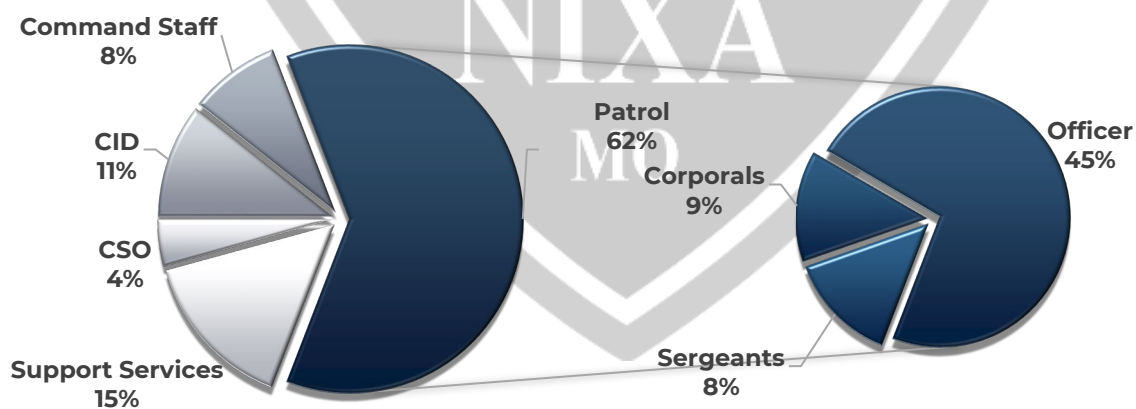
COMMAND STRUCTURE



STAFFING

The Nixa Police Department is authorized to staff six civilian employees and forty-two sworn full-time officers, and one part-time officer. Although the department suffered some attrition in 2021, we were able to staff forty-one of the forty-two sworn officers and all six civilians at the close of 2021.

Staffing Distribution



Authorized Sworn Rank & Years of Service



Years	Chief of Police – 1	Major – 1	Lieutenants – 2	Sergeant – 6	Corporal – 7	Officer - 23	Total
0-4					1	19	20
5-9			1	1	4	1	7
10-14				2	2	2	6
15-19				3		1	3
20-24	1	1		0		0	2
25-30			1	1		0	2
30+						2	2

2021 New Hires

Officer Noel Young

Officer Elizabeth Sayre

Officer Andrew Dougherty

Officer Brett Ford

Police Clerk Shawna Williams

Officer Brett Bennett

Officer Katherine Murphy

Officer Tiffany Galbraith

Officer Jeffrey Withrow

Promotions

Sergeant Richard Eutsler

Sergeant Rob Seiner

Corporal Justin Henderson

Sergeant Ryan Strohm

Corporal Dustin Tackitt

Corporal Jesse Brooks



STRATEGIC PLAN

In 2020 the Nixa City Council set the Strategic Vision which was made of 6 priority areas. This in turn directed city staff to implement a process to create the 2021 to 2025 Strategic Plan. Members of the community were asked to give input through a website created by the communications department. The Police Department's role involved in the Community Safety element of the plan listed below.



In order to provide excellent police services, the City of Nixa shall:

- Action Plan #1: Build community trust of the Police Department through improved transparency and communication.
 - 9 action steps assigned.
 - In progress: publish annual report on multiple public platforms.
 - In progress: provide additional training to officers on mental health and substance abuse.
 - In progress: partner with schools to send officers to school events.
 - In progress: expand our use of crisis intervention teams and trainings.
 - In progress: participate in state/federal program to report use of force stats on an annual basis.
 - Also of note, anyone may now access our NIBRS crime stats through Highway Patrol website.

- Action Plan #3: Expand police department facilities to address the growth of the department and the need for additional workspace.
 - 3 action steps assigned.
 - In progress: Design building expansion to include parking and training needs. Design budgeted for 2022. Funding source needed in order to build.
 - In progress: Design and build range and training facility. Budgeted for 2022

- Action Plan #4: Offer more trainings and education opportunities to the public regarding policing and safety-related issues.
 - 2 action steps assigned.
 - Completed: Secure grant funding to enhance Citizen Police Academy Program.



- Assigned: Evaluate which trainings are desired/needed by the community and appropriate for the department to provide (considering limited resources).

In order to promote health and safety through community partnerships, the City of Nixa shall:

- Action Plan #5: Foster partnerships to enhance long-term crisis intervention programs.
 - 6 action steps assigned.
 - In progress: 2022 budget includes program to better support mental health of officers.
 - In progress: Evaluate how to better support mental health of crime victims and members of the public whom officers come in contact with.
 - Operational since 2021: Created a partnership with school SROs and Christian County Child Crimes Task Force to assist investigations in which children are victims.

In order to enhance emergency preparedness, the City of Nixa shall:

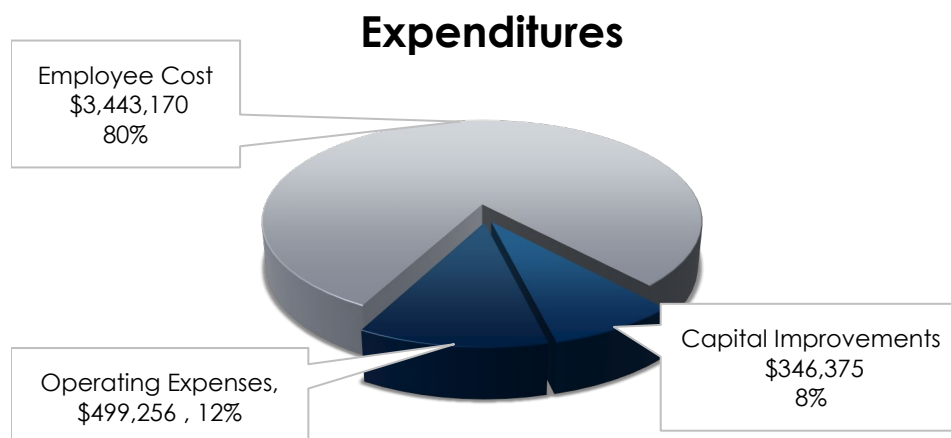
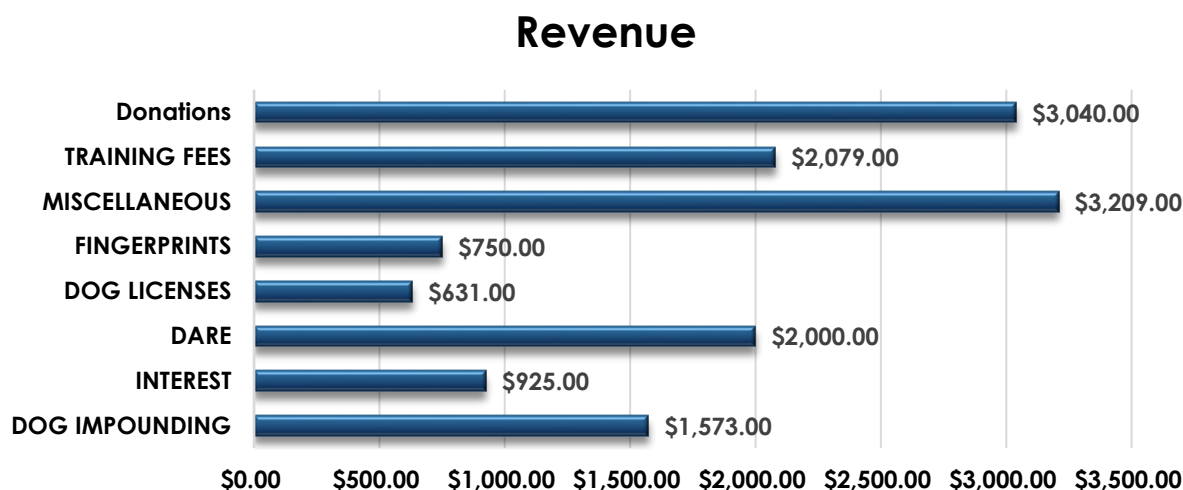
- Action Plan #10: Prioritize funding for facilities, equipment, and technology necessary to ensure the city is prepared for all-hazards incidents.
 - 5 action steps assigned.
 - In progress: Participate in any county-wide radio system upgrade for police comms.
 - In progress: Start Police drone program.
 - In progress: Start NARCAN program to help officers handle drug overdose cases and potential exposure to strong narcotics such as Fentanyl.
 - In progress: Purchase upgraded handguns to allow for optics in effort to increase accuracy.
 - In progress: Purchase, equip and deploy Police Mobile Command Post.



2021 BUDGET

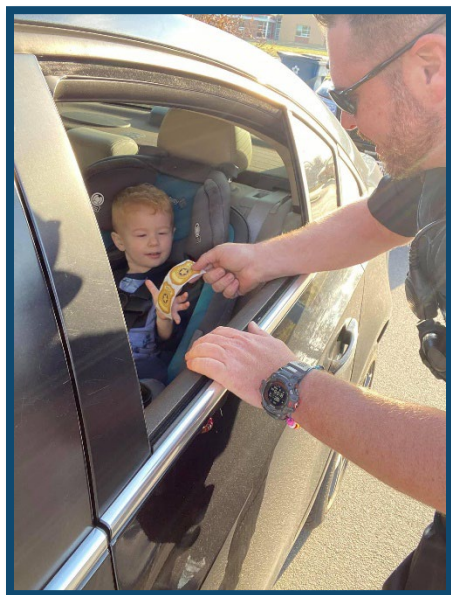
Primary funding for the police department comes from the General Revenue Fund. In 2021, the Nixa Police Department's operating budget was \$4,162,918 with actual expenditures of \$3,951,314. The difference between the operating budget and the actual expenditures was \$211,604. This was primarily due to unexpended salaries because of vacancies and a capital improvement project which is continued to 2022.

The following chart is a representation of revenues generated by the department and **does not** include the \$3,571,237 from General Fund Transfer nor the \$394,505 in received grants.

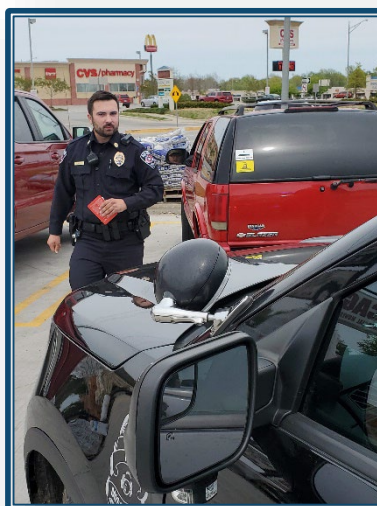


OPERATIONS BUREAU

The Operations Bureau consists of Uniformed Operations, Field Training and NETT.



Uniformed Operations provides traffic enforcement and responds to emergency and non-emergency calls for service from our community 24 hours a day. The primary objective of the Operations Bureau is to provide a safe, secure environment for all citizens in the city



Workload

2021 Workload

Total Calls

41,215

Per Month

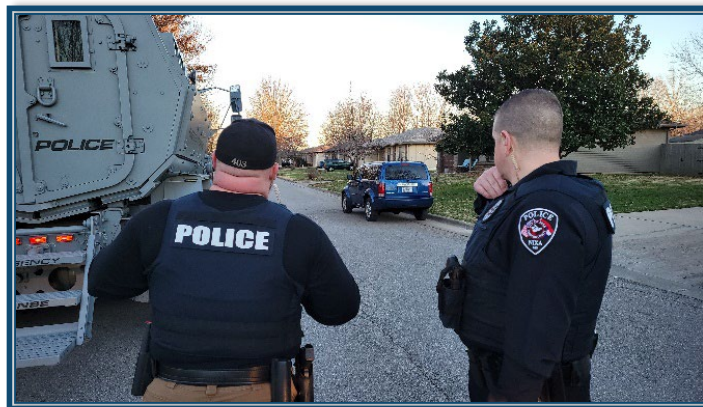
3,434

Calls Per Day

112

Calls Per Shift

56



Calls for Service Comparison by Year

CAD CFS

All incidents the officers respond to or initiate are considered law enforcement specific duties.



Reports

The total number of incidents where reports were taken.



All Tickets

This number tickets issued for traffic, animal control, and other related ordinance violations.



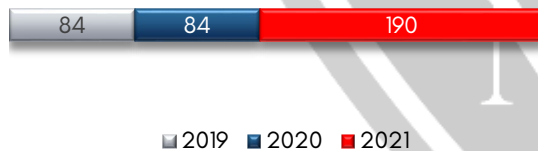
Traffic Stops

This is the total number of traffic stops completed.



DWI Charges

DWI charges submitted to the Christian County Prosecutor's Office.



Felony and Misd Charges

Combination of misdemeanor and felony charges submitted to the Christian County Prosecutor's Office.



Warnings

These are traffic violation warnings.



Physical Arrest

This is an arrest where a person was taken into custody and transported to the Christian County Jail.



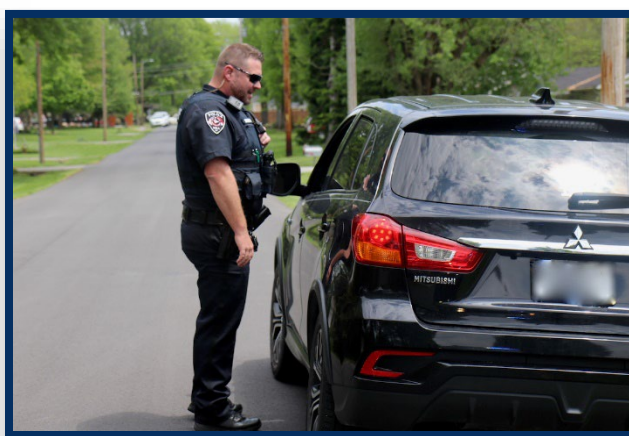
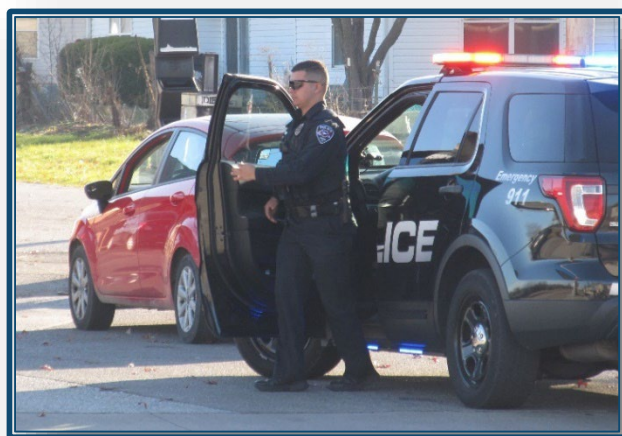
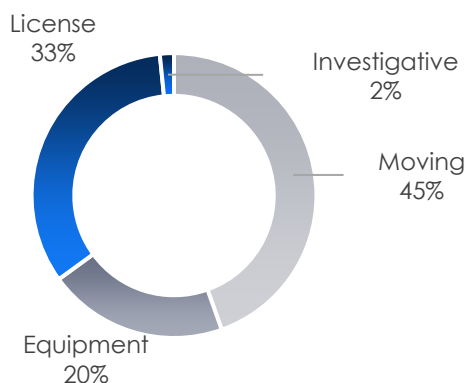
Traffic Enforcement

Motor vehicle safety is of great value to the safeguard of life and property, and through enforcement of motor vehicle laws, we hope to decrease crashes, improve motorist and pedestrian safety, as well as raise awareness of proper and safe motor vehicle operation.

In 2021, the Nixa Police Department conducted 11,749 traffic stops for moving violations (5,449), equipment violations (2,500), license violations (4,085), and investigative stops (195). Moving violations are divided into six categories, and they are speed, lane violation, follow too close, fail to signal, CVE, and other reasons.



2021 Moving Violations



In addition to traffic enforcement, the Nixa Police Department submits crash reports to the Missouri State Highway Patrol through a system called LETS4. The data provided in this report was collected from the LETS4 system. Private property accidents, walk-in accident reports, or reports that do not meet the state-mandated requirements are not included in the provided statistics.

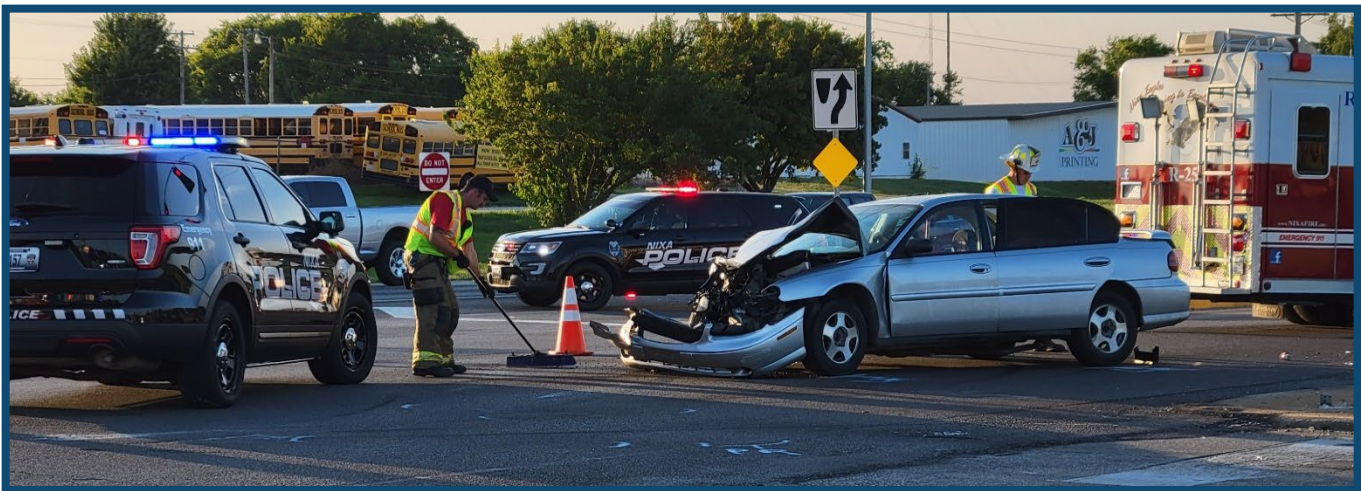
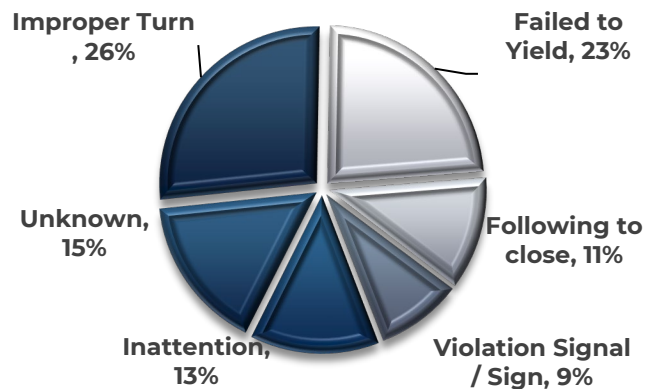
Crash Data

2021 Crash Data (Reported to STARS):

- 329 vehicle crashes involving 638 vehicles
- 1 fatality
- 85 injury crashes resulting in 129 people being hurt
- 243 Property Damage only (including the vehicles themselves)

For 2021, the top six contributing circumstances for crashes in Nixa were Improper Turn, Failed to Yield, Unknown, Inattention, Following to Close, Violation Signal/Sign.

Top 6 % of Crashes by Contributing Circumstances



On average, the highest number of crashes occurred on Tuesdays and Thursdays (16.75%) between 6 p.m. and 7 p.m. (10.64%).

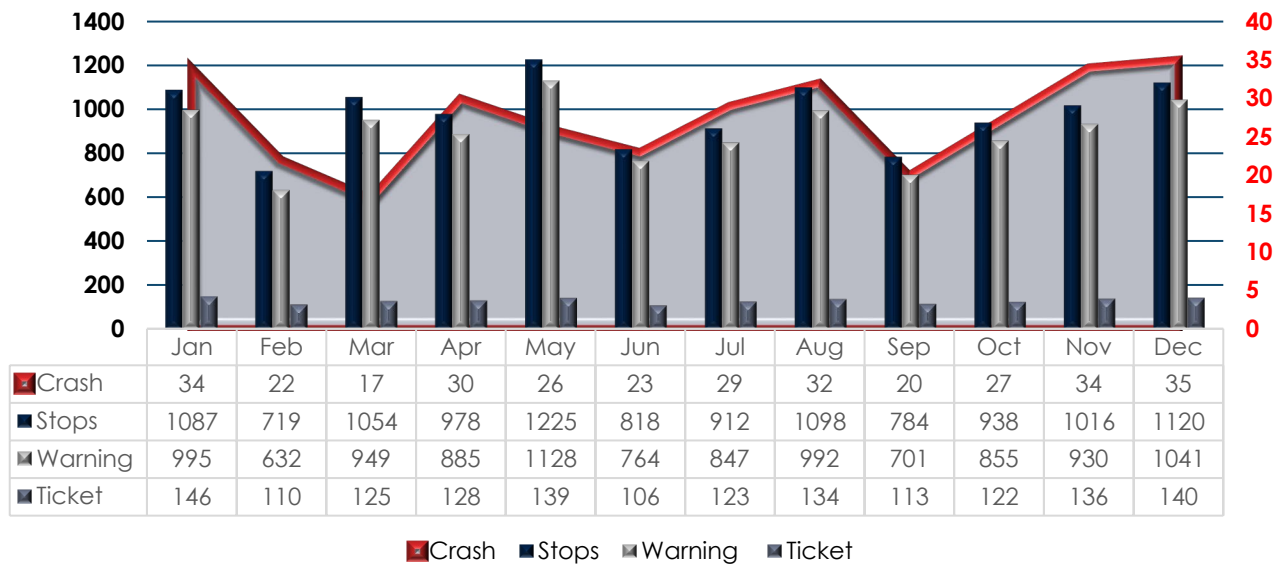
49.31% of the drivers were female and 50.69% were male.

20.45% (highest) of all drivers were between the age of 16 and 20-years-old. The second highest was 10.31%, and the age of those drivers was between 21 and 25-years-old.



The following diagram shows the comparison of traffic stops, tickets, and warnings in relation to the number of traffic crashes reported in the City of Nixa to STARS. (Traffic stop information from final Traffic Stop Report)

2021 Stops, Warnings, Tickets Crash



Use of Force

The use of force by employees shall, for the most part, be progressive. Force may occur in a variety of forms from officer presence to physical encounters. Officers utilize this force to control or diffuse situations. As an encounter between an officer and a subject escalates, the officer may find a need to employ a variety of force to control the situation. What may be an appropriate amount of force in one situation, may not be applicable in another instance. Employees must weigh the circumstances of each case and respond accordingly.

Use of Force Reporting Criteria

Any use of force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.



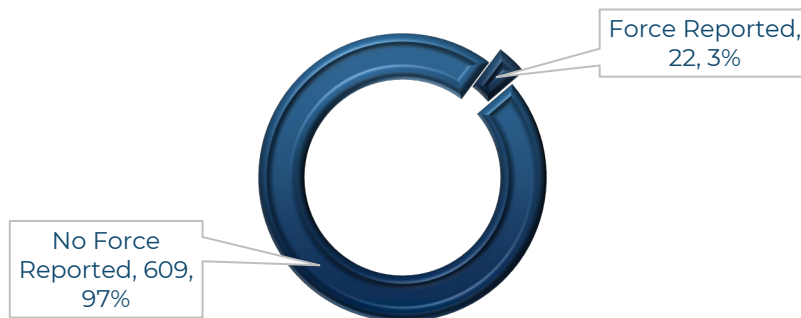
The following actions do not require the documentation of use of force by an officer unless unusual circumstances exist.

- Reasonable touch or a firm grasp used to maintain control, guide, or escort an individual.
- The drawing or display of an authorized weapon.
- Humane destruction of animals.

Use of Force Data

During the 2021 calendar year, Nixa Police Department answered 41,215 calls for service. During these calls for service, officers made 631 arrests in 2021. Of the 631 arrests, the need to use force to effect the arrest was reported 22 times.

Reported Force



In addition to de-escalation techniques, officers also receive training in using contact and cover to execute arrests and searching of suspects. Utilizing both techniques we believe reduces the physical resistance a suspect gives and, therefore, reduces the need for force to safely execute an arrest.

100 % of the time resistance began before handcuffing.
 0% of the time resistance began during handcuffing.
 0% of the time resistance began after handcuffing.

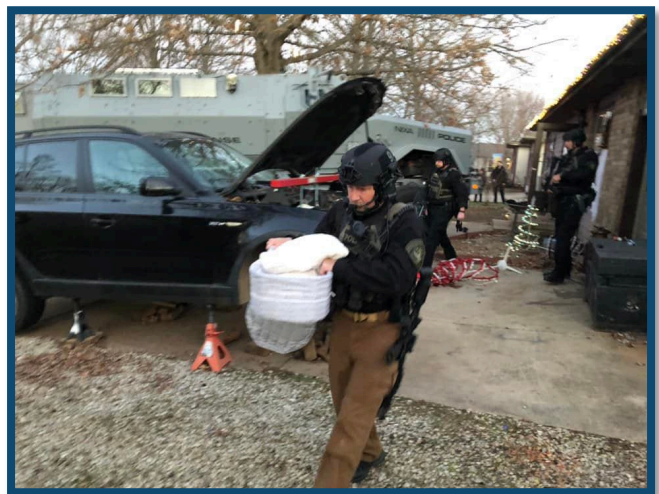


Operations Special Units

NETT



The Nixa Emergency Tactical Team (NETT) consists of 13 sworn police officers from the Operations and Support Bureaus of the department; this includes 8 operators, 4 support members, and a team commander. NETT is a highly-skilled unit designed to reduce the risk of injury and life. The primary responsibility of NETT is the containment and/or resolution of difficult police situations outside the realm of the typical patrol response using specialized skills, tactics, and equipment. In 2021, the team was active for all 12 months of the year and had a combined total of 1,360 hours of additional training. The team was deployed seven times in 2021, which included one incident with barricaded suspects, one hostage rescue of a one-month-old child, and other planned operations to serve high-risk search warrants. Those seven incidents were all resolved peacefully and without injury.



SUPPORT BUREAU

The Support Bureau provides supervision, management, and administrative, technical, logistical support to multiple department-wide sections necessary to support and enable effective policing operations.

The units supervised in this

Bureau are Information Technology Support, Criminal Investigations, Training, Professional Standards, Fleet Management, Quartermaster's Office, Animal Control, social media, Crime Prevention, K9, and DARE.



On daily basis officers may use over 20 different computer programs to do their job. Here are few of the systems they use:

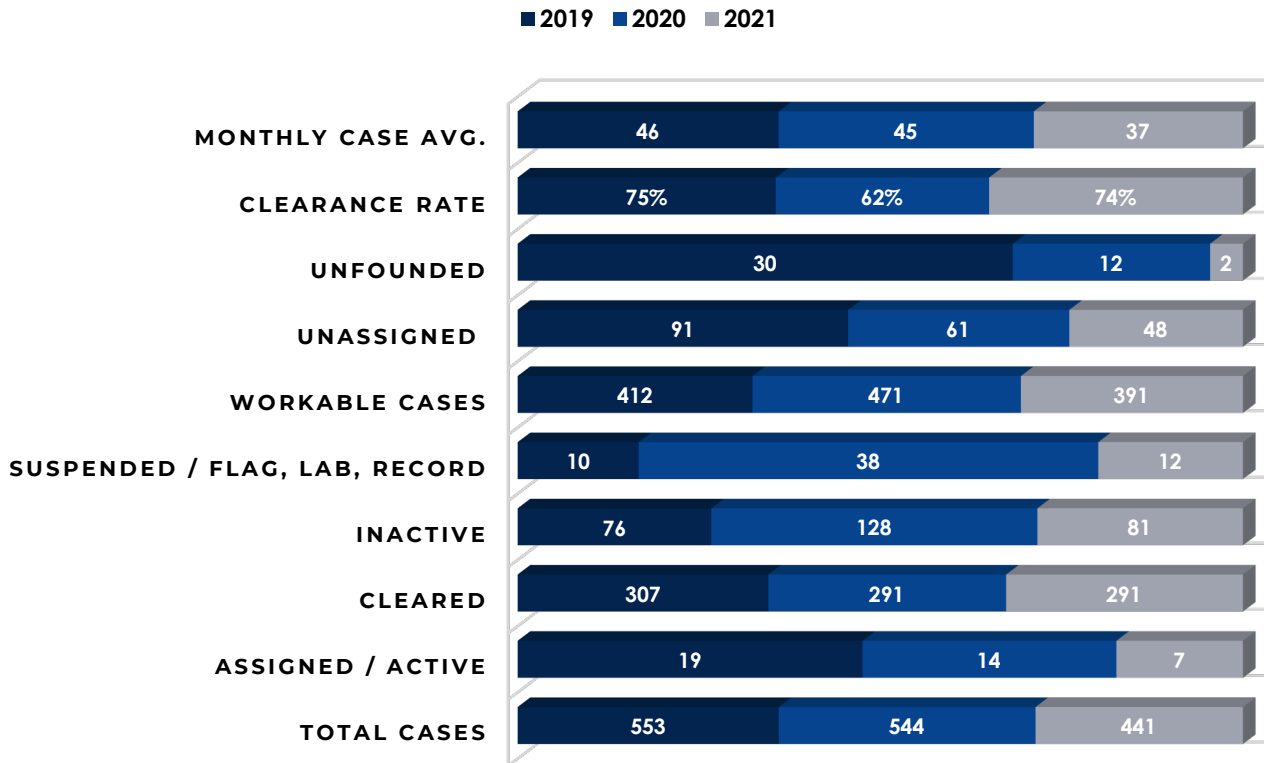
Outlook, Word, Powerpoint, Excuteime, PlanIt, Lexipol, CAD, CarFax, TLO, NICHE, REJIS, LETS4 Digital Ticketing, LEFTA, METR, V-DOC, FACTS, VIPR, Chrome, RDP, and Police One Academy.

Criminal Investigations

Criminal Investigations is responsible for the investigation and follow-up of crimes referred to criminal investigations and other agencies. All cases referred to the Criminal Investigations Division are reviewed for solvability factors. The existence of leads determines case solvability. These leads must indicate the potential for successful arrest and conviction. If a case has a good chance of solvability, the case is assigned to a detective for follow-up. If sufficient leads do not exist, the case will be unassigned. If new information develops in the future, a case can be assigned to a detective for follow-up. The CID caseload numbers for 2019, 2020 and 2021 are listed in the following chart.



CID Caseload



Professional Standards Unit



The unit is currently made up of the Support Bureau Lieutenant and a Sergeant, who reports directly to the Chief of Police. These officers are assigned to the Professional Standards Unit in addition to their primary duties.

The primary purpose of the unit is to preserve the public's trust and confidence in the Nixa Police Department by conducting thorough and impartial investigations of alleged employee misconduct.

The Department takes all complaints regarding the service provided by the department and the conduct of its members seriously. The department will accept and address all allegations of misconduct in accordance with policy and applicable federal, state and local law, municipal and county rules, and the requirements of any employment agreement.

In 2021, the department received three formal complaints. The complaints were investigated and resulted in one "unfounded" and two "not sustained." (see the following definitions)



Formal - A matter in which a supervisor determines further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Professional Standards Unit, depending on the seriousness and complexity of the investigation.

Unfounded - When the investigation discloses the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses the alleged act occurred, but the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish the act occurred and it constituted misconduct.

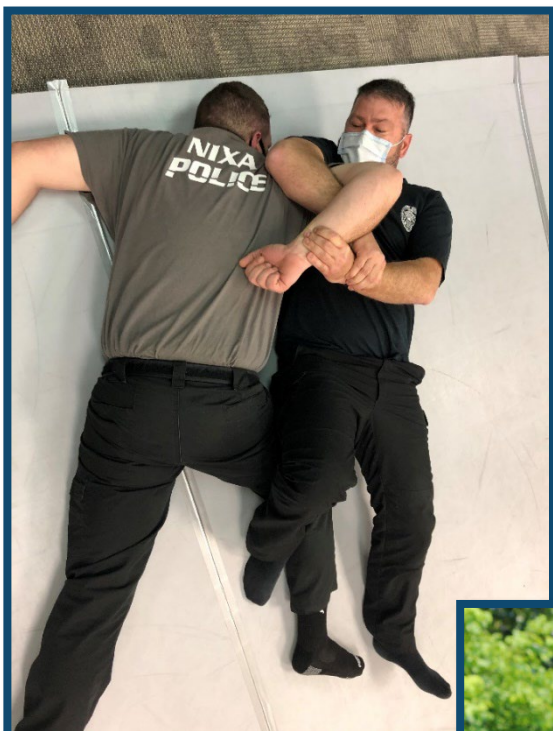
Training Unit

The Training Unit is responsible for the ongoing education of civilian employees as well as sworn peace officers as required by the Missouri Department of Public Safety.

Sworn officers licensed before Jan. 1, 2021 must obtain 24 hours of Continuing Law Enforcement Education (CLEE) by Dec. 31, 2021 with at least 8 of the 24 hours coming from an "Approved Provider" of training. More information on More information about POST requirements can be found at <https://dps.mo.gov/dir/programs/post/>.

The department annually works to identify training that works in conjunction with the on-going mission of the Nixa Police Department as well as annual certifications required to operate the numerous pieces of equipment utilized by officers every day.





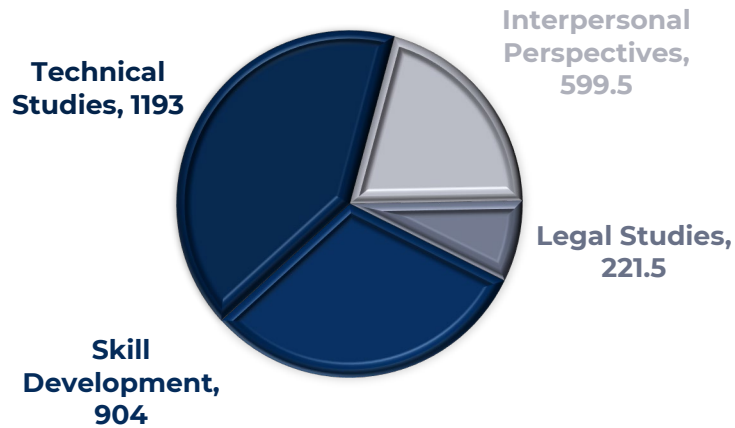
In addition to annual training, the Training Unit is responsible for the department's In-House Academy. This is approximately a four-week program, which all newly hired sworn officers complete before they begin field training. The program prepares officers for field training by ensuring they understand the report management system, reviewing policy and procedures, and certifying officers to utilize tools needed to do their job. In 2021, the department completed five In-House Academy's, which prepared eight new officers for Field Training.



Training Hours

In addition to in-service and technology update training, sworn officers reported over 2918 hours of POST-approved training in 2021, which does not include specialized unit training like K-9 and NETT training.

POST TRAINING HOURS



K9 Team

Officer Ronald Hilburn and K9 Jack make up the department's K9 Unit. K9 Jack is a three-year-old Belgian Malinois. Jack is a dual-purpose Belgian Malinois and is trained in narcotics detection, article location / searches, tracking, and suspect apprehension and handler protection. Both Jack and Officer Hilburn train weekly to ensure skill and discipline are maintained.



Crime Prevention Programs

The police department participates in several national and local programs to foster the relationship with our community and present educational information on crime prevention. During 2021, we had 10 Neighborhood Watch meetings, attended 61 public events, provided 5 tours of the police department, and spent 15 days during the summer on the Cops Connecting with Kids project.





DARE

DARE was introduced to the Nixa schools by the Nixa Police Department at the beginning of 1991. The program is run and managed by Officer Forgery. The program is directed towards students in K-8th grade. During the 2020-2021 school year, we reached approximately 2,350 students. This program helps our youth build their self-esteem, manage stress, foresee behavioral consequences, resist pro-drug media messages, and identify alternatives to drug use. It does not just tell them to say "NO;" it teaches them *how* to say "NO."

Fleet Management and Quartermaster

The Police Department's Community Service Supervisor maintains a fleet of 32 vehicles total with 15 marked patrol vehicles, 1 marked animal control truck, 1 DARE car, 1 K9 vehicle, 9 unmarked vehicles, 1 trailer, 2 command posts, 1 armored vehicle and 1 side by side. He also manages approximately 2500 pieces of issued equipment and uniforms, while supervising the Animal Control Unit.



Animal Control

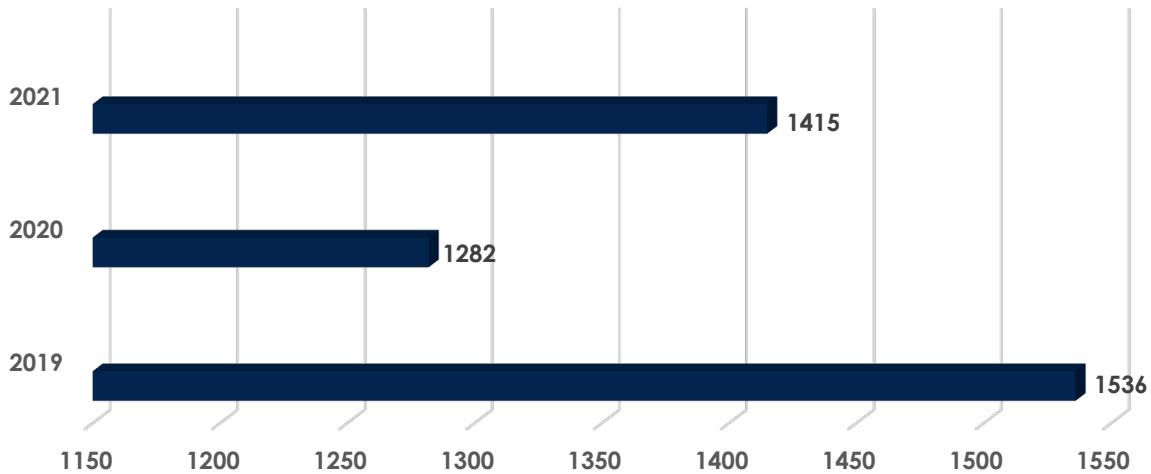
Animal Control enforces animal ordinances and helps take care of our animal population within the city limits of Nixa. Animal Control is available Monday through Friday from 9:00 a.m. to 5:00 p.m. and on call 24-hours a day for emergencies. Outside of their normal hours Patrol Officers handle animal calls.

In 2021, the police department responded to 1,415 calls for service involving animals.

This past year, we investigated 17 dog bites and picked up 132 dogs that were running at large. All the dogs impounded were placed in our climate-controlled facility which is maintained daily by one of our Community Service Officers. Of the 132 dogs impounded, 101 were returned to the owners and 20 were sent to a no kill rescue facility. In addition, officers worked several other animal related calls, such as animal abuse or neglect and barking dog calls.

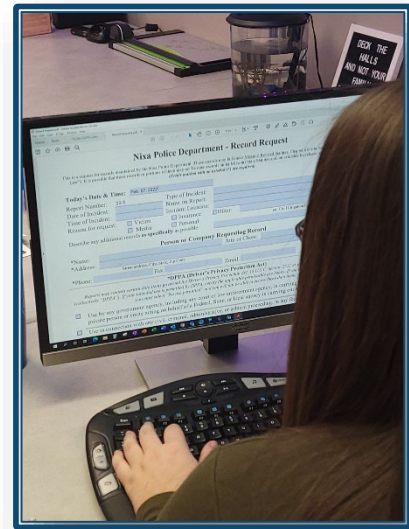


2019-2020-2021 Animal Calls



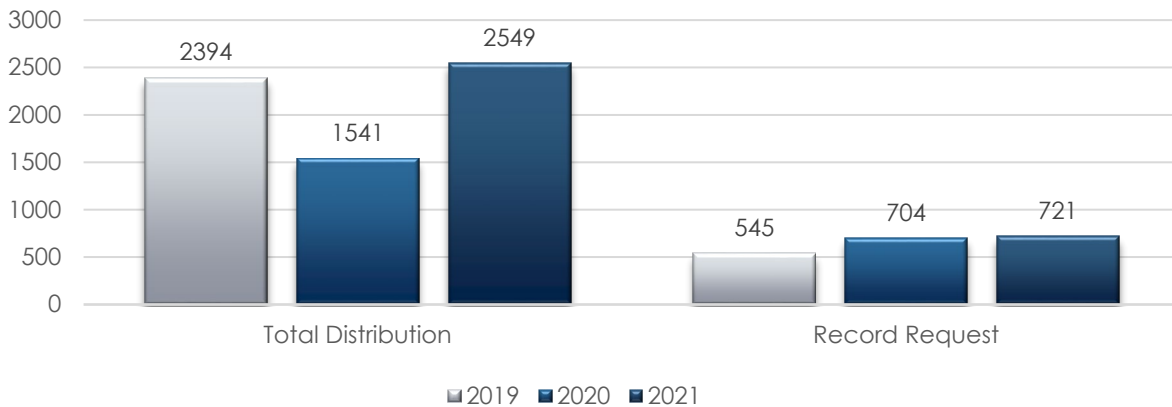
Police Services

The Police Services Unit is made up of four civilian employees who handle a variety of administrative functions that keep the department running. The duties for this unit include front office responsibilities, employment fingerprinting, evidence, records retention, records distribution for all Sunshine Requests, crime analysis, public events, crime reporting, warrant records, stolen property entries, validations, asset management records, and training records.



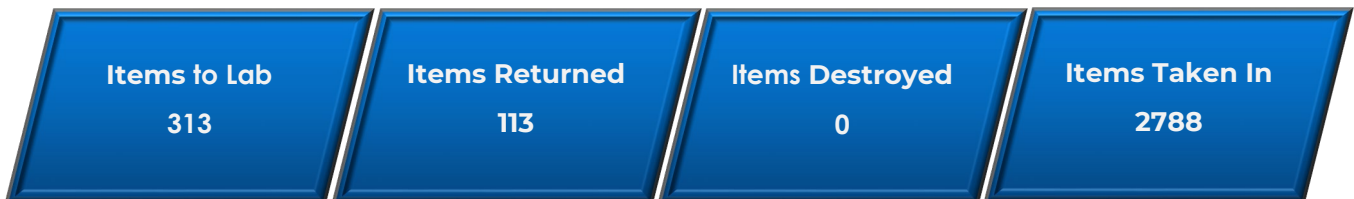
Records

The Police Services Unit also completes the distribution of police reports for law enforcement purposes. In 2021, the Unit processed 2,549 distribution requests with 721 of the distributions being Record Requests.



Property and Evidence

While property and evidence are different, they are both kept in a secure area and managed by the department's Evidence Custodian. The Evidence Custodian is responsible for storage, inventory, disposal, and return of all property seized and/or recovered by the Nixa Police Department.



ANNUAL AWARDS

Officer of the Year

Officer of the year is an honor awarded to a Police Officer of the Nixa Police Department by the Police Command Staff. This honor is awarded to an officer who has consistently exemplified the mission, vision, and values of the Nixa Police Department during the entire calendar year. The 2021 Officer of the Year is Officer James Gentry.

Officer James Gentry – Officer of the Year

Officer James Gentry has been selected as the 2021 Nixa Police Department Officer of the Year. Officer of the Year is an honor awarded to a Police Officer by the Command Staff to an officer who has consistently exemplified the mission, vision, and values of the Nixa Police Department during the entire calendar year.

Officer Gentry has been with the department since July of 2020. During his time here, he has developed a skill for fugitive apprehension and narcotic investigation through traffic enforcement. In 2021, Officer Gentry made 453 traffic stops, submitted 162 charges, made 63 arrests, and responded to 2,002 calls for service. Officer Gentry always has a positive attitude and a clear passion for law enforcement. His calm, professional demeanor is very effective in his work and is much like that of a very seasoned officer.



Officer Gentry's work ethic is very strong and sets a great example for other officers. He routinely strives to improve and become a better officer by seeking additional training and feedback from supervisors. In 2021 Officer Gentry was selected for a position on the Nixa Emergency Tactical Team as a SWAT Operator. He just recently completed Field Training Officer School and will soon be tasked with sharing his skill, knowledge, work ethic, and determination with recruits as he trains and prepares them to be Nixa Police Officers. Officer Gentry is a pleasure to work with and is well-liked in the community. We look forward to his many years of service to the citizens of Nixa.

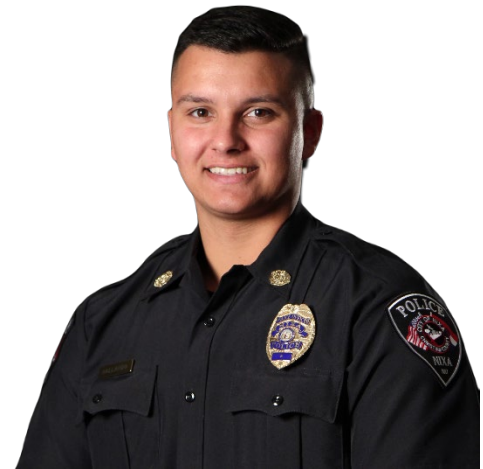


Award of Life Saving

Award of Life Saving is an Award for actions by an individual to provide lifesaving efforts to a person or persons who, without immediate assistance, would be in imminent risk of death. This year's Award of Life Saving is presented to Officer Sam Gallardo, Sergeant Josh Barton, Officer Daryck Wheeler, Officer Morgan Hill.

Officer Sam Gallardo – Lifesaving

On 06/26/2021, Officer Gallardo responded to an assault where a juvenile female had been stabbed several times and a male suspect was said to be armed with a gun. Upon his arrival, Officer Gallardo assessed the victim and applied a chest seal to the wound from his individual first-aid kit. His quick actions and ability to rise to his training to provide life-saving trauma care in the field, stabilized the victim so other officers could get her to an ambulance, where she was transported to the hospital and rushed into life-saving surgery.



Sergeant Josh Barton -Lifesaving

On June 26, 2021, officers responded to an assault where a juvenile female had been stabbed several times and a male suspect was said to be armed with a gun. Officers quickly arrived and assessed the situation and provided bleeding control. Sergeant Barton and the officers had called for EMS several times to the stabbing victim's location, who was losing blood and the stab wounds were near vital organs. EMS declined to come on scene as the scene was not secure. Sergeant Barton displayed decisiveness and presence of mind, regardless of his personal safety, and quickly made the decision to place the victim in his patrol car and transport her to the EMS staging area.



Officer Daryck Wheeler – Lifesaving

On 06/16/2021, at about 1900 hours, Officer Wheeler was investigating a LSOA when he was alerted to a child drowning in a nearby pool. Ofc. Wheeler ran to the child who was not breathing and had been removed from the pool. There, Ofc. Wheeler began to administer life-saving efforts which were successful, and the child began to breath on their own. The Paramedic who responded to the scene and transported the child to a nearby Hospital stated Ofc Wheeler's actions save the child's life. The Paramedic further commented had it been another 30 seconds, the child may have died.

**Officer Morgan Hill – Lifesaving**

On 12/31/2021, Officer Hill responded to a medical call for service where a male patient was not breathing and had fallen on the floor. Officer Hill arrived and started CPR. He provided life-saving efforts until emergency medical personnel arrived. Due to his quick response and medical aid, the patient regained a pulse and was able to be transported to the hospital where he was said to have survived the medical emergency.



Award of Merit

Award of Merit is an award for exceptional work above and beyond the call of duty to improve the overall service of the department. This year the police department awards Mallory Forschler and BJ Sartin the Award of Merit.

Police Clerk Mallory Forschler – Award of Merit

In February 2021, Mallory did a fantastic job in her direct supervisors and co-workers' absence during a court week. Mallory was able to work diligently and did not let the level of service drop during this stressful time period. Through the week Mallory held her ground handling everything thrown at her. Although she received help from other staff members, in the end it was because of Mallory's outstanding performance and exceptional work above and beyond the typical duties, that the front office kept running smoothly.



CSO Supervisor BJ Sartin – Award of Merit

On 12/22/2021, the Nixa Emergency Tactical Team responded to a call of a male suspected of felony domestic assault barricaded in his home taking a one-month-old baby hostage. Community Services Supervisor BJ Sartin was instrumental in helping the Nixa Emergency Tactical Team have a successful operation. BJ assisted the Nixa Emergency Tactical Team with driving both the Command Post and MRAP to the scene. During this time, he also picked up bail out bags that contained critical munitions equipment for potential use by the Nixa Emergency Tactical Team. Even after assisting coordination of these important assets BJ Sartin remained on scene and conducted traffic control at an intersection until the entire operations was completed. BJ Sartin exhibited outstanding performance and exceptional work above and beyond the typical duties and again was instrumental in helping the Nixa Emergency Tactical Team have a successful operation.



2021 HIGHLIGHTS

COPS CONNECTING WITH KIDS

Officer Forgey and other officers spent the year when not teaching or taking enforcement action meeting with the younger population of our community. Kids 13 and under were divided into 3 age groups and were asked to draw a picture of how they believe police officers help their community. Prizes included two Nintendo Switches donated by Game World and four bikes donated by Walmart of Nixa.



Friday Night Lights on the Square

On December 10, 2021 the Historic River District and the Ozark Chamber of Commerce hosted Emergency Responder Night on the Square. This year the department with help of the Nixa Citizens' Police Academy Alumni and Innovative Sound entered the departments DARE car into the decoration contest. Participants were able to vote using their cell phone for their favorite entry. After all the votes were in the Nixa Police Department DARE care took 1st place.



2021 Citizens Police Academy

The 2021 graduating class of the Nixa Citizens' Police Academy had the opportunity to learn about law enforcement and the behind-the-scenes work of the Nixa Police Department through an 11-week course. Participants were able to learn through hands-on experience and meeting members of our local agency.



Safest Cities

In May of 2021 safewise.com rated the City of Nixa as #13 on the Safest Cities in Missouri for 2021 according to SafeWise. All 12 cities ranked above Nixa have populations under 12,000. With an estimated population of 22,000+, Nixa is the highest rated city of its size.



CIT Certifications

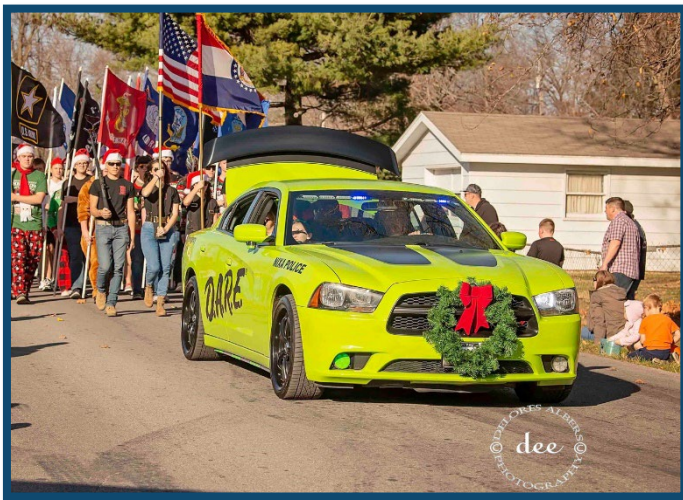
Crisis Intervention Team (CIT) programs are local initiatives designed to improve the way law enforcement and the community respond to people experiencing mental health crises. They are built on strong partnerships between law enforcement, mental health provider agencies and individuals and families affected by mental illness. In 2021 four officers from patrol attended and completed certification. The department now has seven officers who are certified.

NTOA Conference

In September of 2021, NETT had the opportunity to travel to Kansas City, MO to attend the National Tactical Officers Association National Law Enforcement Operations Conference. While there, our officers were able to attend a week of various seminars, debriefs, and training sessions. They were also able to interact and network with tactical teams from across the nation and several other countries.



Christmas Parade



Leading the way for the annual Nixa Christmas Parade was Officer Forgey and the DARE. What a beautiful day in December where the temperature high was 70 degrees.



Shop with a hero

In 2021, we participated in two Shop with a Hero events. Academy Sports and Walmart of Nixa both hosted a Shop with a Hero event. The Nixa Police Department teamed up with the other first responders from the area to help spread Christmas cheer. Both programs allowed children, with the help of a hero and funding from Academy Sports and Walmart to purchase Christmas presents for them and their families.



**For questions or more information about this publication
contact the Nixa Police Department at:**

Nixa Police Department

Mailing Address: PO Box 395

Physical Address: 715 W Center Circle

Nixa, MO 65714

417-725-2510

www.nixapolice.com

www.joinnixapd.com

<https://www.facebook.com/NixaPolice/>





Issue: FIRST READING – COUNCIL BILL #2022-031
AUTHORIZING AGREEMENTS WITH MJMEUC

Date: 03.11, 2021

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

Background

The Missouri Joint Municipal Electric Utility Corporation (MJMEUC), the electric corporation arm of the Missouri Public Utility Alliance (MPUA) is in the process of purchasing the electric transmission assets we sold to Gridliance in 2018. For them to complete the sale, they have asked staff for assistance on several associated items. Over the past few months, staff has been working with their legal counsel and engineering consultant to assist with accurate information about the system and to develop new agreements necessary for system operations by both parties.

Analysis

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

To complete the upcoming closing of the sale of these same assets from Gridliance to MJMEUC, new agreements need to be in place for continued operations as our systems are interconnected and MJMEUC has yet to employ a full line and substation crew of their own. As with the Gridliance agreements, we not only work within their substation property, we have equipment that is also shared for operational purposes.

Staff has worked very close with MJMEUC consultants to develop the four proposed agreements (attached) that would be authorized by this Ordinance. To date, we have met to discuss and evaluate every possible aspect of operations, assets, materials, our capabilities and equipment, how to coordinate operations for various functions, testing, patrolling, as well as insurance requirements, safety protocols, security and even potential future upgrades they will want to make.

The attached Council Bill contains sections for each of the agreements requiring action. The agreements are listed as Council Bill Exhibits as follows:

Section 1. Council Bill Exhibit A – Franchise Agreement: Because most of the transmission line is located within a city street or MoDOT right-of-way, there are no easements for those line segments. A Franchise Agreement will allow MJMEUC to operate their system within our public right-of-ways. Authorized by the Nixa City Charter, City Council may grant a franchise for this purpose for up to 20 years. At 20 years it could be renewed by City Council for continued operations based on MJMEUC meeting the terms of the franchise. A Franchise Agreement for this purpose is included with this authorization.



Section 2 Council Bill Exhibit B - Lease Agreement: This is necessary for us to continue to operate and maintain our distribution equipment located within their substation property. This equipment includes the step-down transformer, high side and low side buss and distribution breakers and reclosures. We also have shared equipment such as the control buildings and numerous systems located in the buildings. Previously our use of their property was “traded in-kind” for our work to complete certain maintenance functions for Gridliance such as daily monitoring, grounds maintenance and oversight of some equipment maintenance.

In the attached version with MJMEUC, we have actually split out the areas we need to use and will pay rent for the use of the property. They in-turn will pay us for the operations and maintenance services which is covered in the O&M Agreement discussed below.

Rent has been figured by calculating the percent of actual square footage we will use (see Exhibit A) and paying 12% of the value of our portion. As example, we use 1,100 square foot of the total 28,500 square feet at the Tracker substation, which is 3.86% of the total land area. The value of the improved substation property is \$124,491. Therefore, we would pay 12% of the value of 3.86% of area assigned to us (see Exhibit A). Our total annual rent for the four substations will be \$5,751.26.

Section 3 Council Bill Exhibit C – Operations and Maintenance Agreement: This agreement replaces the old Gridliance Master Services Agreement. Because we are the local presence and MJMEUC does not have their own operating crews yet, we will complete certain O&M functions somewhat as a contract operator for MJMEUC. This works very well for us as we will be getting reimbursed for work we were doing as “rent offset” before. Though I do not have the actual cost yet, we will be made whole and not subsidize MJMEUC. We anticipate that our O&M reimbursement will exceed what we will pay in annual rent. Charges will be based on a labor schedule (Exhibit E) and equipment rental per the FEMA equipment value for mutual aid (Exhibit F). Materials will be supplied by MJMEUC. In the event we need to supply any materials they don’t have in stock, such as in an emergency, we would charge them the actual replacement cost plus an administrative fee for restocking our materials.

It is both parties’ intention that MJMEUC will eventually take on the majority of this work when they have developed the equipment and crew size necessary to take it on. I do anticipate however that this will be several years in the future.

Section 4 Council Bill Exhibit D - Termination of Substation Easement Agreement is simply to terminate the substation easement agreement between Nixa and Gridliance. This action will be required by the Recorder of Deeds. It is being replaced by the Exhibit B Lease Agreement above.

Section 5 Council Bill Exhibit E - Assignment of Easements is necessary because the exhibit in the previous assignment from Nixa to Gridliance did not list any easements. So, Gridliance essentially has no easements to assign. Since Nixa still owns them, we will need to approve this action to transfer them to MJMEUC.



Recommendation

Staff recommendation will be to approve CB@2022-031 upon second reading at your next meeting. Until then, we are available to answer and questions or concerns you may have.

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE
2 MAYOR TO EXECUTE A FRANCHISE AGREEMENT, LEASE AGREEMENT, AN
3 OPERATIONS AND MAINTENANCE AGREEMENT, AND OTHER RELATED
4 AGREEMENTS WITH THE MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY
5 CORPORATION TO FACILITATE THE TRANSFER OF CERTAIN ELECTRIC
6 TRANSMISSION ASSETS TO SAID CORPORATION.
7
8

9 **WHEREAS** the Missouri Municipal Electric Utility Corporation (“MJMEUC”) is in
10 the process of purchasing certain electric transmission assets sold to Gridliance by the
11 City in 2018; and
12

13 **WHEREAS** over the past several months, City staff and representatives from
14 MJMEUC have been negotiating certain instruments to ensure that the electric system
15 will operate in the best interest of both the City and MJMEUC once MJMEUC acquires
16 the electric transmission assets; and
17

18 **WHEREAS** three agreements have been agreed to in principle by City staff and
19 MJMEUC staff, these agreements are a Franchise Agreement, a Lease Agreement, and
20 an Operations and Maintenance Agreement; and
21

22 **WHEREAS** Section 82.230 RSMo., grants constitutional charter cities the
23 authority to grant, regulate, and control the exercise of any public franchise or privilege
24 involving the use of the streets or public ways of such cities; and
25

26 **WHEREAS** the City Council, pursuant to Article XI of the City Charter, is
27 authorized to grant public franchises or privileges; and
28

29 **WHEREAS** Section 70.220 RSMO., authorizes the political subdivisions of the
30 State to contract and cooperate with one another for the planning, development,
31 construction, acquisition or operation of any public improvements or facility, or for a
32 common service; and
33

34 **WHEREAS** for the reasons stated herein, the Council desires to authorize the
35 execution of the Agreements and Instruments referenced herein.
36

37 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
38 **NIXA, AS FOLLOWS, THAT:**
39

40 **SECTION 1:** The Mayor, or designee, is hereby authorized to execute the
41 “Franchise Agreement” attached hereto, and incorporated herein by this reference, as
42 “Council Bill Exhibit A,” with the Missouri Joint Municipal Electric Utility Commission. Said
43 Franchise Agreement shall be in substantially similar form as the document attached
44 hereto as “Council Bill Exhibit A.”
45

46 SECTION 2: The Mayor, or designee, is hereby authorized to execute the "Lease
47 Agreement" attached hereto, and incorporated herein by this reference, as "Council Bill
48 Exhibit B," with the Missouri Joint Municipal Electric Utility Commission. Said Lease
49 Agreement shall be in substantially similar form as the document attached hereto as
50 "Council Bill Exhibit B."
51

52 SECTION 3: The Mayor, or designee, is hereby authorized to execute the
53 "Operations and Maintenance Agreement" attached hereto, and incorporated herein by
54 this reference, as "Council Bill Exhibit C," with the Missouri Joint Municipal Electric Utility
55 Commission. Said Operations and Maintenance Agreement shall be in substantially
56 similar form as the document attached hereto as "Council Bill Exhibit C."
57

58 SECTION 4: The Mayor, or designee, is hereby authorized to execute the
59 "Termination of Substation Easement Agreement" attached hereto, and incorporated
60 herein by this reference, as "Council Bill Exhibit D," with the Missouri Joint Municipal
61 Electric Utility Commission. Said Termination of Substation Easement Agreement shall
62 be in substantially similar form as the document attached hereto as "Council Bill Exhibit
63 D."
64

65 SECTION 5: The Mayor, or designee, is hereby authorized to execute the
66 "Assignment of Easements" instrument attached hereto, and incorporated herein by this
67 reference, as "Council Bill Exhibit E," with the Missouri Joint Municipal Electric Utility
68 Commission. Said instrument shall be in substantially similar form as the document
69 attached hereto as "Council Bill Exhibit E."
70

71 SECTION 6: The Mayor and the officers of the City are hereby authorized to do all
72 things necessary or convenient to carry out the terms and intent of this Ordinance.
73

74 SECTION 7: This Ordinance shall be in full force and effect from and after its final
75 passage by the City Council and after its approval by the Mayor, subject to the provisions
76 of section 3.11(g) of the City Charter.
77

78 ADOPTED BY THE CITY COUNCIL THIS _____ DAY OF _____ 2022.

79
80 ATTEST:

81
82 _____
83 CITY CLERK

84
85 _____
86 PRESIDING OFFICER

87 APPROVED BY THE MAYOR.

88
89 ATTEST:

90
91 _____
CITY CLERK

MAYOR

COUNCIL BILL NO. 2022-031

ORDINANCE NO. _____

92 APPROVED AS TO FORM:
93
94 _____
95 CITY ATTORNEY

DATE OF APPROVAL

COUNCIL BILL EXHIBIT A

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (“Agreement”) is made this _____ day of _____, 20____ (“Effective Date”), by and between the **CITY OF NIXA**, in the County of Christian, State of Missouri, a Constitutional Charter City, with its principal office located at 715 W. Mt. Vernon St., Nixa, Missouri 65714 (“City”), and the **MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**, a body corporate and politic of the State of Missouri, organized as a joint municipal utility commission pursuant to Section 393.700 *et seq.* RSMo, with its principal office located at 2200 Maguire Blvd., Columbia, Missouri 65201 (“MJMEUC”).

RECITALS

A. MJMEUC is an entity authorized by state statute and by the Missouri Public Service Commission (“MOPSC”) to construct and operate an electrical transmission line providing electrical power and energy, the provision of which requires the installation, operation and maintenance of power poles and other related Facilities to be located within the public right of way and within easements of the City or on land owned by MJMEUC.

B. It is agreed and acknowledged that this franchise agreement grants to MJMEUC the right, privilege, and authority to construct, reconstruct, access, repair, expand, improve, alter, replace, operate, use, inspect, maintain, and remove MJMEUC’s Facilities on property owned by the City, the City’s public right of way, and easements the City is authorized to utilize for utility purposes (collectively, the “Public ROW”).

C. Pursuant to Article XI of the City’s Charter, the City Council is authorized to grant such Franchise following public hearing, and it is the City’s policy to permit such use of the Public ROW for provision of utility services, which includes electrical transmission services, and further finds it to be in the public interest to grant permission to MJMEUC to construct, reconstruct, access, repair, expand, improve, alter, replace, operate, use, inspect, maintain, and remove electrical transmission power poles and other related facilities, subject to the terms and conditions outlined below.

THE PARTIES THEREFORE AGREE:

1. **Definitions.** For the purpose of this Agreement, capitalized terms have the meaning specified in this section, and if not defined herein, their ordinary meaning:

“Agreement” means this Franchise Agreement, together with Appendices and Exhibits attached to this Agreement, if any, and any amendments or modifications thereto.

“Applicable Law” or “Law” means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations.

“Authorizations” means any permissions MJMEUC must have in addition to this Agreement to construct, install, or maintain Facilities or provide services, which may include licenses, permits, zoning approvals, variances, exemptions, grants of authority to use private rights of way or easements or Facilities, agreements to make attachments to poles, ducts, conduits, towers, buildings, manholes, and the like, and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

“Authorized Facilities” means Facilities that comply with the requirements of this Agreement, and the City Code or Ordinances, and have all necessary Authorizations in full force and effect.

“Construction and Maintenance” and variations of those terms refer to any activity performed in the Public ROW with respect to the Facilities, including, but not limited to, constructing, reconstructing, accessing, repairing, expanding, improving, altering, replacing, operating, using, inspecting, maintaining, and removing.

“Easement(s)” means covenants running with real property and land affected and which are binding on the landowner, the City, and MJMEUC, together with their mortgagees, assignees, and respective successors and assigns, heirs, personal representatives, tenants, or persons claiming by, through or under them. In furtherance of the foregoing, City and MJMEUC agree and acknowledge that any right, permission, or authority granted under this Agreement shall not and cannot exceed the right, permission, or authority granted under the original document of conveyance of rights to the City.

“Emergency” means a situation exists which, in the reasonable discretion of City or MJMEUC, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property or a service outage.

“Facilities” means any and all equipment and installations of any kind acquired from GridLiance High Plains, LLC or under the control of MJMEUC that are reasonably necessary and appropriate for the transmission of electrical energy within or without the City including, but not limited to, poles, towers and structures, such wires and cables as MJMEUC shall from time to time suspend therefrom or bury, foundations, footings, attachments, anchors, ground connections, communications devices, antennas, conduit, circuits, vaults, switch cabinets, transformers, or other equipment, accessories, and appurtenances as MJMEUC may deem necessary or desirable in connection therewith.

“Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good

business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those Practices required by the Federal Power Act section 215(a)(4).

“Public right of way” or “Public ROW” means the area upon, over, along and across the surface of and the space above and below the streets, alleys, roads, highways, sidewalks, bridges, City park property and other public ways over which the City has jurisdiction, as well as any other dedicated or acquired easements or interest of the City in any real property for right of way or other utility purposes.

2. **Grant.** The City represents and covenants that it has previously acquired rights for the construction and maintenance of an electric transmission line and the associated facilities needed to operate such electric transmission line from third-party landowners and has full rights and power to grant and convey such rights to MJMEUC as herein provided. Subject to the terms and conditions of this Agreement, MJMEUC is hereby granted the nonexclusive right to Construct and Maintain its Authorized Facilities within the Public ROW, which rights shall be exercised at MJMEUC’s sole cost and expense, and which shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of records which may affect the Public ROW. MJMEUC may not grant any person the right to use or occupy the Public ROW. The grant does not extend to any other service, and MJMEUC may be required to obtain an additional franchise, license, permit or an amendment to this Agreement before using and occupying the Public ROW to provide additional services.

The parties understand and agree that certain Authorized Facilities are currently located within City park property and other public ways over which the City has jurisdiction. All such Authorized Facilities that exist as of the date of this Agreement may continue to be maintained in their current location, including constructing any substantially similar replacements of such Authorized Facilities. MJMEUC shall obtain the City’s written consent prior to constructing any new Authorized Facilities within City park property.

3. **Franchise Fee.** As consideration for this Agreement, MJMEUC has paid the City Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged. During the term of this Agreement, no other fees shall be payable by MJMEUC with respect to the rights granted under this Agreement, except for those fees specifically set out in Paragraph 10 of this Agreement.

4. **Term.** The initial term of this Agreement shall be for a period beginning on the date MJMEUC acquires the Facilities from GridLiance High Plains, LLC and ending twenty (20) years thereafter, but in accordance with City’s Charter Section 11.4.

Upon termination of this Agreement, MJMEUC’s rights to use and occupy the Public ROW are terminated. Notwithstanding the foregoing, all of MJMEUC’s duties related to use of the Public ROW, and its duties to indemnify the City, shall survive

termination and continue thereafter until the Facilities are removed from the Public ROW, or MJMEUC's obligations terminate by other written agreement of the Parties.

5. Compliance with Law and Other City Regulations.

A. The authority of MJMEUC to use and occupy the Public ROW shall always be subject and subordinate to the reasonable non-discriminatory, generally applicable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public ROW, provided that any such exercise may not be unreasonable or discriminatory. MJMEUC shall be subject to all Applicable Laws now or hereafter adopted including Article XI of the City's Charter.

B. MJMEUC shall obtain and is responsible for any necessary permit, license, certification, grant, registration, or any other Authorization required by any appropriate governmental entity, including, but not limited to, the City, Federal Energy Regulatory Commission (FERC), Missouri Public Service Commission (MO PSC), Missouri Department of Natural Resources (DNR), or Missouri Department of Transportation (MODOT) with respect to Construction and Maintenance of Facilities within the Public ROW. MJMEUC shall also comply with all Applicable Laws, including, but not limited to, those relating to the construction in and use of the Public ROW. The foregoing compliance obligations shall be subject to MJMEUC's right to challenge in good faith such Applicable Laws.

C. Nothing in this Agreement shall be construed as a waiver of any laws, regulations, or rules of the City or of the City's right to require MJMEUC to secure the appropriate Authorizations, or to pay the applicable fees associated with same. Nothing in this Agreement shall act as a waiver of the City's police powers.

D. All work involved in the Construction and Maintenance of the Facilities shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality and pursuant to Good Utility Practice. MJMEUC will comply with any reasonable City requirements for identification of Facilities and for identification of employees, subcontractors, vehicles, and equipment when performing work within the Public ROW.

E. Notwithstanding the foregoing, in the event Emergency repairs to Facilities within the Public ROW are necessary, MJMEUC may conduct Emergency work at any time and must provide the City with written or oral notice of Emergency work as soon as reasonably practicable, but in no event later than five business days after the Emergency work has commenced.

F. City shall not require the replacement, transfer or removal of any MJMEUC Facilities, except in the event of an Emergency. In the event of an

Emergency, MJMEUC shall replace, transfer, or remove its Facilities at its sole cost.

6. Use of Public ROW.

A. Subject to the provisions of this Agreement, MJMEUC shall have the right to Construct and Maintain its Facilities within the Public ROW. The Facilities shall be so Constructed and Maintained so as not to obstruct or hinder the usual travel or public safety within the Public ROW or obstruct the legal use by other utilities or other non-exclusive users of the Public ROW, and to maximize efficient use of the Public ROW, and all installations of the Facilities under hard surfaces shall be installed in accordance with plans submitted to and approved by the City. For purposes of this requirement, the term “hard surfaces” shall mean concrete, asphalt, or any other hard surface with similar structural characteristics. In no event may Facilities be Constructed and Maintained in a manner that creates a hazardous condition, or a condition that is inconsistent with Applicable Laws.

B. MJMEUC shall participate in the Missouri One Call utility location program with respect to all of its Facilities in the Public ROW. MJMEUC and its contractors shall coordinate with the City with respect to the placement of any new Facilities in a manner that minimizes adverse impact on public improvements, the Public ROW, and users of them, as reasonably determined by the City in a non-discriminatory, generally applicable manner. Further, City may require MJMEUC to coordinate construction activities with other entities occupying the Public ROW whenever commercially reasonable. Where placement is not otherwise regulated, the Facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by the public improvements and the users of the same.

C. City shall have commercially reasonable access to inspect any work conducted by MJMEUC to Construct or Maintain the Facilities within the Public ROW.

D. MJMEUC shall keep and maintain accurate records and as-built drawings depicting accurate horizontal and vertical locations of the Facilities within the Public ROW, and such records and drawings shall be promptly provided to the City upon request.

E. Except for additional Construction and Maintenance required by FERC or Southwest Power Pool, Inc. (“SPP”), or as necessary in the event of any Emergency, prior to installation of any additional Facilities, MJMEUC will submit to the City for approval all designs for the Construction and Maintenance of such Facilities in strict compliance with all non-discriminatory, generally applicable regulations and standards required by the City.

7. **Duty of Competent Supervision and Performance.** The Parties further understand and agree that, in the performance of work under this Agreement, MJMEUC and City agents, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other electrical Facilities. The Parties understand and intend that MJMEUC's use of the Facilities will not be interrupted during the continuance of this Agreement, except in Emergencies. MJMEUC and City shall ensure that their employees, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, contractors, and subcontractors; as well as employees, agents, contractors, and subcontractors of the other Party; and the general public, from harm or injury while performing work within the Public ROW. In addition, MJMEUC and City shall furnish their employees, agents, contractors, and subcontractors with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.

MJMEUC and City agree that in Emergency situations in which it may be necessary to de-energize any part of the Facilities, MJMEUC and City shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the Facilities are made safe. When circumstances require de-energizing of any Facilities, notice shall be given in advance to MJMEUC. Only MJMEUC is permitted to perform the de-energizing process.

8. **Limitation on Use of Portion of ROW and Easements.** The City shall have the authority to prohibit the use or occupation of a specific portion of the Public ROW by MJMEUC due to a reasonable public interest necessitated by public health, safety, and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include, but not be limited to, the following:

A. The prohibition is based upon a recommendation of the City's Public Works Director city engineer, is related to public health, safety and welfare, and is nondiscriminatory;

B. The City reasonably determines, after affording MJMEUC reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or

C. The specific portion of the Public ROW that MJMEUC seeks to use and occupy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state, or federal law.

9. **Repair or Damage to ROW or Easement.** MJMEUC shall promptly repair all damage to the Public ROW, including, but not limited to, any public drain, sewer, catch basin, water pipe, pavement or other public improvement caused by the activities of

MJMEUC, or of any agent, affiliate, employee, contractor or subcontractor of MJMEUC, while occupying, installing, repairing or maintaining Facilities in the Public ROW and will return the Public ROW, including, but not limited to, any public drain, sewer, catch basin, water pipe, pavement or other public improvement to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the City. If MJMEUC fails to make the repairs required by the City, the City may make those repairs and MJMEUC will promptly reimburse the City for all such costs of the repairs.

10. **Fees.** The City may, at its sole discretion, assess any of the following fees against MJMEUC for use and occupancy of the Public ROW, provided that such fees reimburse the City for its reasonable, actual and verifiable costs of managing the Public ROW, and are imposed on a nondiscriminatory manner:

A. A permit fee in connection with issuing any construction permit to set equipment or fixtures in the Public ROW to compensate the City for issuing, processing and verifying the permit application;

B. An excavation fee for each street or pavement cut to recover the costs associated with Construction and Maintenance activity of MJMEUC, its assigns, contractors and subcontractors with the exception of Construction and Maintenance activity directly related to improvements for the health, safety and welfare of the public; provided, however, imposition of such excavation fee must be based upon a regional specific or other appropriate study establishing the basis for such costs which take into account the life of the City street prior to the Construction and Maintenance activity and the remaining life of the City street. Such excavation fee is expressly limited to activity that results in an actual street or pavement cut; and

C. Repair and restoration costs associated with repairing and restoring the Public ROW because of damage caused by MJMEUC, its assigns, contractors, and/or subcontractors in the Public ROW.

D. Nothing herein shall be construed as limiting the City's ability or authority to impose additional fees by ordinance provided that such fees are in accordance with State law.

11. **Indemnification and Hold Harmless.**

A. It shall be the responsibility of MJMEUC to take adequate measures to protect, maintain, and defend its Facilities in the Public ROW from harm or damage. If MJMEUC fails to accurately or timely locate Facilities when requested, in accordance with the Missouri One Call program, MJMEUC shall have no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures, including calling Missouri One Call for

utility locations and observing marker posts when working near MJMEUC's Facilities.

B. MJMEUC and City shall each defend, indemnify, and hold the other Party and its officers, board members, council members, commissioners, representatives, employees, agents, and contractors harmless against any and all claims, lawsuits, judgments, costs, liens, losses, damages, fines, taxes, special charges, penalties, payments, expenses, fees (including reasonable attorneys' fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence or intentional misconduct of that Party, or any agent, officer, director, representative, employee, affiliate, contractor, or subcontractor of that Party, or its respective officers, agents, employees, directors or representatives, while installing, repairing, operating, or maintaining facilities in the Public ROW. MJMEUC and City further release the other Party from any liability claims, demands, actions and/or causes of action, whatsoever arising out of or related to any loss, damage, or injury (including death) that may be sustained by the other Party or the other Party's employees, agents, contractors, subcontractors, or invitees, while the privileges granted by this Agreement are being exercised, and further, MJMEUC and City agree to hold the other Party harmless from the same.

C. In the event MJMEUC and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Missouri without, however, waiving any governmental immunity available to the City or MJMEUC under state law and without waiving any defenses of the Parties under state or federal law. This Section 11 is solely for the benefit of the City and MJMEUC and does not create or grant any rights, contractual or otherwise, to any other person or entity.

12. **No Consequential Damages.** Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other for any consequential, incidental, indirect, liquidated, punitive or special damages, or lost revenue, or lost profits to any person arising out of this Agreement or the performance or nonperformance of any provision of this Agreement, even if such Party has been informed of the possibility of such damages.

13. **Insurance.**

A. During the term of this Agreement, MJMEUC shall obtain and maintain insurance coverage for the duration of this Agreement, at its sole expense, with financially reputable insurers that are licensed to do business in the State of Missouri. MJMEUC shall obtain and maintain not less than the following insurance:

- i. General Liability or Excess General Liability Insurance. MJMEUC shall maintain coverage of at least One Million Dollars (\$1,000,000) on an occurrence basis, with an aggregate of Two Million Dollars (\$2,000,000), for bodily injury (including death), property damage (including loss of use). Such coverage shall provide coverage for products and completed operations, blanket contractual, broad form property damage, and independent contractors.
- ii. Workers Compensation. MJMEUC shall maintain coverage as required by law and Employer's Liability Insurance with a limit of liability of not less than One Million Dollars (\$1,000,000) for each accident, disease each employee, with a One Million Dollars (\$1,000,000) disease policy limit. In the event MJMEUC contracts or subcontracts the Services to be performed, MJMEUC shall require the City and Approved Subcontractor, as applicable, to fulfill the worker's compensation terms of this Agreement.
- iii. Business Auto Liability Insurance. MJMEUC shall maintain coverage for MJMEUC's owned, non-owned, leased, and hired vehicles with limits of at least One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage for each accident when any auto is used in performing services on or within the Public ROW.
- iv. Property Coverage. MJMEUC shall maintain all risk Property Coverage with respect to the substations, with such coverage to be subject to deductibles and sublimits at levels deemed appropriate by MJMEUC's governing body.
- v. Pollution Liability Insurance. MJMEUC shall maintain coverage of at least Five Million Dollars (\$5,000,000) for each occurrence and in the aggregate. Coverage to include, but not limited to, bodily injury, property damage, cleanup expenses, and defense costs. Policy to be written on a claims-made basis, with coverage to be maintained and remain in effect for at least five (5) years beyond the expiration or termination of this Agreement.
- vi. Umbrella or Excess Liability Insurance. MJMEUC shall maintain coverage of at least Five Million Dollars (\$5,000,000) combined single limit each occurrence and in the aggregate. Coverage to include excess of limits provided by General Liability, Employers Liability, and Business Automobile insurance. The aggregate limit shall apply separately to each annual policy period.

B. MJMEUC shall, as a material condition of this Agreement, prior to the commencement of any work in the Public ROW, deliver to the City a certificate of insurance, satisfactory in form and content to the City, evidencing that the above

insurance is in force. MJMEUC shall timely notify the City if the insurance is cancelled or materially changed with respect to areas and entities covered.

C. No policies of insurance required to be obtained by MJMEUC or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with the City, or (2) exclude coverage of liability arising from excavating, collapse, or underground work.

D. MJMEUC shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program.

14. **Notification of Claims.** MJMEUC and City shall promptly advise the other in writing of any known claim or demand against MJMEUC or the City related to or arising out of MJMEUC's activities or Facilities in the Public ROW.

15. **Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed to be, a waiver for any purpose by the City or by MJMEUC of any applicable state limits on municipal liability or governmental immunity.

16. **Termination.** City will have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of all of the Facilities from the Public ROW, (ii) if MJMEUC's Authorizations with respect to all of the Facilities and/or provision of Service are terminated, revoked, expired, or otherwise abandoned, or (iii) in the event of MJMEUC's breach of this Agreement.

A. In the event of MJMEUC's breach of this agreement, the City shall have the right to terminate this Agreement in accordance with the following procedure. The City shall first serve a written notice upon MJMEUC, setting forth in detail the nature of the breach, and MJMEUC shall have thirty (30) days thereafter to cure such breach. If the breach remains uncured at the end of the thirty (30) day period, the City may terminate this Agreement by serving written notice upon MJMEUC. If curing such default has commenced and MJMEUC is diligently proceeding to complete performance to the reasonable satisfaction of the City, but the cure cannot be reasonably completed within thirty (30) days, MJMEUC shall be granted additional time to complete such cure as is mutually agreed upon by the Parties. In addition, the City may pursue any other remedies available to it at law or equity.

B. The following are breaches of this Agreement: (1) MJMEUC fails to perform or comply with any of the conditions or covenants of this Agreement and such failure continues for a period of thirty (30) days; (2) MJMEUC fails to pay any sums due to the City under this Agreement; or (3) MJMEUC's acts, or omissions, related to the subject matter of this Agreement, create an imminent hazard to persons or properties which MJMEUC cannot or does not promptly correct.

17. **Removal of Facilities.** Following the termination of this Agreement for any reason, or in the event MJMEUC ceases to operate and abandons all of the Facilities, then upon the City's written request, MJMEUC shall within one (1) year, remove all Facilities from the Public ROW and restore the Public ROW in as good condition as it was as of the effective date of this Agreement.

18. **Release, Vacate, Sale, Conveyance, or Abandonment of Public ROW.** In the Event the City shall release, vacate, sell, convey, or abandon any portion of its Public ROW in which MJMEUC Facilities are located, then this Franchise Agreement shall apply to the replacement Public ROW. City shall provide to MJMEUC notice of such replacement rights and shall provide evidence in recordable form of the replacement Public ROW including a legal description and drawing.

19. **Transfer and Assignment.** MJMEUC agrees that this Agreement, along with the rights and duties under this Agreement, shall not be assigned or transferred, either in whole or in part, or leased or sublet in any manner, without the prior written consent of the City. MJMEUC will give the City notice of such a proposed transfer or assignment and make itself available to respond to reasonable inquiries by the City. This provision shall not apply to sales of property or equipment in the normal course of business. No consent from the City shall be required for a transfer in trust, mortgage, or other instrument used to secure an indebtedness. Any transfer or assignment shall only be to a utility or electrical service provider, provided the transfer or assignment does not create any additional burden upon the Public ROW or adversely affect the City's interests under this Agreement. Any assignee or transferee must accept, by becoming a signatory to this Agreement, all obligations of MJMEUC, as well as take responsibility for all acts and omissions of MJMEUC known and unknown. Any attempted assignment of this Agreement without satisfying the requirements of this section shall be void.

20. **Receivership, Foreclosure or Act of Bankruptcy.**

A. All rights, privileges and authority granted hereunder to MJMEUC shall, at the option of the City, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or trustee to take over and conduct the business of MJMEUC whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receiver or trustee shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all breaches under this Agreement.

B. In the case of foreclosure or other judicial sale of MJMEUC's Facilities, or any part thereof, including or excluding this Agreement, the City may serve notice of termination upon MJMEUC and the successful bidder at such sale, in which event this Agreement herein granted and all rights and privileges of this

Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless: (1) the City shall have approved the transfer of this Agreement to the successful bidder, as and in the manner in this Agreement provided; and (2) such successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions to this Agreement.

21. **Reservation of Rights.** In entering into this Agreement, neither the City's nor MJMEUC's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Agreement, neither the City nor MJMEUC waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or MJMEUC may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of this Agreement or any present or future laws, ordinances, rulings, and/or regulations which may be the basis for the City and MJMEUC entering into this Agreement.

22. **Notices.** MJMEUC shall at all times maintain on file with the City a point of contact or a telephone number that allows the City to reach an authorized person, who shall be available at all times and qualified to respond to the City's concerns or requests regarding this Agreement and to act on behalf of MJMEUC in the event of an Emergency. Emergency notice by MJMEUC to the City may be made by telephone to Director of Utilities for the City. All other notices between the Parties shall be in writing and shall be made by personal delivery, by certified mail, return receipt requested, or by an overnight delivery service providing proof of delivery.

City:

City of Nixa, Missouri
Attn: _____
715 W. Mt. Vernon St.
Nixa, Missouri 65714

With Copy to:
Nicolas Woodman
City Attorney
715 W. Mt. Vernon St.
Nixa, Missouri 65714

MJMEUC:

MJMEUC
Attn: _____
2200 Maguire Blvd.,
Columbia, Missouri 65201

With Copy to:
Douglas Healy
General Counsel
3010 E. Battlefield, Suite A
Springfield, MO 65804

23. **Failure to Enforce.** The failure of either Party to enforce and remedy any noncompliance with the terms and conditions of this Agreement shall not constitute a waiver of rights nor a waiver of the other Party's obligations as provided herein.

24. **Materials and Claims/Liens.** All materials furnished for any work done in or on the Public ROW by MJMEUC shall be at MJMEUC's sole cost and expense. MJMEUC agrees to protect the Facilities installed in the Public ROW and the City, from all claims of contractors, laborers, and materialmen pertaining to such work. MJMEUC

shall promptly pay all contractors and materialmen furnishing labor, materials, or services with respect to any work performed by or on behalf of MJMEUC in the Public ROW, so as to minimize the possibility of a lien attaching to any property of the City. Should any such lien be made or filed by reason of such work performed by or on behalf of MJMEUC, MJMEUC shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

25. **Severability.** If any clause, sentence, or section of this Agreement is or shall become invalid under any Applicable Law, regulation, or rule of law or held to be invalid by a court of competent jurisdiction, such invalidity shall not materially alter the essence of this Agreement to either Party, and such provision shall not affect the validity of the remainder, as a whole or any part hereof, other than the part declared invalid.

26. **Force Majeure.** If either the City or MJMEUC is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fires, floods, earthquake, or like acts of nature, war, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including, without limitation, epidemic or pandemic, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, supply chain delays or any other such cause not attributable to the negligence or fault of the Party delayed in performing the acts require by this Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected Party shall endeavor to remove or overcome such inability as soon as reasonably possible.

27. **Applicable Law.** This Agreement, the performance hereunder, and all suits and special proceedings hereunder shall be interpreted according to the laws of the State of Missouri. Venue will only lie in a State Court within Boone County, Missouri.

28. **Modification.** This agreement shall not be modified or amended except by written instrument executed by the City and MJMEUC, or its successors, transfers, or assigns.

EXECUTED the day and year first above stated.

[Remainder of this page left blank. Signature pages follows].

CITY OF NIXA, MISSOURI

By: _____
Brian Steele, Mayor

ATTEST:

Cindy Robbins, City Clerk

ACKNOWLEDGEMENT

STATE OF MISSOURI

COUNTY OF CHRISTIAN

On this ___ day of _____, 20___, before, the undersigned authority, a Notary Public in and for said State and County, personally appeared Brian Steele and Cindy Robbins, who, being duly sworn according to law, acknowledged they are the Mayor and City Clerk of the City of Nixa, Missouri, and that as such Mayor and City Clerk, being authorized to do so, executed the Franchise and Easements Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunder set my hand and official seal.

Notary Public

My Appointment Expires:

[Signatures continue on following page.]

**MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION
MJMEUC**

By: _____
John Twitty, President and CEO

ACKNOWLEDGEMENT

STATE OF MISSOURI

COUNTY OF BOONE _____

On this ___ day of _____, 20___, before, the undersigned authority, a Notary Public in and for said State and County, personally appeared John Twitty, President and CEO of MJMEUC, and that as such President and CEO, being authorized to do so, executed the Franchise and Easements Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunder set my hand and official seal.

Notary Public

My Appointment Expires:

LEASE AGREEMENT

BETWEEN

MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION

AND

CITY OF NIXA, MISSOURI

Dated _____, 2022

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Agreement”) made and effective this ____ day of _____ 2022, by and between Missouri Joint Municipal Electric Utility Commission, a body public and corporate organized and existing under the laws of the State of Missouri, with its principal office located at 2200 Maguire Blvd. Columbia, MO 65201 (“MJMEUC”) and the City of Nixa, in Christian County, State of Missouri, a Constitutional Charter City, with its principal office located at 715 W. Mt. Vernon St., Nixa, Missouri 65714 (“City”). MJMEUC and City are each also referred to herein as a Party and collectively as the Parties.

1. Leased Space at Substations for Benefit of City. MJMEUC leases to City and City leases from MJMEUC certain space in each substation as delineated in **Exhibit A** (the “Lease Space”).

2. Term. The term of this Agreement is for a period of Ninety-Nine (99) years, commencing upon the date MJMEUC is granted a deed to the real estate legally described on **Exhibit D** (the “Premises”), unless earlier terminated by operation of Section 16 herein.

3. Rental Payments. City agrees to pay to MJMEUC, from the City’s electric utility system revenues, as an operating expense of the City’s electric utility system, an annual rental payment in the amount of \$5,751.26 for the 2022 calendar year, with the initial rental payment due within thirty (30) days of the Term of this Agreement commencing as set out in Paragraph 2 of this Agreement, and each subsequent rental payment due on January 15th of each successive year thereafter. The Parties agree the annual rental payment will increase three percent (3%) each year. Unless otherwise directed by MJMEUC, all payments due under this Section 3 will be made payable to MJMEUC at the address specified in **Exhibit C**.

4. Joint Use of Premises. The use of Premises will be jointly with MJMEUC’s use of the Premises. City’s employees, contractors, subcontractors, licensees, invitees, representatives, and agents may use and occupy the Premises as a City operated electrical distribution substation, and may construct, reconstruct, replace, modify, uprate, upgrade, remove, maintain, inspect, and operate its electrical distribution facilities with structures, poles, and all accessory facilities, equipment and systems used or useable in an electrical distribution substation, along with equipment and systems used or useable for the transmission or provision of telecommunications and fiber optic services (collectively, “City’s Facilities”), on, over, under and across the Premises, together with rights of ingress and egress on, over and across the Premises, provided the City complies with the Safety Rules as defined below in 4.1 and fulfills the provisions of this Agreement.

4.1. Safety Rules means (a) Good Utility Practice, (b) all Requirements of Law, (c) written instructions from MJMEUC, (d) National Electric Safety Code (latest version) and (e) safety rules of the City of Nixa. If any conflict occurs between the above requirements, the rule which produces the highest safety outcome shall prevail.

4.2. Good Utility Practice means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).

5. Ten (10) Year Reviews. This Agreement will be reviewed by the Parties every ten (10) years, beginning January 1, 2032, to evaluate whether the insurance coverages and parties' use of the Premises has changed sufficiently to warrant a change in the annual rental payment.

6. Work and Improvements. Subject to the terms of this Agreement, with respect to any work undertaken by City on the Premises, City shall at its sole cost and expense comply with all laws, rules, and regulations of all Governmental Authorities having jurisdiction over the Premises or the use of the Premises, including Environmental Laws as defined in Section 7, below.

6.1. Subject to the terms and conditions of this Agreement, City shall not, construct or erect any permanent or temporary building, structure, fixture, fence, shelter, attachment, or improvement on the Premises without prior written consent from MJMEUC which shall not be unreasonably withheld, conditioned, or delayed. Under no circumstances shall any City construction, building, structure, fixture, fence, shelter, attachment, or improvement obstruct or interfere with MJMEUC's operations or with MJMEUC's Facilities.

6.2. Subject to the foregoing, MJMEUC grants City the right to improve the access point from the Premises of each substation to any existing roads, including grading and culverts. City will have the right to remove shrubs and vegetation that interfere with the reasonable use of either MJMEUC's Facilities or the City's Facilities. City will be responsible for maintenance of any fences or enclosures at all substations, as well as weed and pest control on the Premises.

6.3. No Interference. Each Party's use of the Premises shall, to the fullest extent commercially reasonable and subject to prudent industry practices, except in the event of an Emergency: (i) limit any interference with the use and enjoyment by the other Party of their rights in and to the Premises, (ii) schedule any maintenance and repair activities in order to minimize the impact on the other Party, and (iii) for any construction, maintenance, or repair activities that could reasonably be anticipated to impact the other Party's Facilities, provide prior written notice to the other Party no less than five (5) Business Days prior to the commencement of such construction, maintenance, or repair activities together with a reasonably detailed description thereof, including dates and time of such activities.

7. Environmental Matters.

7.1. Hazardous Substances. The Parties agree that except for the Permitted Hazardous Substances, neither Party (including its employees, contractors, subcontractors, or anyone else working at such Party's direction) shall use, store, handle, treat, transport, release or dispose of any Hazardous Substance on, under, across, or in the Premises without the prior written consent of the other Party, which consent may be withheld or conditioned in the consenting Party's sole and absolute discretion. The term Permitted Hazardous Substances means those Hazardous Substances customarily found and used in order to maintain and operate a substation for electric line systems for the transmission or distribution of electricity, including but not limited to dielectric fluid, transformer oil, Edisol XT, sulfuric acid and sulfur hexafluoride gas. The term Hazardous Substances means: (i) asbestos or asbestos containing materials, radioactive materials, lead, polychlorinated biphenyls, petroleum or petroleum products, mold, mycotoxin, urea formaldehyde foam insulation, and radon gas; (ii) any waste or substance that is listed, defined, designated or classified as, or otherwise determined by any Environmental Law to be ignitable, corrosive, radioactive, dangerous, toxic, explosive, infectious, mutagenic or otherwise hazardous; and (iii) any pollutant, contaminant, waste, chemical or other material or substance that is defined as a "solid waste," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "extremely hazardous substance," "restricted hazardous material," "restricted hazardous waste," "pollutant," "contaminant," "hazardous constituent," "special waste," "toxic substance," or "toxic waste," or any word, term, or phrase of similar meaning or regulatory effect under any Environmental Law.

7.2. Records Maintenance. Each Party shall maintain (i) copies of all local, state, or federal permits, licenses, or other authorizations required for any and all of its activities on the Premises, and (ii) copies of all material safety data sheets ("MSDSs") for all Permitted Hazardous Substances that are or at any time have been used, stored, handled, treated, transported, released or disposed on the Premises pursuant to Section 7.1 herein. Each Party shall promptly present copies of such permits, licenses, other authorizations and MSDSs to the other Party and to any local, state, and federal governmental agency official that requests to see the same.

7.3 Environmental Conditions. Neither Party shall cause, create, contribute to, permit, or allow any Environmental Contamination or Other Environmental Impacts (collectively referred to as "Environmental Conditions") as a result of its use of or operation on the Premises. Environmental Contamination is defined as any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the Environment of any Hazardous Substance by a Party that results in any pollution or contamination of the Environment for which investigation, removal, remediation, or other response would be required pursuant to Environmental Law. Other Environmental Impacts means any impacts from any use of or operation on the Premises that is not conducted in all material respects in compliance with all applicable Environmental Laws. Environmental Law means any and every law pertaining to, regulating, relating to or imposing liability, standards or obligations of

conduct concerning pollution or protection of the air, water (including surface water, groundwater, streams, and water in drains), soil, sediments, land surface, subsurface strata, and plant and animal life (the “Environment”), including without limitation: Any law relating to any actual or threatened release, manufacture, processing, distribution, use, treatment, storage, transport, or handling of any Hazardous Substance, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC §§ 9601 *et seq.*), the Federal Water Pollution Control Act (33 USC §§ 1251 *et seq.*), the National Environmental Policy Act (42 USC §§ 4321 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*); the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*); the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*); the Emergency Planning and Community Right to Know Act (42 U.S.C. §§ 11001 *et seq.*); the Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*); the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701 *et seq.*); and the Hazardous Materials Transportation Uniform Safety Act (49 U.S.C. §§ 5101 *et seq.*), together with any amendments or reauthorization thereto or thereof, and any and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents, and all permits issued under any such laws.

7.4 Notification and Correction. Each Party shall promptly notify the other Party upon discovery of any Environmental Condition resulting from use of or operation on the Premises. Within seventy-two (72) hours of discovering such Environmental Conditions (or sooner as required by Environmental Law), the Party responsible for an Environmental Condition shall, at its sole cost and expense, commence and diligently pursue cure or correction of such Environmental Condition. Any Environmental Condition resulting from use of or operation on the Premises that is required to be submitted to any federal, state, or local regulatory agencies shall be made on the advice of legal counsel and following notification to the other Party and coordination among the Parties.

7.5. Right to Cure Environmental Condition. Except in an Emergency, after reasonable notice, of not less than five (5) Business Days, to a Party following that Party’s failure to commence efforts to cure or correct any Environmental Condition for which it is responsible or to remove any objects, materials, debris, structures or conditions that could cause injury or damage to persons or property or interfere with the notifying Party’s use of the Premises, the notifying Party may, at its sole discretion and upon prior written notification to the responsible Party, cure or correct or remove or cause to be removed all such objects, materials, debris, structures or conditions. All actual, out-of-pocket costs and expenses expended by the notifying Party pursuant to this Section 7.5 are and shall be the sole obligation of the responsible Party, who shall reimburse the notifying Party upon demand.

8. Abandonment of Premises. If City abandons its use of the Premises (excluding any period during which any of the City Facilities are under construction, repair or are subject to replacement) for a period of twelve (12) consecutive months, then this Agreement is automatically terminated.

9. Fixtures and Personal Property. All City Facilities and personal property located on the Premises are as listed in **Exhibits B, B-2, B-3, B-4, and B-5**, unless transferred to MJMEUC by written instrument, are and shall remain City's property free and clear of any claim by MJMEUC. City will have the right to remove the same at any time during the Term; provided City notifies in writing MJMEUC at least thirty (30) days prior to removal. Any damage to the Premises caused by such removal shall be repaired by City at its sole expense. City shall notify MJMEUC annually of any changes to the contents listed in **Exhibits B, B-2, B-3, B-4, and B-5**.

10. Notice. All notice, payment, demand, requests, consents and approvals required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given if personally served or delivered, by nationally recognized overnight delivery service (such as Federal Express), with signature required upon receipt, or sent by certified mail, postage prepaid, return receipt requested, to the respective parties as listed in **Exhibit C**. Each Party may, from time to time, change its contact information for notice purposes by giving notice of such change in accordance with this Section.

11. Insurance.

11.1 City Required Insurance. City shall maintain in full force and effect throughout the Term of this Agreement, for its benefit and for the benefit of MJMEUC, insurance policies for the following coverages:

11.1.1. General Liability or Excess General Liability Insurance. City shall maintain coverage of at least One Million Dollars (\$1,000,000) on an occurrence basis, and with an aggregate of Two Million Dollars (\$2,000,000), for bodily injury (including death), property damage (including loss of use) and personal injury. Such coverage shall provide coverage for products and completed operations, blanket contractual, broad form property damage, and independent contractors; with MJMEUC named as an additional insured, such coverage shall be primary and non-contributory.

11.1.2. Workers Compensation. City shall maintain coverage as required by law where Services are to be performed and Employer's Liability Insurance with a limit of liability of not less than One Million Dollars (\$1,000,000) for each accident, disease each employee, with a One Million Dollars (\$1,000,000) disease policy limit. In the event City subcontracts any services to be performed on the Premises, the City shall require the Approved Subcontractor, as applicable, to fulfill the worker's compensation terms of this Agreement.

11.1.3. Property Coverage. City shall maintain all risk Property Coverage for any City Facilities located on or in the Premises. MJMEUC will not be responsible for the City's Facilities or property located on or in the Premises. This provision shall survive termination of this Agreement and continue until such time as City removes all City Facilities from the Premises.

11.1.4. Pollution Liability Insurance. City shall maintain coverage of at least Five Million Dollars (\$5,000,000) for each occurrence and in the aggregate. Coverage to include, but not limited to, bodily injury, property damage, cleanup expenses, and defense costs. If policy is written on a claims-made basis, then coverage will be maintained and remain in effect for at least five (5) years beyond the expiration or termination of this Agreement.

11.1.5. Umbrella or Excess Liability Insurance. City shall maintain coverage of at least Five Million Dollars (\$5,000,000) combined single limit each occurrence and in the aggregate. Coverage to include excess of limits provided by General Liability, Employers Liability and Business, Automobile insurance. The aggregate limit shall apply separately to each annual policy period.

11.2. MJMEUC Required Insurance. MJMEUC shall maintain in full force and effect throughout the Term of this Agreement, for its benefit and for the benefit of the City, insurance policies for the following coverages:

11.2.1 General Liability or Excess General Liability Insurance. MJMEUC shall maintain coverage of at least One Million Dollars (\$1,000,000) on an occurrence basis, with an aggregate of Two Million Dollars (\$2,000,000), for bodily injury (including death), property damage (including loss of use). Such coverage shall provide coverage for products and completed operations, blanket contractual, broad form property damage, and independent contractors.

11.2.2 Workers Compensation. MJMEUC shall maintain coverage as required by law and Employer's Liability Insurance with a limit of liability of not less than One Million Dollars (\$1,000,000) for each accident, disease each employee, with a One Million Dollars (\$1,000,000) disease policy limit. In the event MJMEUC contracts or subcontracts any services to be performed on the Premises, MJMEUC shall require the contractor and/or subcontractor, as applicable, to fulfill the worker's compensation terms of this Agreement.

11.2.3. Property Coverage. MJMEUC shall maintain all risk Property Coverage with respect to the Transmission Facilities, with such coverage to be subject to deductibles and sublimits at levels deemed appropriate by MJMEUC's governing body.

11.2.4. Pollution Liability Insurance. MJMEUC shall maintain coverage of at least Five Million Dollars (\$5,000,000) for each occurrence and in the aggregate. Coverage to include, but not limited to, bodily injury, property damage, cleanup expenses, and defense costs. If policy is written on a claims-made basis, then coverage will be maintained and remain in effect for at least five (5) years beyond the expiration or termination of this Agreement.

11.2.5. Umbrella or Excess Liability Insurance. MJMEUC shall maintain coverage of at least Five Million Dollars (\$5,000,000) combined single limit each occurrence and in the aggregate. Coverage to include excess of limits provided by General Liability, Employers Liability, and Business Automobile insurance. The aggregate limit shall apply separately to each annual policy period.

11.3. Policy Requirements. All insurance policies shall: (i) contain a severability of interest clause, (ii) unless stated otherwise herein, apply on a primary and non-contributory basis to any insurance maintained by any additional insured, (iii) waive subrogation against any additional insureds, and (iv) otherwise be in form and substance reasonably acceptable to the other Party, and (v) unless stated otherwise herein, if a policy is on a “claims made” basis, such coverage shall survive the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of Missouri for actions based on contract or in tort. If coverage is on an “occurrence” basis, insurance on an occurrence basis shall be maintained for the term of this Agreement.

11.4. Disclosure of Claims. Each Party shall promptly furnish the other Party with all information reasonably available to it relating to the operations and maintenance of the Transmission Facilities as is necessary to enable the first Party to comply with its disclosure obligations under the insurance which it has taken out. Each Party shall promptly notify the other Party of any claim with respect to any of the insurance policies referred to in this Section 11, accompanied by full details of the incident giving rise to such claim. Each Party shall afford to the other Party all such assistance as may reasonably be required for the preparation and negotiation of insurance claims, save where such claim is against the Party required to give assistance.

11.5. Waiver of Claims for Insured Events. Notwithstanding anything to the contrary contained in this Agreement, each party waives any and every claim that arises or may arise in its favor against the other Party during the term of the Agreement for any and all loss of, or damage to any property of such Party, to the extent such loss or damage is an insured event covered by the insurance to be maintained in accordance with this Agreement; provided, however, the foregoing waiver shall not apply to any uninsured deductible or to instances where the relevant insurer disputes that the relevant event of loss was an insured event covered by the applicable insurance policy. Nothing in the foregoing provision shall be construed to prevent a Party from making a claim against any Party’s insurance policy.

11.6 Governmental and Municipal Immunity. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City or MJMEUC of any applicable state limits on municipal liability or governmental immunity.

11.7. Insurance Adjustment. MJMEUC reserves the right, in its sole discretion, to require from time to time, additional or increased insurance coverages. Such adjustments shall be determined during the ten (10) year reviews required pursuant to

Section 5 herein and shall be based on reasonable written justification of such increases or additions by MJMEUC.

12. Governmental and Municipal Immunity. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City or MJMEUC of any applicable state limits on municipal liability or governmental immunity.

13. Indemnification. Both Parties shall indemnify, defend, and hold the other Party harmless from and against all claims, actions, damages, liability, and expenses (including reasonable attorneys' fees and actual costs) including the loss of life, personal or bodily injury, or damage to property, caused by any act or omission of their respective employees, directors, officers, contractors, subcontractors, representatives, agents, or invitees in connection with this Agreement and the City's use of the Premises. The Parties' obligations set forth in this paragraph shall survive termination or expiration of this Agreement.

14. Default. The occurrence of any one or more of the following events will constitute a default and breach of this Agreement by City:

14.1. Failure by City to pay the annual Agreement payment when required hereunder and such failure continues for thirty (30) days after written notice to City from MJMEUC of such failure.

14.2. Failure by City to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by City and such failure continues for thirty (30) days after written notice to City from MJMEUC of such failure.

14.3 Any permits or licenses required by any Governmental Authority that are required for the City's use of the Premises as an electrical distribution substation are revoked or suspended for more than thirty (30) days for any reason whatsoever.

14.4. Notwithstanding the cure period allowed herein, it shall be an immediate default under this Agreement, if City's failure to surrender the Premises to MJMEUC upon the expiration or sooner termination of this Agreement, or if any failure of City to comply with any provision of this Agreement results in the cancellation of any property insurance coverage or causes or results in a dangerous condition on the Premises, and such failure to comply is not cured as soon as reasonably practicable after notice thereof by MJMEUC to City. In no event shall financial inability be considered a reasonable ground for failure of City to cure any breach of, or failure to comply with, the provisions of this Agreement.

15. Remedies. In the event of any such default or breach by City, MJMEUC may take any of the following actions at any time thereafter, in its sole discretion, with or without notice or demand and without limiting MJMEUC in the exercise of any right or remedy that MJMEUC may have by reason of such default or breach under the laws or judicial decisions of the State of Missouri.

15.1. MJMEUC may terminate City's right to possession or access of the Premises by any lawful means, in which case this Agreement may terminate, City shall immediately surrender the premises to MJMEUC, and MJMEUC shall be entitled to recover from City all damages incurred by MJMEUC by reason of City's default including, but not limited to, the cost of recovering possession of the Premises; the cost to restore the Premises to the condition required by this Agreement; and reasonable attorney fees.

15.2. MJMEUC may maintain City's right to possession, in which case this Agreement shall continue in effect whether or not City shall have abandoned the Premises. In such event MJMEUC will be entitled to enforce all of MJMEUC's rights and remedies under this Agreement, including the right to recover the annual rental payment as it becomes due hereunder.

15.3. In any event, MJMEUC will be entitled to recover interest on any unpaid annual rental payment or any amounts owing pursuant to this Agreement not paid when due at the rate of fifteen percent (15%) per annum from the date due until paid in full.

16. Termination. This Agreement may be lawfully terminated as follows:

16.1. City may terminate this Agreement upon thirty (30) days prior written notice to MJMEUC;

16.2. By written agreement of the Parties;

16.3. When the Term of this Agreement comes to an end;

16.4. In the event City should expressly break a condition of this Agreement and fail to cure within thirty (30) days of written notice of same;

16.5. In the event City should become insolvent;

16.6. In the event the City abandons its Facilities property, pursuant to Section 8 herein; and

16.7. Termination by any other lawful means permitted under this Agreement.

17. Arbitration. Notwithstanding Sections 15 and 16 of this Agreement, any dispute or controversy arising under or in connection with this Agreement, including the inability to agree on the rental fee, shall be settled by arbitration, conducted before a panel of three arbitrators from Missouri, in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in the Circuit Court of Christian County, Missouri, the expense of such arbitration shall be borne equally by the Parties, but each Party shall pay its own attorneys' fees. In addition to the arbitration provided for herein, either Party may seek equitable injunctive relief.

18. Entire Agreement. This Agreement, along with the attached Exhibits, constitute the entire agreement between the Parties. No agreement shall be effective to change, modify, or terminate this Agreement in whole or in part unless such agreement is in writing and duly signed by the Parties hereto.

19. Successors and Assign. The covenants and conditions contained in this Agreement shall inure to and bind the respective heirs, successors, executors, administrators and assigns of the Parties hereto, and the identifiers “MJMEUC” and “City” shall include their successors and assigns of either such Party, whether immediate or remote, unless otherwise specifically set forth in this Agreement.

19.1. Assignments by MJMEUC. MJMEUC shall not assign its rights under this Agreement to another party except with the prior written consent of City, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that MJMEUC shall be permitted to assign any of its rights under this Agreement without any consent of the City: (a) to any of MJMEUC’s Affiliates; (b) in connection with a sale of substantially all of the Transmission Facilities which are the subject of this Agreement, or (c) for the purpose of financing the MJMEUC Assets.

19.1.1. As used in this Agreement: (a) Affiliates means any entity closely connected or associated with MJMEUC or a regulated energy utility; (b) Transmission Facilities means the tangible assets, real property interests, infrastructure, and facilities, owned by MJMEUC and used to transmit or deliver power and energy for resale in or through SPP, including equipment, feeders, lines, substations, breakers, switches, transformers and such other assets as may be designated by SPP, FERC, or other applicable regulatory agency, including facilities not controlled by SPP, if used for delivery of power and energy for resale in Missouri; and (c) MJMEUC Assets means the Transmission Facilities listed on **Exhibit D** attached hereto.

19.2. Assignments by City. City shall not assign its rights under this Agreement to another party except with the prior written consent of MJMEUC, which consent shall not be unreasonably withheld, conditioned, or delayed.

20. No Encumbrances. City will not cause or allow any liens or encumbrances to be placed against, grant any security interest in, or otherwise sell, transfer, bequeath, quitclaim or otherwise assign, or allow any of the foregoing to occur to the leased property. Further neither Party shall be liable to satisfy any indebtedness caused by or that may result from the operation or activity of the other Party on the Premises.

21. Severability and Restoration. If any Governmental Authority, including any court of competent jurisdiction, holds that any provision of this Agreement is unlawful, void, or unenforceable, then that term, condition, provision, or part thereof shall be deemed severable and will not affect the validity and enforceability of any of the remaining terms, conditions, and provisions of this Agreement. However, if such holding, or as a result of any Requirements of Law, or a change in any Requirements of Law, renders this Agreement impossible to perform,

then the Parties shall attempt to renegotiate new provisions to restore this Agreement as nearly as possible to its original intent and effect.

22. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of Missouri, without regard to conflicts of law principles.

23. No Waivers. Any waiver at any time by a Party of its rights with respect to a default under this Agreement or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or subsequent matter of a similar nature arising in connection therewith.

24. Counterparts. This Agreement may be executed in any number of counterparts by the Parties, each of which when so executed will be an original, but all of which together will constitute one and the same instrument. To facilitate execution of this Agreement, the Parties may execute and exchange electronic form counterparts of the signature pages to this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have made and executed this Lease Agreement the day and year first above written intending the same to be binding upon the Parties, their successors and assigns. This Agreement will be executed in two counterparts, each constituting an original but altogether one and the same instrument and Agreement.

MJMEUC

Missouri Joint Municipal Electric Utility Commission

By: _____
John Twitty,
President and CEO

STATE OF MISSOURI)
) ss:
_____ COUNTY)

Before me, a Notary Public in and for this state on this ____ day of _____, 20 ____, personally appeared John Twitty to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and CEO and acknowledged to me that he executed the same as his free and voluntary act and deed as the free and voluntary act and deed of such entity, for the uses and purposes therein set forth.

Given under my hand and seal of office this day and year last above written.

Notary Public

My commission expires: _____.

CITY

City of Nixa, Missouri

By: _____
Brian Steele,
Mayor

STATE OF MISSOURI)
) ss:
CHRISTIAN COUNTY)

Before me, a Notary Public in and for this state on this ____ day of _____, 20 ____, personally appeared Brian Steele to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its Mayor and acknowledged to me that he executed the same as his free and voluntary act and deed as the free and voluntary act and deed of such city, for the uses and purposes therein set forth.

Given under my hand and seal of office this day and year last above written.

Notary Public

My commission expires:_____.

EXHIBIT A

DIMENSIONS AND PERCENTAGES OF LEASED SPACE

Northeast Substation:

Total land square footage is 64800
City uses square footage of 4035 which is 6.23% of the total square footage
Substation value is \$164,444
Annual 12% rent payment is \$1,228.76

Espy Substation:

Total land square footage is 33803
City uses square footage of 1144 which is 3.38% of the total square footage
Substation value is \$80523
Annual 12% rent payment is \$327.02

Downtown Substation:

Total land square footage is 22500
City uses square footage of 3810 which is 16.93% of the total square footage
Substation value is \$178,095
Annual 12% rent payment is \$3,618.89

Tracker Substation:

Total land square footage is 28500
City uses square footage of 1100 which is 3.86% of the total square footage
Substation value is \$124,491
Annual 12% rent payment is \$576.59

Total annual rent payment is \$5,751.26

Substation value = Land acquisition + Land/Rock + Fence
City used = square footage used by City equipment and shared buildings
City % - City used / Total land square footage
Common rent price rule of thumb is 1% of property value per month. Using this rule of thumb,
used 12% of used substation value to calculate rent payment.

EXHIBIT B

**PERSONAL PROPERTY LOCATED ON OR ABOUT MJMEUC'S ASSETS
AND DESIGNATED INTERESTS**

See **Exhibits B-2, B-3, B-4, and B-5** for lists of major items (personal property) located on the premises of MJMEUC's Assets and the designated interests of that personal property. The items marked MJMEUC are solely owned by MJMEUC. The items marked Nixa are solely owned by Nixa. The items marked both MJMEUC and Nixa are solely owned by MJMEUC but jointly used by MJMEUC and Nixa.

In addition, there is metering equipment and miscellaneous other items on the premises of MJMEUC's Assets which the Parties have mutually agreed will be jointly used by both Parties, but actual ownership will be determined at a later date.

EXHIBIT B-2

DOWNTOWN

MAJOR ITEMS	MJMEUC	NIXA	BRAND	SERIAL #
1 - 69KV Control Building	X	X	GFRC	506517
1 - HVAC System	X	X	Bard	309D133002302-02
1 - Set of Batteries (20 total)	X	X	Mesa	Vented Lead Acid
1 - Battery Charger	X	X	Sens	216049
1 - DC Panelboard	X	X	G. E.	AXB7L5
1 - AC Panelboard	X	X	Square D	?
1 - Double Throw Safety Switch	X	X	Eaton	Backup Station Power
1 - 69KV Breaker (DT6951)	X		Siemens	54968-3
1 - Panel 1 Rack	X		SEL	130153-32007
1 - Panel 1 (21P/DT51)	X		SEL-421	1131350107
1 - Panel 1 (21B/DT51)	X		SEL-311L	1131350106
1 - Panel 1 (Bus Diff)	X		SEL-587Z	1131350104
1 - Panel 1 Shark Meter 100	X		Electro Industries	1111-0090856937
1 - 69KV Breaker (DT6952)	X		Siemens	54968-5
1 - Panel 2 Rack	X		SEL	130153-32008
1 - Panel 2 (21P/DT52)	X		SEL-421	1131350108
1 - Panel 2 (21B/DT52)	X		SEL-311L	1131350105
1 - Panel 2 Shark Meter 100	X		Electro Industries	96-0035314824
1 - 69KV Building Sump Pump	X		Water Control in Cable Pull Box	
3 - 69KV Bay Lighting LED	X		PacLights	SKU- FFL100-LV-50
6 - 69KV Lightning Arrestors	X		Turner Type: AZES006G048060	
15 - 69KV Disconnect Switches	X		Type: Hook Disconnect Switches	
6 - 69KV 600/5 CT's	X		Siemens	BYM Bushing 54968-10
18 - 69KV 1200/5 CT's	X		Siemens	BYM Bushing 54968-10
3 - 69KV PT's	X		Kuhlman Model: POF-350-2	
1 - Ground Grid	X	X	4/0 Bare Copper	?
1 - 69KV Breaker (DT6953)		X	Siemens	3006199681-1
1 - Panel 3 Rack		X	SEL	170084-89106
1 - Panel 3 (Overcurrent)		X	SEL-351S	3170580144
1 - Panel 3 (Xfrm Diff)		X	SEL-387A	1170590092
1 - Power Xfrm 15/20/25		X	CG Power	20151600781
3 - 12KV Bay Lighting LED		X	PacLights	SKU- FFL100-LV-50
1 - Yard Light LED		X	Same as the City's street lights	
3 - 69KV Lightning Arrestors		X	?	?
3 Sets - 69KV Disconnect Switches		X	69KV G.O. Center Side Break Switches	
3 - 69KV 600/5 CT's		X	Siemens	BYM Bushing 54968-10
6 - 69KV 400/5 CT's		X	Siemens	BYM Bushing 54968-10
3 - 69KV Shorted CT's		X	Siemens	BYM Bushing 54968-10
1 - 25KVA Xfrm - Station Power		X	Pole Mount	Unknown
1 - Substation Fence	X	X		

EXHIBIT B-3

NORTHEAST

MAJOR ITEMS	MJMEUC	NIXA	BRAND	SERIAL #
1 - 69KV Control Building	X	X	GFRC	504737
1 - HVAC System	X	X	Bard	225A051988582-02
1 - Set of Batteries (15 total)	X	X	GNB Classic	Vented Lead Acid
1 - Battery Charger	X	X	Sens	216047
1 - DC Panelboard	X	X	Siemens	Cat: P1N42ML250ATF
1 - Double Throw Safety Switch	X	X	Eaton	?
1 - AC Panelboard Main	X	X	Square D	?
1 - 69KV Breaker (NE6951)	X		Siemens	54968-8
1 - Panel 1 Rack	X		SEL	07/0393
1 - Panel 1 (87L/51 Line Diff)	X		SEL-387L	2007085252
1 - Panel 1 (21B/51 Distance)	X		SEL-311C	2007087122
1 - Panel 1 Shark 100 (NE6951)	X		Electro Industries	1211-0124410315
1 - 69KV Breaker (NE6952)	X		Siemens	54968-7
1 - Panel 2 Rack	X		SEL	07/0394
1 - Panel 2 (87L/52 Line Diff)	X		SEL-387L	2007085254
1 - Panel 2 (21B/52 Distance)	X		SEL-311C	2007087119
1 - Panel 2 (87/69B Bus Diff)	X		SEL-587Z	2007085301
1 - Panel 2 Shark Meter 100	X		Electro Industries	73-146868
1 - 69KV Breaker (NE6953)	X		Siemens	54968-6
1 - Panel 3 Rack	X		SEL	07/0395
1 - Panel 3 (87L-JRPS Line Diff)	X		SEL-387L	2010230372
1 - Panel 3 (21B/53 Distance)	X		SEL-421	2007086290
1 - Panel 3 Shark Meter 100	X		Electro Industries	73-146867
1- 69KV Building Sump Pump	X		Water Control in Cable Pull Box	
4 - 69KV Bay Lighting	X		High Pressure Sodium, No Repair Parts	
9 - 69KV Lightning Arrestors	X		Turner Type: AZES006G04800	
15 - 69KV Disconnect Switches	X		Type: Hook Disconnect Switches	
36 - 1200/5 CT's	X		Siemens	BYM Bushing 54968-11
6 - 600/300 PT's	X		Kuhlman Model: POF-350-2	
Ground Grid	X	X	4/0 Bare Copper	?
1 - Power Transformer 15/20/25		X	Kuhlman	987267-1
1 - AC Panelboard 12KV		X	Square D	HOMC21UC
3 - Yard Light LED		X	Same as the City's street lights	
1 - 69KV Breaker (NE6954)		X	Siemens	54968-1
1 - Panel 1(50/51-54)Overcurrent		X	SEL-351S	1122160348
1 - Panel 1 (87T/54 Trans Diff)		X	SEL-387A	1122160416
1 - Panel 1 Shark 100 (NE6954)		X	Electro Industries	73-146885
6 - 69KV Disconnect Switches		X	Type: Hook Disconnect Switches	
3 - 600/5 69KV CT's		X	Siemens	BYM Bushing 54968-10
9 - 1200/5 69KV CT's		X	Siemens	BYM Bushing 54968-10
1 - 25KVA Xfrm - Station Power		X	Pole Mount	Unknown
1 - Substation Fence	X	X		

EXHIBIT B-4

Tracker

MAJOR ITEMS	MJMEUC	NIXA	BRAND	SERIAL #
1 - 69KV Control Building	X		GFRC	504736
1 - HVAC System	X		Bard	225F041909436-02
1 - Set of Batteries (15 total)	X		GNB Classic	Vented Lead Acid
1 - Battery Charger	X		Sens	216046
1 - DC Panelboard	X		Siemens	Cat: P1N30ML25OATS
1 - AC Panelboard	X		Square D	?
1 - 69KV Breaker (TR6951)	X		Siemens	54968-10
1 - Panel 1 Rack	X		SEL	07/0390
1 - Panel 1 (21P/51 Distance)	X		SEL-311C	2007087120
1 - Panel 1 (21B/51 Distance)	X		SEL-311C	2007087123
1 - Panel 1 Shark Meter 100	X		Electro Industries	73-146869
1 - 69KV Breaker (TR6952)	X		Siemens	54968-9
1 - Panel 2 Rack	X		SEL	07/0391
1 - Panel 2 (87L/52 Line Diff)	X		SEL-387L	2007085253
1 - Panel 2 (21B-52 Distance)	X		SEL-311C	2007087121
1 - Panel 2 (87/69B Bus Diff)	X		SEL-387L	2007087323
1 - Panel 2 Shark Meter 100	X		Electro Industries	73-146866
4 - 69KV Bay Lighting	X		High Pressure Sodium, No Repair Parts	
Ground Grid	X	X	4/0 Bare Copper	?
1 - 69KV Building Sump Pump	X		Water Control in Cable Pull Box	
6 - 69KV Lightning Arrestor	X		Turner Type: AZESOO6G048060	
12 - 69KV Disconnect Switches	X		Type: Hook Disconnect Switches	
24 - 69KV 1200/5 CT's	X		Siemens	BYM Bushing 54968-11
6 - 69KV 600/5 PT's	X		Kuhlman Model: POF-350-2	
1 - 25KVA Xfrm - Station Power		X	Pole Mount ?	?
1 - S & C Circuit Switcher		X	S & C	00-18363R
1 - Power Transformer 15/20/25		X	Kuhlman	282747-98-1
1 - 12KV Switchgear & Contents		X	All Distribution Equipment	
1 - 12KV Switchgear HVAC		X	Bard	140M991399398-02
3 - 69KV Lightning Arrestors		X	Turner Type: AZESOO6G048060	
6 - 69KV 600/5 CT's		X	Siemens	BYM Bushing 54968-11
1 Set - 69KV Disconnect Switches		X	69KV G.O. Center Side Break Switches	
1 - Substation Fence	X	X		

EXHIBIT B-5

ESPY

MAJOR ITEMS	MJMEUC	NIXA	BRAND	SERIAL #
1 - 69KV Control Building	X		GFRC	504739
1 - HVAC System	X		Bard	225B092600753-02
1- Set of Batteries (15 total)	X		GNB Classic	6-TCX-100
1 - Battery Charger	X		Sens	216048
1 - DC Panelboard	X		G. E.	Cat:AEF1482BBX AXB7
1 - AC Panelboard	X		Square D	Cat: NQMB2Q
1 - 69KV Breaker (ES6951)	X		Siemens	54968-2
1 - Panel 1 Rack	X		EP/2	Job: 4940
1 - Panel 1 (Annunciator)	X		SEL-2523	2008361110
1 - Panel 1 (21P-51 Distance)	X		SEL-311C	2008364113
1 - Panel 1 (21B-51 Distance)	X		SEL-311C	2008364111
1 - Panel 1 Shark Meter 100	X		Electro Industries	91-0042744526
1 - 69KV Breaker (ES6952)	X		Siemens	54968-4
1 - Panel 2 Rack	X		EP/2	Job: 4940
1 - Panel 2 (21P-52 Distance)	X		SEL-311C	2007087119
1 - Panel 2 (21B-52 Distance)	X		SEL-311C	2008364110
1 - Panel 2 (87/69B Bus Diff)	X		SEL-587Z	2008364341
1 - Panel 2 Shark Meter 100	X		Electro Industries	91-0042744021
4 - 69KV Bay Lighting	X		High Pressure Sodium, No Repair Parts	
Ground Grid	X	X	4/0 Bare Copper	?
1 - 69KV Building Sump Pump	X		Water Control in Cable Pull Box	
6 - 69KV Lightning Arrestors	X		Turner Type: AZESOO6G048060	
12 - Disconnect Switches	X		Type: Hook Disconnect Switches	
6 - 600/5 CT's	X		Siemens	BYM Bushing 54968-10
18 - 1200/5 CT's	X		Siemens	BYM Bushing 54968-10
7 - 600/350 PT's	X		Kuhlman Model: POF-350-2	
1 - 25KVA Xfrm - Station Power		X	B & B Transformer	5100861
S & C Circuit Switcher		X	S & C	92-35960
12KV Switchgear Door (1) LED		X	Street Works	Cat: CRTKAA08E1205A
Yard Light (1) LED		X	Same as the City's street lights	
Power Transformer 18/24/30		X	WEG	20151700929
12KV Switchgear & Contents		X	All Distribution Equipment	
12KV Switchgear HVAC		X	Haier	FS002498C
3 - 69KV Lightning Arrestors		X	Turner Type: AZESOO6G048060	
3 - 200/5 69KV CT's		X	Siemens	BYM Bushing 54968-10
3 - 600/5 69KV PT's		X	Siemens	BYM Bushing 54968-10
1 - Substation Fence	X	X		

EXHIBIT C

PERSONS FOR NOTICES AND PAYMENTS

For City:

Name: Doug Colvin
Title: Director of Nixa Utilities and Public Works
Address: 1111 W. Kathryn, Nixa, MO 65714
Office Telephone: 417-725-2353
Cell Telephone:
Email: dcolvin@nixa.com

With a copy to:

Name: Nicholas Woodman
Title: City Attorney
Address: 715 W. Mt. Vernon St., Nixa, MO 65714
Office Telephone: 417-725-3785
Cell Telephone:
Email: nwoodman@nixa.com

For MJMEUC:

Name: John Grotzinger
Title: Chief Operating Officer for MJMEUC
Address: 2200 Maguire Blvd. Columbia, MO 65201
Offices Telephone: 573-445-3279
Cell Telephone:
Email: jgrotzinger@mpua.org

With a copy to:

Names: Doug Healy
Title: General Counsel
Address: 3010 E. Battlefield, Suite A, Springfield, MO 65804
Office Telephone: 417-864-7018
Cell Telephone: [REDACTED]
Email: doug@healylawoffices.com

Rental Payments:

MJMEUC
Accounts Receivable
2200 Maguire Blvd.
Columbia, MO 65201.

EXHIBIT D

LEGAL DESCRIPTIONS

Downtown Substation:

ALL OF A PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SW1/4 NW1/4) OF SECTION 13, TOWNSHIP 27, RANGE 22, BOUNDED AND DESCRIBED AS FOLLOWS: FROM THE SOUTHWEST CORNER OF SAID SUBDIVISION, THENCE NORTH 1161/2 FEET AND EAST 632 FEET FOR A POINT OF BEGINNING; THENCE SOUTH 80 FEET TO THE NORTH RIGHT OF WAY OF HIGHWAY #14; THENCE WEST ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 150 FEET; THENCE NORTH 1161/2 FEET TO A POINT DIRECTLY WEST OF THE POINT OF BEGINNING; THENCE EAST 150 FEET TO THE POINT OF BEGINNING.

AND,

A PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 27, RANGE 22, DESCRIBED AS FOLLOWS: FROM THE SOUTHWEST CORNER OF SAID SUBDIVISION, THENCE NORTH 3411/2 FEET; THENCE EAST 632 FEET; THENCE SOUTH 155 FEET FOR A TRUE BEGINNING POINT; THENCE SOUTH 75 FEET; THENCE WEST 150 FEET; THENCE NORTH 75 FEET; THENCE EAST 150 FEET TO SAID TRUE POINT OF BEGINNING, ALL IN CHRISTIAN COUNTY, MISSOURI.

Espy Substation:

A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27, NORTH, RANGE 22 WEST; THENCE S89°15'23"E ALONG THE NORTH LINE OF ROYAL ESTATES SUBDIVISION, 507.85 FEET TO AN IRON PIN SET FOR THE POINT OF BEGINNING; THENCE N00°44'37"W, 100.00 FEET TO AN IRON PIN SET; THENCE S89°15'23"E, 150.00 FEET TO AN IRON PIN SET; THENCE S00°44'37"W, 100.00 FEET TO AN IRON PIN SET; THENCE N89°15'23"W, 150.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.34 ACRES.

ALSO INCLUDED IS A PERPETUAL NEUTRAL INGRESS AND EGRESS TO THE SUBJECT PROPERTY LEGALLY DESCRIBED AS FOLLOWS:

A THIRTY FOOT (30') WIDE INGRESS-EGRESS EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27, NORTH, RANGE 22 WEST; THENCE S89°15'23"E ALONG THE NORTH LINE OF ROYAL ESTATES SUBDIVISION, 40.02 FEET TO THE EAST RIGHT OF WAY

OF GREGG ROAD; THENCE N02°23'49"E ALONG SAID EAST RIGHT OF WAY 20.95 FEET TO THE POINT OF BEGINNING; THENCE S89°15'23"E, 366.80 FEET FOR A TERMINUS.

AND,

THAT CERTAIN PARCEL OR TRACT OF LAND BEING A PART OF THE NORTHWEST QUARTER (NW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 22 WEST, IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID NW1/4 OF THE SW1/4; THENCE S89°15'23"E, ALONG THE NORTH LINE OF ROYAL ESTATES, A SUBDIVISION IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI, A DISTANCE OF 496.41 FEET TO AN IRON PIN SET FOR A POINT OF BEGINNING; THENCE N00°44'37"E, A DISTANCE OF 125.00 FEET TO AN IRON PIN SET; THENCE S89°15'23"E, A DISTANCE OF 153.79 FEET TO AN IRON PIN SET ON THE EAST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 216, AT PAGE 102 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S02°28'56"W, ALONG THE EAST LINE OF SAID TRACT OF LAND, A DISTANCE OF 125.06 FEET TO SOUTHEAST CORNER OF SAID TRACT OF LAND, SAID POINT BEING ON THE NORTH LINE OF SAID ROYAL ESTATES; THENCE N89°15'23"W, ALONG SAID NORTH LINE OF ROYAL ESTATES, A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINS 0.436 ACRES (MORE OR LESS) AND IS SUBJECT TO ANY EASEMENTS, RIGHTS OF WAY, AND RESTRICTIONS OF RECORD.

ALSO, WITH RIGHTS OF INGRESS AND EGRESS OVER AND ACROSS AN ENTRANCE EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID NW1/4 OF THE SW1/4; THENCE S89°15'23"E, ALONG THE NORTH LINE OF SAID NW1/4 OF THE SW1/4, A DISTANCE OF 40.02 FEET TO AN EXISTING IRON PIN AT THE NORTHWEST CORNER OF LOT 2 IN ROYAL ESTATES, A SUBDIVISION IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI; THENCE S89°15'23"E, ALONG THE NORTH LINE OF SAID ROYAL ESTATES, A DISTANCE OF 367.26 FEET FOR A POINT OF BEGINNING; THENCE N00°44'37"E, A DISTANCE OF 90.00 FEET; THENCE S89°15'23"E, A DISTANCE OF 89.13 FEET; THENCE S00°44'37"W, A DISTANCE OF 90.00 FEET TO A POINT ON THE NORTH LINE OF SAID ROYAL ESTATES; THENCE N89°15'23"W, ALONG SAID NORTH LINE, A

DISTANCE OF 89.13 FEET TO THE POINT OF BEGINNING.

ALSO INCLUDED IS A PERPETUAL NEUTRAL INGRESS AND EGRESS TO THE SUBJECT PROPERTY LEGALLY DESCRIBED AS FOLLOWS: A THIRTY (30') WIDE INGRESS-EGRESS EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27, NORTH, RANGE 22 WEST; THENCE S89°15'23"E ALONG THE NORTH LINE OF ROYAL ESTATES SUBDIVISION, 40.02 FEET TO THE EAST RIGHT OF WAY OF

GREGG ROAD; THENCE N02°23'49"E ALONG SAID EAST RIGHT OF WAY 20.95 FEET TO THE POINT OF BEGINNING; THENCE S89°15'23"E, 366.80 FEET FOR A TERMINUS.

Northeast Substation:

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH 16 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI; THENCE S02°11'50"W, 240.00 FEET; THENCE N87°55'10"W, 270.00 FEET; THENCE NORTH 02°11'50"E, 240.00 FEET; THENCE S87°55'10"E, 270.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1.49 ACRES.

AND,

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 16 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI; THENCE S02°11'50"W, 240.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S02°11'50"W, 20.00 FEET; THENCE N87°55'10"W, 290.00 FEET; THENCE N02°11'50"E, 260.00 FEET; THENCE S87°55'10"E, 20.00 FEET; THENCE S02°11'50"W, 240.00 FEET; THENCE S87°55'10"E, 270.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.24 ACRES.

Tracker Substation:

ALL OF LOTS TWELVE (12) AND THIRTEEN (13), OF C & K CORNERS, A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI, ACCORDING TO THE PLAT FILED IN PLAT BOOK "G" AT PAGE 139, RECORDER'S OFFICE OF CHRISTIAN COUNTY, MISSOURI.

OPERATIONS AND MAINTENANCE AGREEMENT

BETWEEN

MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION

AND

CITY OF NIXA, MISSOURI

Dated _____, 2022

OPERATIONS AND MAINTENANCE AGREEMENT

THIS OPERATIONS AND MAINTENANCE AGREEMENT (“Agreement”) made and effective this ____ day of _____ 2022, by and between Missouri Joint Municipal Electric Utility Commission, (“MJMEUC”) a body public and corporate organized and existing under the laws of the State of Missouri, and the City of Nixa, in the County of Christian, State of Missouri, a Constitutional Charter City under the law of the State of Missouri (“City”). MJMEUC and City are each also referred to herein as a Party and collectively as the Parties.

WHEREAS, MJMEUC desires to utilize the services of City to provide operations and maintenance services for the Transmission Facilities (defined herein); and

WHEREAS, the Parties desire to set forth herein the manner and terms upon which said operations and maintenance services shall be performed.

NOW, THEREFORE, the Parties mutually agree as follows:

Article 1. Definitions

- 1.1 Administrative Services has the meaning set forth in Section 2.4.
- 1.2 Agreement has the meaning set forth in the introductory paragraph of this Agreement.
- 1.3 Approved Subcontractors means those subcontractors that are approved by MJMEUC as set forth in **Exhibit B** or any amendments to **Exhibit B**.
- 1.4 Business Day means any day other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in Nixa, Missouri are authorized by law to be closed for the day.
- 1.5 Change has the meaning set forth in Section 2.5.
- 1.6 City has the meaning set forth in the introductory paragraph of this Agreement.
- 1.7 City Assets means those assets specifically excluded from MJMEUC’s Assets as set for in **Exhibits G, G-2, G-3, G-4, and G-5**.
- 1.8 City Authorized Personnel has the meaning set forth in Section 3.5.
- 1.9 City Insurance Policies are those required in Section 10.1.
- 1.10 City’s Adder means, for Services performed by City under this Agreement, MJMEUC shall pay City, in addition to the reimbursable expenses pursuant to Section 5.1 herein, a fee of 15% of the amount invoiced prior to the City’s Adder, excluding any amount paid to an Approved Subcontractor for Services performed.
- 1.11 City Work Product has the meaning set forth in Section 9.1.
- 1.12 Claims has the meaning set forth in Section 11.1.
- 1.13 Confidential Information has the meaning set forth in Section 12.1.

- 1.14 Compensation has the meaning set forth in Section 5.1.
- 1.15 Core Services has the meaning set forth in Section 2.2.
- 1.16 Disclosing Party has the meaning set forth in Section 12.1.
- 1.17 Discriminate and Discrimination has the meaning set forth in Section 2.7.3.
- 1.18 Due Diligence means the exercise of good faith efforts to perform a required act on a timely basis and in accordance with Good Utility Practice.
- 1.19 Emergency Services has the meaning set forth in Section 2.3.
- 1.20 Event of Default has the meaning set forth in Section 8.1.
- 1.21 FERC means the Federal Energy Regulatory Commission.
- 1.22 Financial Default has the meaning set forth in Section 8.1.3.
- 1.23 Good Utility Practice means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).
- 1.24 Government Authority means any foreign, federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, instrumentality, legislature, rulemaking board, tribunal, arbitration body, or other governmental entity, including the Missouri Public Service Commission and FERC.
- 1.25 Indemnified Party has the meaning set forth in Section 11.1.
- 1.26 Indemnifying Party has the meaning set forth in Section 11.1.
- 1.27 Initial Term has the meaning set forth in Section 7.1.
- 1.28 Inside the Fence means all Assets and Services to be performed from the top of the bushings of the first disconnect device inside each substation.
- 1.29 Material Adverse Effect means, with respect to the Party making a representation or warranty, any change or effect that has a material adverse effect on (a) the business or financial condition of such Party, (b) the ability of such Party to perform its obligations or receive the contemplated benefits under this Agreement, (c) the prospects of consummating the transactions contemplated by this Agreement or (d) as defined in Section 2.7.3 herein.
- 1.30 Materials has the meaning set forth in Section 4.1.

- 1.31 MJMEUC has the meaning set forth in the introductory paragraph of this Agreement.
- 1.32 MJMEUC Assets means the Transmission Facilities listed on **Exhibit A** attached hereto.
- 1.33 MJMEUC Asset Sites has the meaning set forth in Section 3.1.
- 1.34 MJMEUC Work Product has the meaning set forth in Section 9.1.
- 1.35 Outside the Fence means all transmission lines maintenance that are not Inside the Fence.
- 1.36 Party and Parties have the meanings set forth in the introductory paragraph of this Agreement.
- 1.37 Payment Default has the meaning set forth in Section 8.1.1.
- 1.38 Payment Default Notice has the meaning set forth in Section 8.1.1.
- 1.39 Performance Default has the meaning set forth in Section 8.1.2
- 1.40 Qualified Person means a person knowledgeable in the construction and operations of the electric power generation, transmission, and distribution equipment present in and around the Transmission Facilities, along with the associated hazards thereof.
- 1.41 Recipient has the meaning set forth in Section 12.1.
- 1.42 Related Agreements means the Rental and Services Agreement between the MPUA RSC and City, the Master Services Agreement between MJMEUC and the MPUA RSC, the MPUA Mutual Aid Agreement, and the Franchise Agreement between MJMEUC and City, and all other agreements entered into by the Parties in connection with the operations and maintenance of the Transmission Facilities.
- 1.43 Related Party means, with respect to a Party, the Party's members, managers, directors, officers, contractors, employees, agents, Representatives, and attorneys.
- 1.44 Renewal Term has the meaning set forth in Section 7.1.
- 1.45 Representative means, with respect to any Party, to the extent engaged by such Party for activities contemplated hereunder, any member, officer, director, principal, agent, third party advisor (such as attorneys, accountants, and consultants), employee or other representative or advisor of such Party.
- 1.46 Requirements of Law means any applicable foreign, federal, state, county, or local laws (including common law), statutes, regulations, rules, orders, codes, or ordinances enacted, adopted, issued or promulgated by any Governmental Authority, SPP, or FERC, including any tariff accepted for filing and effective.
- 1.47 Safety Rules means (a) Good Utility Practice, (b) all Requirements of Law, (c) written instructions from MJMEUC, (d) National Electric Safety Code (latest version) and (e) safety rules of the City. If any conflict occurs between the above requirement, the rule which produces the highest safety outcome shall prevail.
- 1.48 Services has the meaning set forth in Section 2.4.

- 1.49 Shared Expenses means those expenses necessary for the operations and maintenance of both MJMEUCA and City Assets in which the Parties share comparably in the benefits thereof, and by agreement of the Parties are the cost of which are to be shared equally between the Parties.
- 1.50 SPP means the Southwest Power Pool, Inc.
- 1.51 Specified Interest Rate means an interest rate per annum equal to the lesser of (a) the maximum rate permitted by Requirements of Law or (b) a rate equal to two hundred (200) basis points over the interest rate per annum for large commercial loans as published in The Wall Street Journal as the prime rate (sometimes referred to as the base rate) from time to time (or, if more than one rate is published, the arithmetic mean of such rates), determined as of the date the obligation to pay interest arises.
- 1.52 Term has the meaning as set forth in Section 7.1.
- 1.53 Transmission Facilities means the tangible assets, real property interests, infrastructure, and facilities, owned by MJMEUC and used to transmit or deliver power and energy for resale in or through SPP, including equipment, feeders, lines, substations, breakers, switches, transformers and such other assets as may be designated by SPP, FERC, or other applicable regulatory agency, including facilities not controlled by SPP, if used for delivery of power and energy for resale in Missouri.
- 1.54 Work Product has the meaning set forth in Section 9.1.

Article 2. Engagement and Rendition of Services

- 2.1. Engagement. MJMEUC hereby engages City to perform the Services on the MJMEUC Assets. MJMEUC reserves the right, and intends to exercise the right, to either perform itself, or engage another contractor to perform, some or all maintenance, operations and other services that may constitute the Services.
- 2.2. Core Services. City shall furnish and perform the following specified operations and maintenance services for the MJMEUC Assets (collectively, the “Core Services”):
- 2.2.1. Operations. Subject to the terms set forth in this Agreement, with respect to the Transmission Facilities, to the extent permitted and authorized by this Agreement, City, through its employees, consultants, contractors, and other personnel, shall perform the following operational duties to ensure the reliability and security of the Transmission Facilities. But nothing herein shall constitute an assumption by City of any liabilities with respect to the Transmission Facilities except as otherwise specifically provided herein (including as provided in Article XI of this Agreement). The City shall perform the following functions with respect to the Transmission Facilities consistent with the Safety Rules, FERC regulatory standards, and as directed by MJMEUC:
- a. Substations Access Control: The Director of City Utilities shall determine who constitutes a Qualified Person who may access the substations without notice to MJMEUC. MJMEUC agrees to provide notice to the Director of City Utilities prior to any MJMEUC representative accessing the substations. The parties agree each substation shall have a lock, and the Parties will have shared keys to each of the substation locks.

- b. **Monitoring:** The Transmission Facilities shall have electronic monitoring of substation equipment and system performance status with notification of status change to specified personnel twenty-four (24) hours a day, seven (7) days a week (“24/7”), or as mutually agreed to by the Parties. All transmission system notifications shall be sent to the following: MPUA Chief Operating Officer, MPUA Director of Energy Supply Services, MPUA Director of Engineering and Systems Planning, MPUA RSC Chief Lineman, Director of City Utilities and City Electric Superintendent.
- c. **69 KV Breakers Opening and Closing:** In the event one or more of the breakers are tripped, the Parties shall coordinate the manual opening or closing of the breakers utilizing NESC or OSHA guidelines for the lock-out/tag-out process. City shall notify MJMEUC anytime City changes status of any breaker.
- d. **One-Call Locates:** City shall provide all One-Call Locates requested of and involving the Transmission Facilities.
- e. City shall respond and act in accordance with the Safety Rules to all outages and real-time events, providing notification to MJMEUC as soon as reasonably practicable.
- f. City shall have the right to adopt and implement, consistent with Good Utility Practice, procedures and to take such actions it deems necessary to protect the Transmission Facilities from physical damage or to prevent injury or damage to persons or property, providing notification to MJMEUC as soon as reasonably practicable.

2.2.2. **Maintenance:** Transmission overhead line maintenance and inspection including but not limited to testing, inspection and maintenance of MJMEUC Assets Inside the Fence (including the substation fence), substation equipment testing, maintenance and inspection of protective relaying and control testing, maintenance and inspection of SCADA systems and telecommunication testing, maintenance and inspection of ongoing system operation services, rights-of-way maintenance (including tree trimming and vegetation management) and equipment operation for routine lockout/tagout. More specifically, the City shall perform the following services, as well as Emergency, administrative, and other additional services not herein contemplated which shall be chargeable to MJMEUC as compensation pursuant to Section 5.1 herein:

- a. Primary relays for 69 kV shall be tested annually and the first annual test shall be done during 2022.
- b. Each substation and each 69 kV breaker shall be inspected monthly utilizing inspection sheets provided by MJMEUC. The monthly inspection sheets shall be completed and returned to MJMEUC’s Chief Operating Officer no later than the 5th of each month.
- c. Each substation fence shall be inspected monthly and repaired pursuant to the Safety Rules. Any holes or voids in or under the fence large enough for a small child or animal to enter the substation shall be considered an

Emergency. Such hole or void shall be guarded until adequate repairs can be performed. All repairs to substation fences shall be a Shared Expense.

- d. The ground grid at each substation shall be tested within one hundred twenty (120) days of the secondary containment being installed and at least once every five (5) years thereafter. MJMEUC will specify the testing parameters and identify an acceptable resistance to ground value.
- e. Grounds maintenance (i.e., snow removal, tree trimming, vegetation control, etc.) at each substation, and for all Transmission Facilities shall be the responsibility of the City. Grounds maintenance for the substations shall be a Shared Expense. Grounds maintenance for the transmission line shall be proportionately divided between the grounds maintenance necessary for the transmission line and the grounds maintenance necessary for the City's distribution system.
- f. All cybersecurity requirements that are imposed by SPP, Requirements of Law, Good Utility Practice, or required for insurance.
- g. The cost of maintenance and repair of all jointly used facilities shall be a Shared Expense.

2.2.3 The Core Services shall also include, but not be limited to, the provision by City of all Qualified Personnel, tools, and equipment necessary or advisable in connection with the Core Services (which shall be chargeable to MJMEUC as Compensation pursuant to Section 5.1 herein).

2.2.4 For the avoidance of doubt, the Core Services shall not include (a) any services with respect to Transmission Facilities that are not MJMEUC Assets unless specifically preapproved by MJMEUC; (b) any capital replacements or capital additions to the MJMEUC Assets; provided, however, that the Parties may agree that City will perform certain capital replacements or additions to the MJMEUC Assets as directed by MJMEUC from time to time; or (c) any SF6 maintenance or replacement, which shall be handled only by an Approved Contractor.

2.2.5 The City may purchase material and supply labor up to Five Thousand Dollars (\$5,000), per occurrence, for purposes of repair or maintenance on the Transmission Facilities without prior approval from MJMEUC. All expenditures in excess of Five Thousand Dollars (\$5000.00) requires prior MJMEUC approval.

2.3 Emergency Services. In the event of any emergency, City shall act to prevent, avoid, or mitigate injury, damage, or loss to the Transmission Facilities and shall contact MJMEUC as soon as practical. City shall, upon receiving actual notice of an emergency, or written or email notice from MJMEUC, either provide such qualified personnel, tools and equipment as are necessary to assist in providing emergency restoration actions and services for the Transmission Facilities as directed by MJMEUC or notify MJMEUC if City is not able to provide this service in a timely manner. MJMEUC may, at MJMEUC's sole discretion, regardless of the City's availability to perform the service, immediately provide such service on its own. The Services described in this Section 2.3 are defined as "Emergency Services."

- 2.4 Administrative Services. City shall, on a timely basis: (a) meet with Representatives of MJMEUC as reasonably requested by MJMEUC; (b) appoint and designate a manager to represent and to act on behalf of City and to receive communications from MJMEUC; (c) provide MJMEUC with such reports or data reasonably requested by MJMEUC; (d) provide MJMEUC or its Representatives with reasonable access to the Transmission Facilities; (e) create and maintain a SharePoint document library for the preservation of all inspection reports, repair reports, invoices, and such other documents as the Parties designate; and (f) maintain in good order all written and electronic books, records, logs and accounts with respect to the Services in accordance with Requirements of Law and Good Utility Practice. Upon termination of this Agreement, City shall deliver to MJMEUC all existing records with respect to the Services (items (a)-(f), the Administrative Services and collectively with the Core Services and the Emergency Services, the “Services”).
- 2.5. Changes to Services. MJMEUC may request a Change to the Services (a “Change”) by advising City in writing of a Change that MJMEUC, in its discretion, believes to be necessary or advisable. Within fifteen (15) Business Days thereafter, City shall advise MJMEUC whether it is willing to provide the Services in the proposed Change and a cost estimate for the Change. MJMEUC shall advise City in writing of its approval or disapproval of the Change within fifteen (15) Business Days thereafter. If MJMEUC approves the Change, City shall perform the Services as Changed. The Parties shall memorialize in an addendum to this Agreement all Changes, which addendum shall be updated by the Parties from time to time. City may request a Change by advising MJMEUC in writing that, in City's opinion, a Change to the Services is necessary or advisable. If MJMEUC agrees, it shall advise City and thereafter, the Change shall be handled as if it were initiated by MJMEUC. Notwithstanding the foregoing, neither MJMEUC nor City shall have any obligation to proceed with any Change without a written authorization signed by both Parties.
- 2.6. Nothing herein shall be construed as requiring or effecting a transfer of any of MJMEUC’s responsibility (or the assumption thereof by the City) for the physical control of the Transmission Facilities, including the physical operation, repair, maintenance and replacement of such Transmission Facilities, or as conveying to the City any right, ownership, title or interest in or to the Transmission Facilities; or any conveying to MJMEUC any right, ownership, title or interest in or to the City’s Assets.
- 2.7. Standard of Conduct
- 2.7.1 City shall perform the Services in accordance with the Safety Rules.
- 2.7.2 In fulfilling its duty to operate and maintain the Transmission Facilities in accordance with Article 2 herein, City shall do so consistently and without discrimination between the Transmission Facilities and the City Assets specifically including the facilities owned by City. In exigent circumstances where City is unable to perform the duties without discrimination, City shall ensure an Authorized Subcontractor has been engaged to perform the needed duties and notify MJMEUC immediately. In addition, with respect to costs that are to be allocated to MJMEUC, City shall only allocate to MJMEUC equitably and in accordance with Good Utility Practice, costs incurred by City in the performance of its obligations under this Agreement.
- 2.7.3 “Discriminate” means the failure of City to provide services in a manner that treats alike the Transmission Facilities and the other facilities it owns, operates,

or maintains under substantially similar conditions, and which dissimilar treatment (a) either (i) has a Material Adverse Effect on MJMEUC or (ii) is not otherwise justified as acting in accordance with Good Utility Practice, and (b) is evidenced by a particular practice or pattern of behavior of City that is intended to and actually does Discriminate against MJMEUC. The term Discrimination has a correlative meaning to a “Material Adverse Effect.” Discrimination does not include any incidental assistance by City that it has no contractual obligation to provide. For purposes of this Section 2.7.3, a Material Adverse Effect on MJMEUC means a Material Adverse Effect on, or a material increase in the costs of, any of (A) the operations and maintenance of the Transmission Facilities for the benefit of MJMEUC, (B) the performance of the Services for the benefit of MJMEUC, or (C) the business, operations or financial condition of MJMEUC.

2.8 Limitation on Subcontracting. Except for the Approved Subcontractors set forth in **Exhibit B**, City shall use its own employees to perform the Services and shall not subcontract any responsibility or obligation under this Agreement without the prior written consent of MJMEUC. In order to appoint an Approved Subcontractor, City shall provide at least thirty (30) days' prior written notice to MJMEUC of any Services proposed to be subcontracted and of the identity of all proposed subcontractors. If MJMEUC does not consent to the engagement of a proposed subcontractor, City shall not engage said subcontractor for the Services. City shall not be relieved of any responsibility or obligation under this Agreement by subcontracting all or any portion of the Services. City shall include in any such subcontracts any provisions of this Agreement which in any way may be applicable to performance of the subcontract, including this Article, and all representations, warranties, insurance, indemnity, jobsite safety and compliance provisions and all other applicable provisions intended for the protection of MJMEUC and the Transmission Facilities in form and substance similar to those provisions as contained herein, and MJMEUC shall be an expressed third party beneficiary of any such subcontract. Notwithstanding the foregoing, when providing Emergency Services, City may utilize the services of any entity provided under a mutual aid agreement with other utilities.

2.8.1. Required Information for Contractors and Subcontractor. In the event City contracts or subcontracts any of the Services herein, or for any services for the City's Assets, it shall be the responsibility of City to provide the required OSHA regulation 1910.269(a)(3) information, as set out in Section 3.2 herein, to the contractor or subcontractor for work safety on or around the Transmission Facilities. Likewise, if MJMEUC contracts or subcontracts any of the Services herein, it shall be the responsibility of MJMEUC to provide the contractor or subcontractor the aforesaid information.

Article 3. Jobsite Safety

3.1. Site inspection. City shall be deemed to have examined all Transmission Facility sites where it performs Services (“MJMEUC Asset Sites”) and to have secured full knowledge of all conditions under which the Services are to be performed, including, but not limited to, soil conditions, available roadway, and other approaches to the MJMEUC Asset Sites and the space available for work areas, storage, and temporary buildings.

3.2. Compliance with OSHA regulation 1910.269(a)(3). Prior to City rendering any Services, MJMEUC shall inform City who shall inform any City Qualified Personnel of the specific characteristics of the Transmission Facilities that are related to the safety of the

work to be performed and Services to be rendered, including but not limited to the following:

- 3.2.1. The nominal voltages of the lines and equipment;
 - 3.2.2. The maximum switching-transient voltages;
 - 3.2.3. The presence of hazardous induced voltages;
 - 3.2.4. The presence and condition of protective grounds and equipment grounding conductors;
 - 3.2.5. The locations of circuits and equipment, including electric supply lines, communications lines, and fire-protective signaling circuits;
 - 3.2.6. The condition of poles;
 - 3.2.7. Environmental conditions relating to safety;
 - 3.2.8. Fault current availability;
 - 3.2.9. If MJMEUC fails to apprise City of the foregoing information, City shall not perform any Services under this Agreement until such time MJMEUC has provided the specific characteristics of the Transmission Facilities; and
 - 3.2.10. In the event City discovers an unanticipated hazardous condition(s) that MJMEUC did not previously apprise City thereof, City shall provide such information regarding the hazardous condition(s) to MJMEUC in writing within two (2) working days after discovering the hazardous condition(s).
- 3.3. Use of Site by Others. Each MJMEUC Asset Site and its approach facilities shall be used by City with due regard for the requirements of MJMEUC and others permitted by MJMEUC to use such MJMEUC Asset Site. If it becomes necessary to move the materials or facilities of City, it shall be done upon request of MJMEUC at the expense of City unless the request involves a movement from a previously approved area. MJMEUC may install and operate equipment and machinery or otherwise use and occupy any MJMEUC Asset Site during the performance of the Services, provided that MJMEUC shall not unreasonably interfere with City's performance of the Services under the conditions originally contemplated.
- 3.4. Site Maintenance. City shall perform the Services in a manner that does not degrade the safe and sanitary conditions of each MJMEUC Asset Site.
- 3.5. Substation Security Regulations. MJMEUC, before entering the premises of any MJMEUC Asset Site that is secured by fencing or other perimeter barrier, must notify City of its intention to do so and at the same time inform City of the starting date for the performance of the Services, the nature of the Services to be performed, the areas in which the Services will be performed, the duration of the Services, the approximate number and types of personnel performing the Services, the schedule, length of time to be worked and such other information as may be necessary to enable City to be advised of and to comply with all applicable Safety Rules. If required by MJMEUC, City shall provide the foregoing information to MJMEUC before entering the premises of any MJMEUC Asset Site secured by fencing or other perimeter barrier.

- 3.6. Safety Rules. This Section 3.6 applies to all employees, agents, subcontractors, contractors, and invitees of City, including the employees of any of them (herein called “City Authorized Personnel”). Prior to commencement of the Services, the Parties will agree to procedures that ensure that City adheres, and the City Authorized Personnel adhere, to a mutually satisfactory safety program at all times while on MJMEUC Asset property, by adopting procedures (the Safety Rules) that incorporate the more stringent of the various safety procedures described in the Safety Rules. City shall ensure that all City Authorized Personnel on any MJMEUC Asset Site conform to all Safety Rules and attend all required safety training before starting to perform any Services. City will ensure that all City Authorized Personnel have been instructed with respect to all Safety Rules and have been advised to report any infractions thereof to City without fear of reprimand. City shall immediately correct any such infractions by City Authorized Personnel and shall be responsible for any and all consequences thereof. City agrees to indemnify and hold harmless MJMEUC from and against any claims and liability for personal injury or death of any City Authorized Personnel occurring while they are present on any MJMEUC Asset Site and arising out of or in connection with any failure by City or any City Authorized Personnel to enforce or observe any Safety Rules.

Article 4. Obligations of MJMEUC

- 4.1. Materials. MJMEUC shall provide and have the financial responsibility for all materials required by City to perform the Services. City shall use all materials provided by MJMEUC to perform the Services. City shall keep an inventory record of any materials MJMEUC provides to it under this Agreement and return any such unused materials to MJMEUC upon termination or expiration of this Agreement. City shall be responsible for safeguarding and segregating any materials provided by MJMEUC in a secured location (the address of which City shall provide to MJMEUC by written notice prior to placing such materials at the address), clearly labeled as being the property of MJMEUC.
- 4.2. Compliance with Safety Rules and Management of Policies. MJMEUC and City shall, at all times, comply with the Safety Rules, and City’s internal operating procedures. City shall be responsible for operations and maintenance as set out in this Agreement, including management and administration of policies and procedures with respect to the Services as directed and authorized of MJMEUC.
- 4.3. Strategy and Tactics. MJMEUC shall in its sole discretion make business, management, tactical and strategic decisions as may be required from time to time in connection with the Services and the Transmission Facilities.
- 4.4. Managers. MJMEUC’s Chief Operations Officer is designated to represent MJMEUC and to act on its behalf and receive communications from City. The City’s Director of Utilities is designated to represent the City and to act on its behalf and receive communications from MJMEUC.
- 4.5. Access. MJMEUC shall provide City with access to the Transmission Facilities that is sufficient to enable City to perform the Services in accordance with the requirements set forth in this Agreement.

Article 5. Compensation, Billing, Payment and Audit

- 5.1. Compensation. In consideration for City's performance of the Services, MJMEUC shall pay City an amount equal to the sum of the following amounts in connection with the performance of the Services: (a) the actual amount incurred by City for direct labor costs (See City's Labor Rates in **Exhibit E**); plus (b) a reasonable usage fee for the use of any equipment provided by City (See City's Equipment Rates in **Exhibit F**); plus (c) the actual amount incurred by City for any verifiable incidental materials provided by City, or other direct costs, and any required permits or approvals from Governmental Authorities to the extent applicable to Services on the Transmission Facilities; plus (d) all indirect expenses of City allocatable to this agreement; plus (e) the actual amount paid to any Approved Subcontractor for Services performed (without duplication of amounts paid under any of clauses (a), (b), (c) (d) or (e)); plus (f) the product of (i) clauses (a), (b), (c) and (d) and (ii) the City's Adder (collectively, the "Compensation"). Any cost of City, or of any Approved Subcontractor must be reasonable, supported by proper documentation and in accordance with Good Utility Practice. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that any consideration for the Services must be just and reasonable.
- 5.2. Invoicing. On a monthly basis, City shall invoice the amount of Compensation earned by City during the prior month, including in the invoice the appropriate MJMEUC designated maintenance activity and expense codes set forth in **Exhibits C-1 and C-2** hereto, and shall provide such other records and detail as MJMEUC reasonably requests in connection with invoicing.
- 5.3. Payment. MJMEUC shall pay to City from revenue earned from the Transmission Facilities the amount of each invoice received from City for the O&M services and expenses on a net 30-day basis following MJMEUC's receipt of the invoice. In the event that MJMEUC has a dispute with respect to the amount of any invoice, MJMEUC shall make full payment and include with such payment, or within thirty (30) days of such payment, a written statement specifying the amount in dispute and its reasons for disputing such amount. MJMEUC and City shall endeavor to negotiate a settlement of any disputed amounts. In the event that the Parties determine that MJMEUC has paid a disputed amount that it should not have been obligated to pay, MJMEUC shall be entitled to that amount plus Interest at the Specified Interest Rate, until paid. With respect to an overpayment by MJMEUC, such amount, including interest at the Specified Interest Rate, shall first be used to offset any invoices due and payable and the balance shall be refunded to MJMEUC.
- 5.4. Recordkeeping. City shall maintain adequate books and records concerning the amount of Compensation for operations and maintenance services billed to MJMEUC pursuant to the Requirements of Law and Good Utility Practice. City shall also comply with the MJMEUC accrual requirements contained in **Exhibit C**. Upon ten (10) days advance written notice from MJMEUC, City will permit MJMEUC to audit during normal business hours such records as may be reasonably necessary to verify the accuracy of the amount of Compensation billed by City to MJMEUC. City shall cooperate with all such audits. All such audits will be conducted at the expense of MJMEUC. In the event that the Parties determine that a Party has paid or incurred an amount that it should not have been obligated to pay or incur, such Party shall be given credit for that amount plus Interest at the Specified Interest Rate. If MJMEUC has overpaid, such amount, including Interest at the Specified Interest Rate from the date of overpayment, shall first be used to offset any invoices due and payable and the balance shall be refunded to MJMEUC within ten (10) days. If MJMEUC has underpaid, such amount, including Interest at the

Specified Interest Rate from the date of underpayment, shall be paid to City within ten (10) days.

Article 6. Representations and Warranties

6.1. Each Party. Each of the Parties represents and warrants as follows:

6.1.1. Organization and Existence. Such Party is duly organized, validly existing and in good standing under the laws of the State of Missouri.

6.1.2. Execution, Delivery and Enforceability. Such Party has full power and authority to execute, deliver and carry out its obligations under this Agreement. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary action required on the part of such Party. Assuming due authorization, execution and delivery of this Agreement by the other Party hereto, this Agreement constitutes the valid and legally binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors' rights, by general equitable principles and to the extent that the enforceability of indemnification provisions may be limited by Requirements of Law.

6.1.3. No Violation. Neither the execution and delivery of this Agreement, nor compliance with any provision hereof, nor consummation of the transactions contemplated hereby, (a) violate such Party's bylaws, operating agreements, constitutional charter, or any other organizational document, each as amended to date; (b) violate any Requirements of Law as applicable to such Party or any effective resolution of such Party, each as amended to date, in a manner that could cause a Material Adverse Effect; (c) result in any violation of or default (with or without notice or lapse of time, or both) under, or give to others a right of termination, cancellation or acceleration of any obligation under (i) any agreement, note, bond, mortgage, indenture, lease or other contract applicable to such Party or such Party's Assets or (ii) any Requirements of Law or any judgment, order or decree applicable to such Party or such Party's Assets, which violation or default could create a Material Adverse Effect; or (d) result in the imposition or creation of any lien or encumbrance upon or with respect to the Party's Assets that could create a Material Adverse Effect.

6.2. Additional Representation of City. City further represents, warrants and covenants to MJMEUC that City and its respective employees and personnel have, and shall have, at the time of performance of the Services, substantial expertise and experience in the operations and maintenance of the MJMEUC Assets and each is, and shall be, fully qualified to operate and maintain the MJMEUC Assets that operate at 69 kV (72.5kV at peak) or below in accordance with the terms hereof.

Article 7. Term and Termination

7.1. Term. This Agreement shall (a) commence upon the date MJMEUC obtains ownership of the MJMEUC Assets (the "Commencement Date"); and (b) remain in effect for five (5) years after the Commencement Date, unless earlier terminated pursuant to this Section 7.1 (the "Initial Term"). In addition, this Agreement shall automatically renew

for an additional five (5) year term (each, a “Renewal Term” and collectively with the Initial Term, the “Term”), upon the expiration of the Initial Term or the then-current Renewal Term (up to a maximum of five (5) such Renewal Terms), unless terminated pursuant to Section 7.2.1.

7.2. Termination. This Agreement may be terminated as follows:

7.2.1 Upon delivery of written notice by either Party at least one (1) year prior to the end of the Initial Term or any Renewal Term.

7.2.2 A non-defaulting Party may terminate this Agreement as a result of an Event of Default as provided in Section 8.4.

7.2.3 This Agreement may be terminated by either party in connection with MJMEUC’s sale of all or substantially all of the MJMEUC Assets.

7.2.4 This Agreement may be terminated at any time by written consent, signed by both Parties.

7.3. Effect of Termination. Upon termination, the Parties shall take the following actions:

7.3.1. City shall be paid the Compensation for Services actually rendered prior to termination of this Agreement.

7.3.2. Within sixty (60) days following termination of this Agreement, City and MJMEUC shall reconcile all amounts then due and payable to each other under this Agreement. Within ninety (90) days after such reconciliation, City or MJMEUC, as the case may be, shall make final payment in complete discharge of its obligations under this Agreement, except those obligations that expressly survive the termination of this Agreement.

7.3.3. City shall deliver to MJMEUC upon termination or expiration of this Agreement all records pertaining to the Services pursuant to Section 2.4 (f), all unused Materials pursuant to Section 4.1 and all MJMEUC Work Product and City Work Product pursuant to Section 9.2.

7.3.4. The indemnification provisions in Sections 2.8 (Limitations on Subcontracting), 3.5 (Safety Rules) and Article 11 (Indemnity), as well as the provisions in Article 12 (Confidentiality), shall each survive the termination of this Agreement.

Article 8. Default

8.1. Event of Default. An Event of Default occurs if:

8.1.1. Either Party fails to make a payment under this Agreement when due and such failure continues for a period of twenty (20) days after receipt of written notice thereof from City (the “Payment Default Notice”) (such default being a “Payment Default”); or

8.1.2. Either Party fails to fulfill any material obligation under this Agreement and such failure continues for thirty (30) days after receipt of written notice thereof from the non-defaulting Party (a “Performance Default”); or

- 8.1.3. (a) Either Party becomes insolvent or bankrupt or ceases to pay its debts as they mature or makes an arrangement with or for the benefit of its creditors or consents to or acquiesces in the appointment of a receiver, trustee or liquidator for any substantial part of its property; or (b) a bankruptcy, winding-up, reorganization, insolvency, arrangement or similar proceeding instituted by or against such Party under the laws of any jurisdiction, which proceeding has not been dismissed within ninety (90) days; or (c) any action or answer by such Party approving of, consenting to, or acquiescing in, any such proceeding; or (d) the levy of any distress, execution or attachment upon the property of such party that substantially interferes with such Party's performance under this Agreement (any such event being a "Financial Default").
- 8.2. Cure. If the nature of the failure to cure a Performance Default is such that, although curable, it cannot with Due Diligence be cured within said thirty (30) day period, and the defaulting Party shall have diligently prosecuted the cure of such Performance Default within said thirty (30) days and thereafter diligently prosecutes such cure until the Performance Default is remedied, the time for cure of the Performance Default shall be extended by such period of time as is reasonably necessary to cure such Performance Default, subject to a maximum extension of ninety (90) days.
- 8.3. Remedies. Upon the occurrence of an Event of Default that is not cured in accordance with Section 8.2 above, a non-defaulting Party shall be entitled to commence an action to require the defaulting Party to remedy such Event of Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof and may exercise such other rights and remedies as it may have in equity or at law. In addition, if City fails to carry out any of its obligations under this Agreement and fails, within thirty (30) days after receiving notice of such breach from MJMEUC (or within such shorter time as MJMEUC reasonably believes is prudent in light of the nature of the breach), MJMEUC may, without prejudice to any other remedy it may have, cure such breach. City shall pay, upon demand, the costs reasonably incurred by MJMEUC in exercising its rights under this Section 8.3 and such exercise will not diminish any of MJMEUC's rights under this Section 8.3 or any of its other rights and obligations under this Agreement. Any amount due under this Agreement shall bear interest from the date due until paid at the Specified Interest Rate. City's liability for damages as the result of a Performance Default shall not exceed the actual amount paid for direct labor, reasonable overhead costs and the City's Adder on such amount paid by MJMEUC to City in performing such Service; it being understood that the foregoing limitation of damages does not apply to any liability under the indemnification provisions in Sections 3.5 and 11.1.
- 8.4. Termination. After applicable cure periods, a non-defaulting Party may terminate this Agreement as a result of a Payment Default, a Financial Default, or a Performance Default as defined in Section 8.1. by the other Party.

Article 9. Ownership of Property, Data and Information

- 9.1. Ownership. MJMEUC shall own all right, title and interest in any goods and other property created, delivered or provided by City to MJMEUC in connection with City's performance of the Services, including any physical repairs, improvements or betterments of the Transmission Facilities, as well as all accumulated drawings, sketches, data, reports, plans, specifications, calculations, maps, schedules, models, samples, estimates, summaries, completed work, and work in progress (collectively "Work Product") prepared or developed by City or its employees during the performance of the

Services (“City Work Product”). MJMEUC shall also retain all right, title and interest in all Work Product provided to City by MJMEUC (“MJMEUC Work Product”). The Parties recognize that City, while operating and maintaining utilities, may develop know-how or other intellectual property while operating and maintaining its own City Assets as well as while providing the Services and agree that such know-how or other intellectual property shall remain the property of City, except as agreed to in writing in advance of City developing specific know-how or other intellectual property at MJMEUC's request.

- 9.2. Return of Work Product. City shall promptly deliver to MJMEUC all City Work Product and MJMEUC Work Product upon MJMEUC's request and, in any event, upon termination or expiration of this Agreement.

Article 10. Insurance.

- 10.1 City Required Insurance. Prior to commencing performance under this Agreement, City at its sole expense, shall maintain in full force and effect throughout the Term of this Agreement, for its benefit and for the benefit of MJMEUC, insurance policies for the following coverages:

10.1.1. General Liability or Excess General Liability Insurance. City shall maintain coverage of at least One Million Dollars (\$1,000,000) on an occurrence basis, and with an aggregate of Two Million Dollars (\$2,000,000), for bodily injury (including death), property damage (including loss of use) and personal injury. Such coverage shall provide coverage for products and completed operations, blanket contractual, broad form property damage, and independent contractors; with MJMEUC named as an additional insured, such coverage shall be primary and non-contributory.

10.1.2. Workers Compensation. City shall maintain coverage as required by law where Services are to be performed and Employer's Liability Insurance with a limit of liability of not less than One Million Dollars (\$1,000,000) for each accident, disease each employee, with a One Million Dollars (\$1,000,000) disease policy limit. In the event City subcontracts the Services to be performed, the City shall require the Approved Subcontractor, as applicable, to fulfill the worker's compensation terms of this Agreement.

10.1.3 Business Auto Liability Insurance. City shall maintain coverage for City's owned, non-owned, leased, and hired vehicles with limits of at least One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage for each accident when any auto is used in performing Services.

10.1.4 Property Coverage. City shall maintain all risk Property Coverage for any owned assets located in or in close proximity to the substations owned by MJMEUC. MJMEUC will not be responsible for the City's property located in or in close proximity to the substation. This provision shall survive termination of this Agreement and continue until such time as City removes all City Assets from the premises of the substations and all City Assets in close proximity to the substations.

10.1.5. Pollution Liability Insurance. City shall maintain coverage of at least Five Million Dollars (\$5,000,000) for each occurrence and in the aggregate. Coverage to include, but not limited to, bodily injury, property damage, cleanup expenses,

and defense costs, with MJMEUC named as an additional insured. If policy is written on a claims-made basis, then coverage will be maintained and remain in effect for at least five (5) years beyond the expiration or termination of this Agreement.

10.1.6. Professional Liability Insurance. City shall maintain coverage of at least One Million Dollars (\$1,000,000) for each occurrence and in the aggregate. If policy is written on a claims-made basis, then coverage will be maintained and remain in effect for at least five (5) years beyond the expiration or termination of this Agreement. This policy is for protection against claims alleging negligent acts, errors, or omissions which may arise from the City's operations or maintenance of the Transmission Facilities under this Agreement, whether such operations or maintenance was performed by the City's employees, contractors, or subcontractors,

10.1.7. Umbrella or Excess Liability Insurance. City shall maintain coverage of at least Five Million Dollars (\$5,000,000) combined single limit each occurrence and in the aggregate, with MJMEUC named as an additional insured. Coverage to include excess of limits provided by General Liability, Employers Liability, and Business Automobile insurance. The aggregate limit shall apply separately to each annual policy period.

10.2. MJMEUC Required Insurance. Upon obtaining ownership of the Transmission Facilities from GridLiance White Plains, LLC, MJMEUC, at its sole expense, shall maintain in full force and effect throughout the Term of this Agreement, for its benefit and for the benefit of the City, insurance policies for the following coverages:

10.2.1 General Liability or Excess General Liability Insurance. MJMEUC shall maintain coverage of at least One Million Dollars (\$1,000,000) on an occurrence basis, with an aggregate of Two Million Dollars (\$2,000,000), for bodily injury (including death), property damage (including loss of use). Such coverage shall provide coverage for products and completed operations, blanket contractual, broad form property damage, and independent contractors.

10.2.2 Workers Compensation. MJMEUC shall maintain coverage as required by law and Employer's Liability Insurance with a limit of liability of not less than One Million Dollars (\$1,000,000) for each accident, disease each employee, with a One Million Dollars (\$1,000,000) disease policy limit. In the event MJMEUC contracts or subcontracts the Services to be performed, MJMEUC shall require the City and Approved Subcontractor, as applicable, to fulfill the worker's compensation terms of this Agreement.

10.2.3 Business Auto Liability Insurance. MJMEUC shall maintain coverage for MJMEUC's owned, non-owned, leased, and hired vehicles with limits of at least One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage for each accident when any auto is used in performing Services.

10.2.4 Property Coverage. MJMEUC shall maintain all risk Property Coverage with respect to the substations, with such coverage to be subject to deductibles and sublimits at levels deemed appropriate by MJMEUC's governing body.

- 10.2.5. Pollution Liability Insurance. MJMEUC shall maintain coverage of at least Five Million Dollars (\$5,000,000) for each occurrence and in the aggregate. Coverage to include, but not limited to, bodily injury, property damage, cleanup expenses, and defense costs. Policy to be written on a claims-made basis, with coverage to be maintained and remain in effect for at least five (5) years beyond the expiration or termination of this Agreement.
- 10.2.6. Umbrella or Excess Liability Insurance. MJMEUC shall maintain coverage of at least Five Million Dollars (\$5,000,000) combined single limit each occurrence and in the aggregate. Coverage to include excess of limits provided by General Liability, Employers Liability, and Business Automobile insurance. The aggregate limit shall apply separately to each annual policy period.
- 10.3. Policy Requirements. All insurance policies shall: (i) contain a severability of interest clause, (ii) unless stated otherwise herein, apply on a primary and non-contributory basis to any insurance maintained by any additional insured, (iii) waive subrogation against any additional insureds, and (iv) otherwise be in form and substance reasonably acceptable to the other Party, and (v) unless stated otherwise herein, if a policy is on a “claims-made” basis, such coverage shall survive the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of Missouri for actions based on contract or in tort. If coverage is on an “occurrence” basis, insurance on an occurrence basis shall be maintained for the term of this Agreement.
- 10.4. Disclosure of Claims. Each Party shall promptly furnish the other Party with all information reasonably available to it relating to the operations and maintenance of the Transmission Facilities as is necessary to enable the first Party to comply with its disclosure obligations under the insurance which it has taken out. Each Party shall promptly notify the other Party of any claim with respect to any of the insurance policies referred to this Article 10, accompanied by full details of the incident giving rise to such claim. Each Party shall afford to the other Party all such assistance as may reasonably be required for the preparation and negotiation of insurance claims, save where such claim is against the Party required to give assistance.
- 10.5. Waiver of Claims for Insured Events. Notwithstanding anything to the contrary contained in this Agreement, each party waives any and every claim that arises or may arise in its favor against the other Party during the term of the Agreement for any and all loss of, or damage to any property of such Party, to the extent such loss or damage is an insured event covered by the insurance to be maintained in accordance with this Agreement; provided, however, the foregoing waiver shall not apply to any uninsured deductible or to instances where the relevant insurer disputes that the relevant event of loss was an insured event covered by the applicable insurance policy. Nothing in the foregoing provision shall be construed to prevent a Party from making a claim against any Party’s insurance policy.
- 10.6. Governmental and Municipal Immunity. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City or MJMEUC of any applicable state limits on municipal liability or governmental immunity.

- 11.1. Mutual Indemnity. To the extent permitted by law, each Party (“Indemnifying Party”) agrees to defend, indemnify, and hold harmless the other Party and its Related Parties (each an “Indemnified Party”), as the case may be, against any claims, liabilities, losses, damages, judgments, costs or expenses, including reasonable attorney's fees arising out of or related to this Agreement (collectively “Claims”) to the extent caused by or resulting from the negligence or willful misconduct by or of the Indemnifying Party or its Related Parties arising out of or related to this Agreement. A Party shall promptly notify the other Party of its assertion of any Claim against such Party that is potentially indemnifiable by such Party. The Claiming Party shall give the Indemnifying Party an opportunity to defend such a Claim and shall not settle such Claim without the approval of the Indemnifying Party, which approval shall not be unreasonably denied. This indemnity shall be in addition to the indemnity set forth in Section 3.5.
- 11.2. Limitation on Damages. Notwithstanding anything to the contrary contained herein the Parties waive all Claims against each other (and against each other's Related Parties) for any consequential, incidental, indirect, special, or exemplary damages (including loss of actual or anticipated profits, revenues or product; loss by reason of shutdown or non-operation; cost of replacement power; interest charges (except as expressly set forth in this Agreement); cost of capital; or claims of its customers to which service is made, and regardless of whether any such Claim arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory. The above limitations shall not, however, be construed as a limitation on liability for death, bodily injury, or third-party claims.

Article 12. Confidentiality

- 12.1. Confidential Information Defined. For all purposes of this Agreement, the term Confidential Information shall refer to any and all information or material disclosed or provided by or on behalf of the Party disclosing the information (each, a “Disclosing Party”) to the Party receiving the information (each, a “Recipient”) that is identified by the Disclosing Party as Confidential Information. Confidential Information also includes any notes, analyses, compilations, studies, or other materials or documents prepared by Recipient that contain, reflect, or are based on, in whole or in part, other Confidential Information.
- 12.2. Exceptions to Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information or material that (i) is publicly available or becomes publicly available through no action or fault of Recipient, (ii) was already in Recipient's possession or known to Recipient prior to being disclosed or provided to Recipient by or on behalf of Disclosing Party, provided that, to the best of Recipient's knowledge, the source of such information or material was not bound by a contractual, legal, or fiduciary obligation of confidentiality with respect thereto, (iii) is obtained by Recipient from a third party, provided that, to the best of Recipient's knowledge, such third party is not bound by a contractual, legal, or fiduciary obligation of confidentiality with respect thereto, (iv) is obtained by or provided to a third party under the Missouri Sunshine Law (Chapter 610 RSMo, as may be amended) or any similar Requirement of Law; (v) is obtained by or provided to a Government Authority at the request of such Government Authority or pursuant to Requirements of Law, or (vi) is necessary for the Party's compliance with Federal securities laws in connection with the issuance of any financing obligations.
- 12.3. Restrictions on Disclosure and Use. Recipient hereby covenants and agrees as follows:

- 12.3.1. Non-Disclosure. Recipient shall keep strictly confidential and shall not disclose the Confidential Information to any Person, except (subject to Sections 12.3.2 and 12.3.4 below) (i) to those Representatives of Recipient to whom disclosure is necessary in connection with Recipient's exercise of rights and obligations under this Agreement and who shall be informed of the confidential nature of the Confidential Information, (ii) to comply with any Requirements of Law, (iii) to any financing sources of Recipient or underwriters or rating agencies in connection with Recipient's efforts to obtain financing, or as necessary (in offering documents or otherwise) to comply with any Requirements of Law in connection with any public offering of securities, or (iv) as otherwise consented to in advance and in writing by Disclosing Party. Recipient shall take all actions necessary to ensure that the Confidential Information remains strictly confidential and is not disclosed to or seen, used, or obtained by any Person except in accordance with the terms of this Agreement.
- 12.3.2. Compelled Disclosure. In the event that Recipient is requested or required (by oral questions, interrogatories, requests for information, or documents in legal proceedings, subpoena, civil investigative demand, or other similar process or by any law, rule, or regulation of any Governmental Authority, including the Missouri Sunshine Law (Chapter 610 RSMo, as may be amended) applicable state and Federal securities laws) to disclose any of the Confidential Information, Recipient shall, to the extent permissible, provide Disclosing Party with prompt written notice of any such request or requirement so that Disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by Disclosing Party, Recipient is legally required to disclose Confidential Information, Recipient may, without liability hereunder, disclose that portion of the Confidential Information that counsel advises Recipient is legally required to disclose.
- 12.3.3. Ownership; No License. No right, title, or interest in or to any of the Confidential Information is transferred to Recipient hereby or by the delivery of Confidential Information to Recipient hereunder. Disclosing Party grants no license, by implication or otherwise, under or of any patent, copyright, trademark, trade secret, or other intellectual property right by disclosing Confidential Information under this Agreement.
- 12.3.4. Use. Recipient shall use the Confidential Information solely for purposes required to exercise rights and obligations under, or otherwise carry out the transactions or Services contemplated by, this Agreement and any other Related Agreements.
- 12.3.5. Representative. All Representatives of Recipient to whom the Confidential Information has been disclosed shall be included within the definition of the term Recipient for purposes of this Agreement and shall be deemed bound by the terms and conditions of this Agreement. Recipient shall be responsible for any breach of this Agreement by any of its Representatives, and for that purpose it will be assumed that all such Representatives signed this Agreement as the Recipient hereunder.
- 12.3.6. Return of Confidential Information. Recipient shall, upon termination of this Agreement, promptly return to Disclosing Party or destroy (and certify in

writing to Disclosing Party the destruction of) all Confidential Information, including all copies thereof, except Recipient may retain one copy of all Confidential Information for its legal files and shall not be required to destroy electronic copies contained on back-up media readily accessible only by information technology staff or experts. Notwithstanding such return or destruction, Recipient shall continue to be bound by this Agreement.

- 12.3.7. Equitable Remedies. Recipient hereby agrees that its failure to perform any obligation or duty that it has agreed to perform under this Article 12 may cause irreparable harm to Disclosing Party, which harm cannot be adequately compensated for by money damages. Accordingly, in the event of any actual or threatened breach or default by Recipient hereunder, Disclosing Party, without any bond or other security being required and in addition to whatever other remedies are or might be available at law or in equity, shall have the right to either seek to compel specific performance by, or seek to obtain injunctive relief against, Recipient.

Article 13. Independent Contractor

City shall be an independent contractor with respect to the Services to be performed hereunder and neither City nor its Related Parties, nor the employees or agents of its Related Parties, shall be deemed to be the servants, employees, or agents of MJMEUC. City shall be responsible for payment of actual wages and salaries of all employees and other of its personnel providing Services, including compensation, payroll taxes, benefits, insurance and other terms and conditions of employment or engagement; it being understood that all employees employed by City shall be employees of City and not of MJMEUC, and MJMEUC shall have no liability relating to such employees.

Article 14. Force Majeure

- 14.1. Defined. An event of “Force Majeure” means any event which is not within the reasonable control of the Party affected and with the exercise of due diligence could not reasonably be prevented, avoided or removed by such Party, which causes the Party claiming that an event of Force Majeure occurred to be delayed, in whole or in part, or unable, using commercially reasonable efforts, to partially or wholly perform its obligations under this Agreement (other than any obligation for the payment of money) or that damages (or is reasonably expected to damage) equipment including any: act of God, labor disturbance, act of the public enemy, war, terrorist act, insurrection, civil disturbance, sabotage, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, order, regulation or restriction imposed by a Governmental Authority or lawfully established civilian authorities, epidemic or pandemic, or any other cause beyond a Party's control. The burden of proof as to whether an event of Force Majeure has occurred, its duration and whether such event excuses a Party from performance under this Agreement shall be upon the Party claiming such event of Force Majeure.
- 14.2. Effect of Force Majeure. Neither Party shall be considered in default as to any obligation under this Agreement if prevented from fulfilling its obligation due to an event of Force Majeure. A Party whose performance under this Agreement is hindered by an event of Force Majeure shall make all reasonable efforts to cure the Force Majeure event and to perform its obligations under this Agreement.

- 14.3. Notification. If there is a Force Majeure event affecting a Party's ability to perform its obligation under this Agreement, the Party shall forthwith (and in any event no later than five (5) Business Days after it first becomes aware that an occurrence constitutes a Force Majeure event) notify the other Party in writing of the reasons why it believes the occurrence constitutes a Force Majeure event, identifying the nature of the event, its expected duration, and the particulars of the obligations affected by the event, and furnish to the other Party verbal reports with respect to the Force Majeure event at such intervals as the other Party may reasonably request during the continuance of the Force Majeure event.
- 14.4. Removal. If there is a Force Majeure event affecting a Party's ability to perform its obligations under this Agreement, the Party shall be prompt and diligent in removing, if practicable, the cause of such inability to perform, but nothing in this Agreement shall be construed as permitting a Party to continue to fail to perform after said cause has been removed. Notwithstanding the foregoing, a Party shall not be obligated to agree to any settlement of a strike or labor dispute that, in that Party's sole opinion, may be inadvisable or detrimental.

Article 15. Assignment

- 15.1. General. This Agreement shall be binding upon the respective Parties and their successors and assigns.
- 15.2. Assignments by MJMEUC. MJMEUC shall not assign its rights under this Agreement to another party except with the prior written consent of City, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that MJMEUC shall be permitted to assign any of its rights under this Agreement without any consent by the City: (a) in connection with a sale of substantially all of the Transmission Facilities which are the subject of this Agreement, or (b) for the purpose of financing the MJMEUC Assets; and provided, further, that nothing in this Agreement shall limit MJMEUC's rights to subcontract any construction of the MJMEUC Assets, and any portions thereof, to any third parties.
- 15.3. Assignments by City. City shall not assign its rights under this Agreement to another party except with the prior written consent of MJMEUC, which consent shall not be unreasonably withheld, conditioned, or delayed.

Article 16. Miscellaneous

- 16.1 Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of Missouri, without regard to conflicts of law principles.
- 16.2 Notices. Unless otherwise specifically provided in this Agreement, including **Exhibit C-1** as to invoices, all notices and other communications required or permitted to be given hereunder shall be in writing and shall be (i) delivered by hand, (ii) delivered by a nationally recognized commercial overnight delivery service, (iii) mailed postage prepaid by certified mail directed or addressed to the respective addresses set forth below, or (iv) transmitted by electronic mail to the e-mail address, respectively, as provided in **Exhibit D**, with receipt confirmed. Such notices shall be effective: (a) in the case of hand deliveries, when received; (b) in the case of an overnight delivery service, on the next Business Day after being placed in the possession of such delivery service, with delivery charges prepaid; (c) in the case of certified mail, upon receipt of the written signature

card indicating acceptance by addressee; and (d) in the case of e-mail notices, the Business Day on the date on which electronic indication of receipt is received. Any Party may change its address and e-mail address by written notice to the other Party given in accordance with this Section, following the effectiveness of which notice such Party's address or e-mail address shall be updated accordingly.

- 16.3 Entire Agreement. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and terminates and supersedes all prior oral and written proposals and communications pertaining hereto. There are no representations, conditions, warranties, or agreements, express or implied, statutory or otherwise, with respect to or collateral to this Agreement other than contained in this Agreement or expressly incorporated herein.
- 16.4 No Third-Party Beneficiaries. No provision of this Agreement shall in any way inure to the benefit of any third Person (including the public at large) so as to constitute any such Person as a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party, Indemnified Party, successor or permitted assignee.
- 16.5 Severability and Restoration. If any Governmental Authority, including any court of competent jurisdiction, holds that any provision of this Agreement is unlawful, void or unenforceable, then that term, condition, provision or part thereof shall be deemed severable and will not affect the validity and enforceability of any of the remaining terms, conditions and provisions of this Agreement. However, if such holding, or as a result of any Requirements of Law, or a change in any Requirements of Law, renders this Agreement impossible to perform, then the Parties shall attempt to renegotiate new provisions to restore this Agreement as nearly as possible to its original intent and effect.
- 16.6 Interpretation. In this Agreement, and in any Schedules and Exhibits hereto, unless a clear contrary intention appears:
- 16.6.1 The singular includes the plural and vice versa;
- 16.6.2 reference to any Person includes such Person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;
- 16.6.3 reference to any agreement (including this Agreement and the Related Agreements), document, instrument or tariff means such agreement, document, instrument or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, to the extent applicable, the terms hereof;
- 16.6.4 the captions and article and section headings in this Agreement are inserted for convenience of reference only and are not intended to have significance for the interpretation of or construction of the provisions of this Agreement;
- 16.6.5 where technical terms are used in the documents, or attachments thereto, save and except as defined herein or therein, such technical terms shall have the same meaning and effect as may be ascribed in the electrical transmission industry;

- 16.6.6 reference to any law means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; and
- 16.6.7 whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.
- 16.7 Construction. This Agreement was negotiated by the Parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof.
- 16.8 Modifications. Unless otherwise specifically provided herein, this Agreement, including all Schedules and Exhibits, may be altered, modified, varied, or waived, in whole or in part, only by a modification executed by the duly authorized Representatives of both Parties.
- 16.9 No Waivers. Any waiver at any time by a Party of its rights with respect to a default under this Agreement or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or subsequent matter of a similar nature arising in connection therewith.
- 16.10 Counterparts. This Agreement may be executed in any number of counterparts by the Parties, each of which when so executed will be an original, but all of which together will constitute one and the same instrument. To facilitate execution of this Agreement, the Parties may execute and exchange electronic form counterparts of the signature pages to this Agreement.
- 16.11 Dispute Resolution. All claims or disputes between the Parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall first be attempted resolved by appointed company representatives. If the appointed company representatives cannot resolve the dispute, then company designated senior officers shall meet to resolve the dispute. Any agreed-upon resolution of the matter shall be documented in writing, signed by both Parties, and shall become a binding agreement for the resolution of the matter. If the Parties are unable to resolve the dispute in this manner, then the Parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules or other mutually agreed upon mediator, before resorting to litigation.
- 16.12 Waiver of Jury Trial. To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have made and executed this Operations and Maintenance Agreement the day and year first above written intending the same to be binding upon the Parties, their successors and assigns. This Agreement will be executed in two counterparts, each constituting an original but altogether one and the same instrument and Agreement.

MJMEUC

Missouri Joint Municipal Electric Utility Commission

By: _____
John Twitty,
President and CEO

STATE OF MISSOURI)
) ss:
_____ COUNTY)

Before me, a Notary Public in and for this state on this ____ day of _____, 20____, personally appeared John Twitty to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and CEO and acknowledged to me that he executed the same as his free and voluntary act and deed as the free and voluntary act and deed of such entity, for the uses and purposes therein set forth.

Given under my hand and seal of office this day and year last above written.

Notary Public

My commission expires: _____.

CITY

City of Nixa, Missouri

By: _____
Brian Steele,
Mayor

STATE OF MISSOURI)
) ss:
CHRISTIAN COUNTY)

Before me, a Notary Public in and for this state on this ____ day of _____, 20____, personally appeared Brian Steele to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its Mayor and acknowledged to me that he executed the same as his free and voluntary act and deed as the free and voluntary act and deed of such city, for the uses and purposes therein set forth.

Given under my hand and seal of office this day and year last above written.

Notary Public

My commission expires: _____.

EXHIBIT A

MJMEUC ASSETS

All of MJMEUC owned 69 kV transmission and substation facilities located in the City of Nixa, Missouri, and further described below.

Downtown Substation:

ALL OF A PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SW1/4 NW1/4) OF SECTION 13, TOWNSHIP 27, RANGE 22, BOUNDED AND DESCRIBED AS FOLLOWS: FROM THE SOUTHWEST CORNER OF SAID SUBDIVISION, THENCE NORTH 1161/2 FEET AND EAST 632 FEET FOR A POINT OF BEGINNING; THENCE SOUTH 80 FEET TO THE NORTH RIGHT OF WAY OF HIGHWAY #14; THENCE WEST ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 150 FEET; THENCE NORTH 1161/2 FEET TO A POINT DIRECTLY WEST OF THE POINT OF BEGINNING; THENCE EAST 150 FEET TO THE POINT OF BEGINNING.

AND,

A PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 27, RANGE 22, DESCRIBED AS FOLLOWS: FROM THE SOUTHWEST CORNER OF SAID SUBDIVISION, THENCE NORTH 341 1/2 FEET; THENCE EAST 632 FEET; THENCE SOUTH 155 FEET FOR A TRUE BEGINNING POINT; THENCE SOUTH 75 FEET; THENCE WEST 150 FEET; THENCE NORTH 75 FEET; THENCE EAST 150 FEET TO SAID TRUE POINT OF BEGINNING, ALL IN CHRISTIAN COUNTY, MISSOURI.

Espy Substation:

A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27, NORTH, RANGE 22 WEST; THENCE S89°15'23"E ALONG THE NORTH LINE OF ROYAL ESTATES SUBDIVISION, 507.85 FEET TO AN IRON PIN SET FOR THE POINT OF BEGINNING; THENCE N00°44'37"W, 100.00 FEET TO AN IRON PIN SET; THENCE S89°15'23"E, 150.00 FEET TO AN IRON PIN SET; THENCE S00°44'37"W, 100.00 FEET TO AN IRON PIN SET; THENCE N89°15'23"W, 150.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.34 ACRES.

ALSO INCLUDED IS A PERPETUAL NEUTRAL INGRESS AND EGRESS TO THE SUBJECT PROPERTY LEGALLY DESCRIBED AS FOLLOWS:

A THIRTY FOOT (30') WIDE INGRESS-EGRESS EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27, NORTH, RANGE 22 WEST; THENCE S89°15'23"E ALONG THE NORTH LINE OF ROYAL ESTATES SUBDIVISION, 40.02 FEET TO THE EAST RIGHT OF WAY OF GREGG ROAD; THENCE N02°23'49"E ALONG SAID EAST RIGHT OF WAY 20.95 FEET TO THE POINT OF BEGINNING; THENCE S89°15'23"E, 366.80 FEET FOR A TERMINUS.

AND,
THAT CERTAIN PARCEL OR TRACT OF LAND BEING A PART OF THE NORTHWEST QUARTER (NW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 22 WEST, IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID NW1/4 OF THE SW1/4; THENCE S89°15'23"E, ALONG THE NORTH LINE OF ROYAL ESTATES, A SUBDIVISION IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI, A DISTANCE OF 496.41 FEET TO AN IRON PIN SET FOR A POINT OF BEGINNING; THENCE N00°44'37"E, A DISTANCE OF 125.00 FEET TO AN IRON PIN SET; THENCE S89°15'23"E, A DISTANCE OF 153.79 FEET TO AN IRON PIN SET ON THE EAST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 216, AT PAGE 102 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S02°28'56"W, ALONG THE EAST LINE OF SAID TRACT OF LAND, A DISTANCE OF 125.06 FEET TO SOUTHEAST CORNER OF SAID TRACT OF LAND, SAID POINT BEING ON THE NORTH LINE OF SAID ROYAL ESTATES; THENCE N89°15'23"W, ALONG SAID NORTH LINE OF ROYAL ESTATES, A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINS 0.436 ACRES (MORE OR LESS) AND IS SUBJECT TO ANY EASEMENTS, RIGHTS OF WAY, AND RESTRICTIONS OF RECORD.

ALSO, WITH RIGHTS OF INGRESS AND EGRESS OVER AND ACROSS AN ENTRANCE EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID NW1/4 OF THE SW1/4; THENCE S89°15'23"E, ALONG THE NORTH LINE OF SAID NW1/4 OF THE SW1/4, A DISTANCE OF 40.02 FEET TO AN EXISTING IRON PIN AT THE NORTHWEST CORNER OF LOT 2 IN ROYAL ESTATES, A SUBDIVISION IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI; THENCE S89°15'23"E, ALONG THE NORTH LINE OF SAID ROYAL ESTATES, A DISTANCE OF 367.26 FEET FOR A POINT OF BEGINNING; THENCE N00°44'37"E, A DISTANCE OF 90.00 FEET; THENCE S89°15'23"E, A DISTANCE OF 89.13 FEET; THENCE S00°44'37"W, A DISTANCE OF 90.00 FEET TO A POINT ON THE NORTH LINE OF SAID ROYAL ESTATES; THENCE N89°15'23"W, ALONG SAID NORTH LINE, A

DISTANCE OF 89.13 FEET TO THE POINT OF BEGINNING.

ALSO INCLUDED IS A PERPETUAL NEUTRAL INGRESS AND EGRESS TO THE SUBJECT PROPERTY LEGALLY DESCRIBED AS FOLLOWS: A THIRTY (30') WIDE INGRESS-EGRESS EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27, NORTH, RANGE 22 WEST; THENCE S89°15'23"E ALONG THE NORTH LINE OF ROYAL ESTATES SUBDIVISION, 40.02 FEET TO THE EAST RIGHT OF WAY OF GREGG ROAD; THENCE N02°23'49"E ALONG SAID EAST RIGHT OF WAY 20.95 FEET TO THE POINT OF BEGINNING; THENCE S89°15'23"E, 366.80 FEET FOR A TERMINUS.

Northeast Substation:

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH 16 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI; THENCE S02°11'50"W, 240.00 FEET; THENCE N87°55'10"W, 270.00 FEET; THENCE NORTH 02°11'50"E, 240.00 FEET; THENCE S87°55'10"E, 270.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1.49 ACRES.

AND,

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 16 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI; THENCE S02°11'50"W, 240.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S02°11'50"W, 20.00 FEET; THENCE N87°55'10"W, 290.00 FEET; THENCE N02°11'50"E, 260.00 FEET; THENCE S87°55'10"E, 20.00 FEET; THENCE S02°11'50"W, 240.00 FEET; THENCE S87°55'10"E, 270.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.24 ACRES.

Tracker Substation:

ALL OF LOTS TWELVE (12) AND THIRTEEN (13), OF C & K CORNERS, A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI, ACCORDING TO THE PLAT FILED IN PLAT BOOK "G" AT PAGE 139, RECORDER'S OFFICE OF CHRISTIAN COUNTY, MISSOURI.

All of the following 69kv electric transmission lines with endpoints designated as below:

SWPA to Espy – 1.55 miles

Espy to Downtown – 1.24 miles

Downtown to Tracker – 1.80 miles

Tracker to Northeast – 2.31 miles

Northeast to James River Power Station(City Utilities) – 3.92 miles

Transmission lines include all attached equipment and conductors including, but not limited to, poles, conductors, fiber optic cables, down guys, anchors attached to assemblies, insulators, and all other attached items necessary for the transmission of electricity.

EXHIBIT B

APPROVED SUBCONTRACTORS

PAR Electrical Contractors

BBC Electrical Contractors

MPUA Resource Services Corporation

Signatories to MPUA mutual aid agreement

Toth & Associates

EXHIBIT C-1

MJMEUC INVOICING REQUIREMENTS

All Invoices for Services performed under this Agreement must be submitted by the 10th of each month to: MJMEUC, Accounts Payable, 2200 Maguire Blvd., Columbia, MO 65201 or via email to MJMEUC's Chief Operating Officer, currently John Grotzinger at jgrotzinger@mpua.org and the Chief Financial Officer, currently Mike Loethen at mloethen@mpua.org.

All Invoices presented for payment must include an **invoice number** or specific identifier, **invoice date**, **total amount of invoice** including freight and taxes, if applicable and the **appropriate general ledger ("GL") account number or work order number** noted for each invoice line item (*See list of accounts by description in Exhibit C-2*). All invoices must include charges assigned to an account in accordance with the Federal Energy Regulatory Commission Uniform System of Accounts.

In addition, invoices shall include the following items, as applicable:

- Purchase Order Number
- Purchase Order Item Number
- Change Order Number
- Change Order Item Number
- Project or Asset Name
- Dates work performed
- Job site or location
- Description of work
- Remit address or Banking information for Electronic Funds Transfers

MJMEUC Accrual Requirements:

Dollar estimate of additional work (by GL account number or work order number) completed but not yet invoiced, must be submitted via email to MJMEUC's Chief Financial Officer, currently Mike Loethen at mloethen@mpua.org within five (5) Business Days upon such request to MJMEUC.

EXHIBIT C-2

LIST OF FERC UNIFORM SYSTEMS OF ACCOUNT BY DESCRIPTION

Operations

- 560 Operations supervision and engineering
- 561.1 Load dispatch-Reliability.
- 561.2 Load dispatch-Monitor and operate transmission system.
- 561.3 Load dispatch-Transmission service and scheduling.
- 561.4 Scheduling, system control and dispatch services.
- 561.5 Reliability planning and standards development.
- 561.6 Transmission service studies.
- 561.7 Generation interconnection studies.
- 561.8 Reliability planning and standards development services.
- 562 Station expenses (Major only).
- 562.1 Operations of Energy Storage Equipment.
- 563 Overhead line expense (Major only).
- 564 Underground line expenses (Major only).
- 565 Transmission of electricity by others (Major only).
- 566 Miscellaneous transmission expenses (Major only).
- 567 Rents.
- 567.1 Operations supplies and expenses (Nonmajor only).

Maintenance

- 568 Maintenance supervision and engineering (Major only).
- 569 Maintenance of structures (Major only).
- 569.1 Maintenance of computer hardware.
- 569.2 Maintenance of computer software.
- 569.3 Maintenance of communication equipment.
- 569.4 Maintenance of miscellaneous regional transmission plant.
- 570 Maintenance of station equipment (Major only).
- 570.1 Maintenance of Energy Storage Equipment.
- 571 Maintenance of overhead lines (Major only).
- 572 Maintenance of underground lines (Major only).
- 573 Maintenance of miscellaneous transmission plant (Major only).
- 574 Maintenance of transmission plan (Nonmajor only).

EXHIBIT D

PERSONS FOR NOTICES

For City:

Name: Doug Colvin
Title: Director of Nixa Utilities and Public Works
Address: 1111 W. Kathryn, Nixa, MO 65714
Office Telephone: 417-725-2353
Off-Hours Telephone: 417-735-3229
Cell Telephone:
Email: dcolvin@nixa.com

With a copy to:

Name: Nicholas Woodman
Title: City Attorney
Address: 715 W. Mt. Vernon St., Nixa, MO 65714
Office Telephone: 417-725-3785
Email: nwoodman@nixa.com

For MJMEUC:

Name: John Grotzinger
Title: Chief Operating Officer for MJMEUC
Address: 2200 Maguire Blvd. Columbia, MO 65201
Office Telephone: 573-445-3279
24-hour Telephone: 573-777-8093
Email: jgrotzinger@mpua.org

With a copy to:

Names: Doug Healy
Title: General Counsel
Address: 3010 E. Battlefield, Suite A, Springfield, MO 65804
Office Telephone: 417-864-7018
Cell Telephone: [REDACTED]
Email: doug@healylawoffices.com

EXHIBIT E

CITY LABOR RATES

EMPLOYEE TITLE	ST	OT	DT
SUPERINTENDENT	\$108.00	\$155.96	\$203.91
GEN FOREMAN	\$103.17	\$148.84	\$194.51
FOREMAN	\$98.96	\$142.64	\$186.33
LINEMAN	\$90.56	\$130.27	\$169.99
OPERATOR	\$84.19	\$120.89	\$157.59
GROUNDSMAN	\$60.69	\$86.28	\$111.88
MECHANIC	\$84.19	\$120.89	\$157.59
SAFETY	\$90.56	\$130.27	\$169.99
1 APPRENTICE	\$56.95	\$80.77	\$104.60
2 APPRENTICE	\$61.15	\$86.96	\$112.78
3 APPRENTICE	\$65.35	\$93.15	\$120.95
4 APPRENTICE	\$69.55	\$99.34	\$129.12
5 APPRENTICE	\$73.75	\$105.52	\$137.29
6 APPRENTICE	\$77.96	\$111.71	\$145.47
7 APPRENTICE	\$82.16	\$117.90	\$153.64

EXHIBIT F**CITY EQUIPMENT RATES**

EQUIPMENT DESCRIPTION	Hourly Rates
Air Compressor: 85 - 130 CFM	\$18.00
Back Hoe	\$40.00
Track Hoe	\$75.00
Backyard Machines	\$42.00
Bobcat	\$25.00
Bobcat on Tracks	\$30.00
Bucket truck up to 49 ft.	\$32.00
Bucket truck 50' to 64'	\$35.00
Bucket truck 65' to 74'	\$51.00
Bucket truck 75' to 84'	\$60.00
Bucket truck 85' to 94'	\$70.00
Caterpillars: D4, D5	\$60.00
Caterpillars - D6	\$75.00
1050 Dozer with triple winches	\$140.00
Digger Derricks up to 47' shiv	\$35.00
Digger Derricks 48' - 50' shiv	\$42.00
Digger Derricks over 50' shiv	\$52.00
Dump Truck	\$19.00
Flatbeds/Material Trailer	\$15.00
Office Trailer	\$25.00
Pickup	\$15.00
Rock Drill	\$60.00
Service Truck	\$20.00
Track Equipment - Bucket or Digger	\$125.00
Tractor Trailer	\$125.00
Truck Crane	\$78.00
Mantis Crane-45 ton	\$205.00
Mantis Crane-100 ton	\$300.00
Trailer - Maintenance	\$15.00
Trailer - Pole	\$10.00
Tool Trailer	\$18.00
Hard line puller	\$75.00
Large rope rig	\$60.00
Bull wheel tensioner	\$50.00
Bundle bull wheel tensioner	\$60.00
Reel stand trailer	\$35.00
Wire Stringing - Rope Pullers-Single & Double Drum	\$18.00
Wire Stringing - Rope Pullers-3 Drum-Medium	\$35.00
Wire Stringing - Rope Pullers-4 Drum-Small	\$25.00
Wire Stringing - Rope Pullers-4 Drum-Medium	\$40.00
Wire Stringing - Conductor Tensioner	\$30.00
Wire Stringing - Wire Trailers - Single	\$25.00
Wire Stringing - Wire Trailer-Four Reel w/Brake	\$30.00
Hot Arms - DAILY RATE	\$2.85
Rollers - DAILY RATE	\$1.30

EXHIBIT G

PERSONAL PROPERTY LOCATED ON OR ABOUT MJMEUC'S ASSETS AND DESIGNATED INTERESTS

See Exhibits G-2, G-3, G-4 and G-5 for lists of major items (personal property) located on the premises of MJMEUC's Assets and the designated interests of that personal property. The items marked MJMEUC are solely owned by MJMEUC. The items marked Nixa are solely owned by Nixa. The items marked both MJMEUC and Nixa are solely owned by MJMEUC but jointly used by MJMEUC and Nixa.

In addition, there is metering equipment and miscellaneous other items on the premises of MJMEUC's Assets which the Parties have mutually agreed that are jointly used by both Parties, but actual ownership will be determined at a later date.

EXHIBIT G-2

DOWNTOWN

MAJOR ITEMS	MJMEUC	NIXA	BRAND	SERIAL #
1 - 69KV Control Building	X	X	GFRC	506517
1 - HVAC System	X	X	Bard	309D133002302-02
1 - Set of Batteries (20 total)	X	X	Mesa	Vented Lead Acid
1 - Battery Charger	X	X	Sens	216049
1 - DC Panelboard	X	X	G. E.	AXB7L5
1 - AC Panelboard	X	X	Square D	?
1 - Double Throw Safety Switch	X	X	Eaton	Backup Station Power
1 - 69KV Breaker (DT6951)	X		Siemens	54968-3
1 - Panel 1 Rack	X		SEL	130153-32007
1 - Panel 1 (21P/DT51)	X		SEL-421	1131350107
1 - Panel 1 (21B/DT51)	X		SEL-311L	1131350106
1 - Panel 1 (Bus Diff)	X		SEL-587Z	1131350104
1 - Panel 1 Shark Meter 100	X		Electro Industries	1111-0090856937
1 - 69KV Breaker (DT6952)	X		Siemens	54968-5
1 - Panel 2 Rack	X		SEL	130153-32008
1 - Panel 2 (21P/DT52)	X		SEL-421	1131350108
1 - Panel 2 (21B/DT52)	X		SEL-311L	1131350105
1 - Panel 2 Shark Meter 100	X		Electro Industries	96-0035314824
1 - 69KV Building Sump Pump	X		Water Control in Cable Pull Box	
3 - 69KV Bay Lighting LED	X		PacLights	SKU- FFL100-LV-50
6 - 69KV Lightning Arrestors	X		Turner Type: AZESOO6G048060	
15 - 69KV Disconnect Switches	X		Type: Hook Disconnect Switches	
6 - 69KV 600/5 CT's	X		Siemens	BYM Bushing 54968-10
18 - 69KV 1200/5 CT's	X		Siemens	BYM Bushing 54968-10
3 - 69KV PT's	X		Kuhlman Model: POF-350-2	
1 - Ground Grid	X	X	4/0 Bare Copper	?
1 - 69KV Breaker (DT6953)		X	Siemens	3006199681-1
1 - Panel 3 Rack		X	SEL	170084-89106
1 - Panel 3 (Overcurrent)		X	SEL-351S	3170580144
1 - Panel 3 (Xfrm Diff)		X	SEL-387A	1170590092
1 - Power Xfrm 15/20/25		X	CG Power	20151600781
3 - 12KV Bay Lighting LED		X	PacLights	SKU- FFL100-LV-50
1 - Yard Light LED		X	Same as the City's street lights	
3 - 69KV Lightning Arrestors		X	?	?
3 Sets - 69KV Disconnect Switches		X	69KV G.O. Center Side	Break Switches
3 - 69KV 600/5 CT's		X	Siemens	BYM Bushing 54968-10
6 - 69KV 400/5 CT's		X	Siemens	BYM Bushing 54968-10
3 - 69KV Shorted CT's		X	Siemens	BYM Bushing 54968-10
1 - 25KVA Xfrm - Station Power		X	Pole Mount	Unknown
1 - Substation Fence	X	X		

EXHIBIT G-3

NORTHEAST

MAJOR ITEMS	MJMEUC	NIXA	BRAND	SERIAL #
1 - 69KV Control Building	X	X	GFRC	504737
1 - HVAC System	X	X	Bard	225A051988582-02
1 - Set of Batteries (15 total)	X	X	GNB Classic	Vented Lead Acid
1 - Battery Charger	X	X	Sens	216047
1 - DC Panelboard	X	X	Siemens	Cat: P1N42ML250ATF
1 - Double Throw Safety Switch	X	X	Eaton	?
1 - AC Panelboard Main	X	X	Square D	?
1 - 69KV Breaker (NE6951)	X		Siemens	54968-8
1 - Panel 1 Rack	X		SEL	07/0393
1 - Panel 1 (87L/51 Line Diff)	X		SEL-387L	2007085252
1 - Panel 1 (21B/51 Distance)	X		SEL-311C	2007087122
1 - Panel 1 Shark 100 (NE6951)	X		Electro Industries	1211-0124410315
1 - 69KV Breaker (NE6952)	X		Siemens	54968-7
1 - Panel 2 Rack	X		SEL	07/0394
1 - Panel 2 (87L/52 Line Diff)	X		SEL-387L	2007085254
1 - Panel 2 (21B/52 Distance)	X		SEL-311C	2007087119
1 - Panel 2 (87/69B Bus Diff)	X		SEL-587Z	2007085301
1 - Panel 2 Shark Meter 100	X		Electro Industries	73-146868
1 - 69KV Breaker (NE6953)	X		Siemens	54968-6
1 - Panel 3 Rack	X		SEL	07/0395
1 - Panel 3 (87L-JRPS Line Diff)	X		SEL-387L	2010230372
1 - Panel 3 (21B/53 Distance)	X		SEL-421	2007086290
1 - Panel 3 Shark Meter 100	X		Electro Industries	73-146867
1 - 69KV Building Sump Pump	X		Water Control in Cable Pull Box	
4 - 69KV Bay Lighting	X		High Pressure Sodium, No Repair Parts	
9 - 69KV Lightning Arrestors	X		Turner Type: AZES006G04800	
15 - 69KV Disconnect Switches	X		Type: Hook Disconnect Switches	
36 - 1200/5 CT's	X		Siemens	BYM Bushing 54968-11
6 - 600/300 PT's	X		Kuhlman Model: POF-350-2	
Ground Grid	X	X	4/0 Bare Copper	?
1 - Power Transformer 15/20/25		X	Kuhlman	987267-1
1 - AC Panelboard 12KV		X	Square D	HOMC21UC
3 - Yard Light LED		X	Same as the City's street lights	
1 - 69KV Breaker (NE6954)		X	Siemens	54968-1
1 - Panel 1(50/51-54)Overcurrent		X	SEL-351S	1122160348
1 - Panel 1 (87T/54 Trans Diff)		X	SEL-387A	1122160416
1 - Panel 1 Shark 100 (NE6954)		X	Electro Industries	73-146885
6 - 69KV Disconnect Switches		X	Type: Hook Disconnect Switches	
3 - 600/5 69KV CT's		X	Siemens	BYM Bushing 54968-10
9 - 1200/5 69KV CT's		X	Siemens	BYM Bushing 54968-10
1 - 25KVA Xfrm - Station Power		X	Pole Mount	Unknown
1 - Substation Fence	X	X		

EXHIBIT G-4

Tracker

MAJOR ITEMS	MJMEUC	NIXA	BRAND	SERIAL #
1 - 69KV Control Building	X		GFRC	504736
1 - HVAC System	X		Bard	225F041909436-02
1 - Set of Batteries (15 total)	X		GNB Classic	Vented Lead Acid
1 - Battery Charger	X		Sens	216046
1 - DC Panelboard	X		Siemens	Cat: P1N30ML25OATS
1 - AC Panelboard	X		Square D	?
1 -69KV Breaker (TR6951)	X		Siemens	54968-10
1 - Panel 1 Rack	X		SEL	07/0390
1 - Panel 1 (21P/51 Distance)	X		SEL-311C	2007087120
1 - Panel 1 (21B/51 Distance)	X		SEL-311C	2007087123
1 - Panel 1 Shark Meter 100	X		Electro Industries	73-146869
1 - 69KV Breaker (TR6952)	X		Siemens	54968-9
1 - Panel 2 Rack	X		SEL	07/0391
1 -Panel 2 (87L/52 Line Diff)	X		SEL-387L	2007085253
1 - Panel 2 (21B-52 Distance)	X		SEL-311C	2007087121
1 - Panel 2 (87/69B Bus Diff)	X		SEL-387L	2007087323
1- Panel 2 Shark Meter 100	X		Electro Industries	73-146866
4 - 69KV Bay Lighting	X		High Pressure Sodium, No Repair Parts	
Ground Grid	X	X	4/0 Bare Copper	?
1 - 69KV Building Sump Pump	X		Water Control in Cable Pull Box	
6 - 69KV Lightning Arrestor	X		Turner Type: AZESOO6G048060	
12 - 69KV Disconnect Switches	X		Type: Hook Disconnect Switches	
24 - 69KV 1200/5 CT's	X		Siemens	BYM Bushing 54968-11
6 - 69KV 600/5 PT's	X		Kuhlman Model: POF-350-2	
1 - 25KVA Xfrm - Station Power		X	Pole Mount ?	?
1 - S & C Circuit Switcher		X	S & C	00-18363R
1 - Power Transformer 15/20/25		X	Kuhlman	282747-98-1
1 - 12KV Switchgear & Contents		X	All Distribution Equipment	
1 - 12KV Switchgear HVAC		X	Bard	140M991399398-02
3 - 69KV Lightning Arrestors		X	Turner Type: AZESOO6G048060	
6 - 69KV 600/5 CT's		X	Siemens	BYM Bushing 54968-11
1 Set - 69KV Disconnect Switches		X	69KV G.O. Center Side Break Switches	
1 - Substation Fence	X	X		

EXHIBIT G-5

ESPY

MAJOR ITEMS	MJMEUC	NIXA	BRAND	SERIAL #
1 - 69KV Control Building	X		GFRC	504739
1 - HVAC System	X		Bard	225B092600753-02
1- Set of Batteries (15 total)	X		GNB Classic	6-TCX-100
1 - Battery Charger	X		Sens	216048
1 - DC Panelboard	X		G. E.	Cat:AEF1482BBX AXB7
1 - AC Panelboard	X		Square D	Cat: NQMB2Q
1 - 69KV Breaker (ES6951)	X		Siemens	54968-2
1 - Panel 1 Rack	X		EP/2	Job: 4940
1 - Panel 1 (Annunciator)	X		SEL-2523	2008361110
1 - Panel 1 (21P-51 Distance)	X		SEL-311C	2008364113
1 - Panel 1 (21B-51 Distance)	X		SEL-311C	2008364111
1 - Panel 1 Shark Meter 100	X		Electro Industries	91-0042744526
1 - 69KV Breaker (ES6952)	X		Siemens	54968-4
1 - Panel 2 Rack	X		EP/2	Job: 4940
1 - Panel 2 (21P-52 Distance)	X		SEL-311C	2007087119
1 - Panel 2 (21B-52 Distance)	X		SEL-311C	2008364110
1 - Panel 2 (87/69B Bus Diff)	X		SEL-587Z	2008364341
1 - Panel 2 Shark Meter 100	X		Electro Industries	91-0042744021
4 - 69KV Bay Lighting	X		High Pressure Sodium, No Repair Parts	
Ground Grid	X	X	4/0 Bare Copper	?
1 - 69KV Building Sump Pump	X		Water Control in Cable Pull Box	
6 - 69KV Lightning Arrestors	X		Turner Type: AZES006G048060	
12 - Disconnect Switches	X		Type: Hook Disconnect Switches	
6 - 600/5 CT's	X		Siemens	BYM Bushing 54968-10
18 - 1200/5 CT's	X		Siemens	BYM Bushing 54968-10
7 - 600/350 PT's	X		Kuhlman Model: POF-350-2	
1 - 25KVA Xfrm - Station Power		X	B & B Transformer	5100861
S & C Circuit Switcher		X	S & C	92-35960
12KV Switchgear Door (1) LED		X	Street Works	Cat: CRTKAA08E1205A
Yard Light (1) LED		X	Same as the City's street lights	
Power Transformer 18/24/30		X	WEG	20151700929
12KV Switchgear & Contents		X	All Distribution Equipment	
12KV Switchgear HVAC		X	Haier	FS002498C
3 - 69KV Lightning Arrestors		X	Turner Type: AZES006G048060	
3 - 200/5 69KV CT's		X	Siemens	BYM Bushing 54968-10
3 - 600/5 69KV PT's		X	Siemens	BYM Bushing 54968-10
1 - Substation Fence	X	X		

COUNCIL BILL EXHIBIT D

(Space above reserved for Recorder's use)

TITLE OF DOCUMENT:	TERMINATION OF SUBSTATION EASEMENT AGREEMENT
DATE OF DOCUMENT:	March __, 2022
GRANTOR(S) NAME AND MAILING ADDRESS:	CITY OF NIXA, MISSOURI 1111 W Kathryn Nixa, Missouri 65714
GRANTEE(S) NAME AND MAILING ADDRESS:	MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION 2200 Maguire Blvd. Columbia, Missouri 65201
LEGAL DESCRIPTION:	See Exhibit A
REFERENCE BOOK/PAGE:	Book 2018, Page 3877

TERMINATION OF SUBSTATION EASEMENT AGREEMENT

This Termination of Substation Easement Agreement (the "Termination") is made as of this ____ day of March, 2022 (the "Effective Date") by and between the **MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**, a body public and corporate organized and existing under the laws of the State of Missouri ("MJMEUC") and the **CITY OF NIXA, MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the "City").

WHEREAS, MJMEUC owns the real property described on **Exhibit A** hereto (the "Substations"); and

WHEREAS, the City has previously been granted certain rights in the Substations pursuant to that certain Substation Easement Agreement effective as of March 31, 2018, between the City, as grantee, and South Central MCN LLC, as grantor (the "Substation Easement")

WHEREAS, the Substation Easement was recorded in the real estate records of Christian County, Missouri on March 30, 2018 as Instrument # 2018L03922, at Book 2018, Page 3877; and

WHEREAS, MJMEUC and the City jointly wish to terminate the Substation Easement.

NOW, THEREFORE, MJMEUC and the City agree that the Substation Easement is hereby terminated as of the Effective Date of this Termination.

MJMEUC

Missouri Joint Municipal Electric Utility Commission

By: _____
John Twitty,
President and CEO

STATE OF MISSOURI)
) ss:
_____ COUNTY)

Before me, a Notary Public in and for this state on this ____ day of _____, 20____, personally appeared John Twitty to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and CEO and acknowledged to me that he executed the same as his free and voluntary act and deed as the free and voluntary act and deed of such entity, for the uses and purposes therein set forth.

Given under my hand and seal of office this day and year last above written.

Notary Public
My commission expires: _____.

CITY

City of Nixa, Missouri

By: _____
Brian Steele,
Mayor

STATE OF MISSOURI)
) ss:
CHRISTIAN COUNTY)

Before me, a Notary Public in and for this state on this ____ day of _____, 20 ____, personally appeared Brian Steele to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its Mayor and acknowledged to me that he executed the same as his free and voluntary act and deed as the free and voluntary act and deed of such city, for the uses and purposes therein set forth.

Given under my hand and seal of office this day and year last above written.

Notary Public
My commission expires:_____.

EXHIBIT A

LEGAL DESCRIPTION OF SUBSTATIONS

Downtown Substation:

ALL OF A PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SW1/4 NW1/4) OF SECTION 13, TOWNSHIP 27, RANGE 22, BOUNDED AND DESCRIBED AS FOLLOWS: FROM THE SOUTHWEST CORNER OF SAID SUBDIVISION, THENCE NORTH 1161/2 FEET AND EAST 632 FEET FOR A POINT OF BEGINNING; THENCE SOUTH 80 FEET TO THE NORTH RIGHT OF WAY OF HIGHWAY #14; THENCE WEST ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 150 FEET; THENCE NORTH 1161/2 FEET TO A POINT DIRECTLY WEST OF THE POINT OF BEGINNING; THENCE EAST 150 FEET TO THE POINT OF BEGINNING.

AND,

A PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 27, RANGE 22, DESCRIBED AS FOLLOWS: FROM THE SOUTHWEST CORNER OF SAID SUBDIVISION, THENCE NORTH 3411/2 FEET; THENCE EAST 632 FEET; THENCE SOUTH 155 FEET FOR A TRUE BEGINNING POINT; THENCE SOUTH 75 FEET; THENCE WEST 150 FEET; THENCE NORTH 75 FEET; THENCE EAST 150 FEET TO SAID TRUE POINT OF BEGINNING, ALL IN CHRISTIAN COUNTY, MISSOURI.

Espy Substation:

A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27, NORTH, RANGE 22 WEST; THENCE S89°15'23"E ALONG THE NORTH LINE OF ROYAL ESTATES SUBDIVISION, 507.85 FEET TO AN IRON PIN SET FOR THE POINT OF BEGINNING; THENCE N00°44'37"W, 100.00 FEET TO AN IRON PIN SET; THENCE S89°15'23"E, 150.00 FEET TO AN IRON PIN SET; THENCE S00°44'37"W, 100.00 FEET TO AN IRON PIN SET; THENCE N89°15'23"W, 150.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.34 ACRES.

ALSO INCLUDED IS A PERPETUAL NEUTRAL INGRESS AND EGRESS TO THE SUBJECT PROPERTY LEGALLY DESCRIBED AS FOLLOWS:

A THIRTY FOOT (30') WIDE INGRESS-EGRESS EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27, NORTH, RANGE 22 WEST; THENCE S89°15'23"E ALONG THE NORTH LINE OF ROYAL ESTATES SUBDIVISION, 40.02 FEET TO THE EAST RIGHT OF WAY OF GREGG ROAD; THENCE N02°23'49"E ALONG SAID EAST RIGHT OF WAY 20.95

FEET TO THE POINT OF BEGINNING; THENCE S89°15'23"E, 366.80 FEET FOR A TERMINUS.

AND,

THAT CERTAIN PARCEL OR TRACT OF LAND BEING A PART OF THE NORTHWEST QUARTER (NW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 22 WEST, IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID NW1/4 OF THE SW1/4; THENCE S89°15'23"E, ALONG THE NORTH LINE OF ROYAL ESTATES, A SUBDIVISION IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI, A DISTANCE OF 496.41 FEET TO AN IRON PIN SET FOR A POINT OF BEGINNING; THENCE N00°44'37"E, A DISTANCE OF 125.00 FEET TO AN IRON PIN SET; THENCE S89°15'23"E, A DISTANCE OF 153.79 FEET TO AN IRON PIN SET ON THE EAST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 216, AT PAGE 102 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S02°28'56"W, ALONG THE EAST LINE OF SAID TRACT OF LAND, A DISTANCE OF 125.06 FEET TO SOUTHEAST CORNER OF SAID TRACT OF LAND, SAID POINT BEING ON THE NORTH LINE OF SAID ROYAL ESTATES; THENCE N89°15'23"W, ALONG SAID NORTH LINE OF ROYAL ESTATES, A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINS 0.436 ACRES (MORE OR LESS) AND IS SUBJECT TO ANY EASEMENTS, RIGHTS OF WAY, AND RESTRICTIONS OF RECORD.

ALSO, WITH RIGHTS OF INGRESS AND EGRESS OVER AND ACROSS AN ENTRANCE EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NW1/4 OF THE SW1/4; THENCE S89°15'23"E, ALONG THE NORTH LINE OF SAID NW1/4 OF THE SW1/4, A DISTANCE OF 40.02 FEET TO AN EXISTING IRON PIN AT THE NORTHWEST CORNER OF LOT 2 IN ROYAL ESTATES, A SUBDIVISION IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI; THENCE S89°15'23"E, ALONG THE NORTH LINE OF SAID ROYAL ESTATES, A DISTANCE OF 367.26 FEET FOR A POINT OF BEGINNING; THENCE N00°44'37"E, A DISTANCE OF 90.00 FEET; THENCE S89°15'23"E, A DISTANCE OF 89.13 FEET; THENCE S00°44'37"W, A DISTANCE OF 90.00 FEET TO A POINT ON THE NORTH LINE OF SAID ROYAL ESTATES; THENCE N89°15'23"W, ALONG SAID NORTH LINE, A

DISTANCE OF 89.13 FEET TO THE POINT OF BEGINNING.

ALSO INCLUDED IS A PERPETUAL NEUTRAL INGRESS AND EGRESS TO THE SUBJECT PROPERTY LEGALLY DESCRIBED AS FOLLOWS:

A THIRTY (30') WIDE INGRESS-EGRESS EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 27, NORTH, RANGE 22 WEST; THENCE S89°15'23"E ALONG THE NORTH LINE OF ROYAL ESTATES SUBDIVISION, 40.02 FEET TO THE EAST RIGHT OF WAY OF

GREGG ROAD; THENCE N02°23'49"E ALONG SAID EAST RIGHT OF WAY 20.95 FEET TO THE POINT OF BEGINNING; THENCE S89°15'23"E, 366.80 FEET FOR A TERMINUS.

Northeast Substation:

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH 16 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI; THENCE S02°11'50"W, 240.00 FEET; THENCE N87°55'10"W, 270.00 FEET; THENCE NORTH 02°11'50"E, 240.00 FEET; THENCE S87°55'10"E, 270.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1.49 ACRES.

AND,

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 16 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI; THENCE S02°11'50"W, 240.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S02°11'50"W, 20.00 FEET; THENCE N87°55'10"W, 290.00 FEET; THENCE N02°11'50"E, 260.00 FEET; THENCE S87°55'10"E, 20.00 FEET; THENCE S02°11'50"W, 240.00 FEET; THENCE S87°55'10"E, 270.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.24 ACRES.

Tracker Substation:

ALL OF LOTS TWELVE (12) AND THIRTEEN (13), OF C & K CORNERS, A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI, ACCORDING TO THE PLAT FILED IN PLAT BOOK "G" AT PAGE 139, RECORDER'S OFFICE OF CHRISTIAN COUNTY, MISSOURI.

COUNCIL BILL EXHIBIT E

(Space above reserved for Recorder's use)

TITLE OF DOCUMENT:	ASSIGNMENT OF EASEMENTS
DATE OF DOCUMENT:	_____, 2022
GRANTOR(S) NAME AND MAILING ADDRESS:	CITY OF NIXA, MISSOURI 1111 W Kathryn Nixa, Missouri 65714
GRANTEE(S) NAME AND MAILING ADDRESS:	MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION 2200 Maguire Blvd. Columbia, Missouri 65201
LEGAL DESCRIPTION:	See Exhibit A
REFERENCE BOOK/PAGE:	See Exhibit A

ASSIGNMENT OF EASEMENTS

This Assignment of Easements (this "Assignment") is made effective as of _____, 2022 (the "Effective Date"), by and between the MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION, a joint utility commission organized and existing under the laws of the State of Missouri ("Assignee"), and the CITY OF NIXA, MISSOURI, a charter city of the State of Missouri ("Assignor"). Assignee and Assignor individually are referred to herein as a Party and together as the Parties.

WHEREAS, Assignor, pursuant to this Assignment, desires to assign to Assignee the easements, as more particularly described on the attached **Exhibit A** (the "Easements"), and Assignee desires to assume from Assignor the Easements; and

WHEREAS, notwithstanding the foregoing, Assignor retains a non-exclusive right to use the Easements simultaneously with Assignee, all for such purposes as expressly set forth in the Easements.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Defined Terms. Any capitalized term used but not otherwise defined in this Assignment shall have the meaning ascribed to such term in the Purchase Agreement.
2. Assignment of Easements. Assignor does hereby assign, transfer, and deliver to Assignee, for all purposes at and as of the Effective Date, Assignor's right, title, and interest in and to the Easements, except that Assignor retains a non-exclusive right to use the Easements for the purposes as expressly set forth in the Easements simultaneously with Assignee's use of the Easements.
3. Acceptance of Easements. Assignee hereby accepts such assignment of the Easements.
4. Further Assurances. Assignor and Assignee agree to take all such further actions and to execute, acknowledge, and deliver all such further documents as are necessary or useful to carry into effect the intent and purposes of this Assignment.
5. Successors and Assigns. This Assignment shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.
6. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Missouri without giving effect to the principles of conflicts of law.
7. Counterparts. This Assignment may be executed in any number of counterparts by the Parties, each of which when so executed will be an original, but all of which together will constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have made and executed this Assignment of Easements the day and year first above written intending the same to be binding upon the Parties, their successors and assigns. This Agreement will be executed in two counterparts, each constituting an original but altogether one and the same instrument and Agreement.

ASSIGNEE

**MISSOURI JOINT MUNICIPAL
ELECTRIC UTILITY COMMISSION**

By: _____
John Twitty
President and CEO

STATE OF MISSOURI)
) ss.
_____ COUNTY)

Before me, a Notary Public in and for this state on this ____ day of _____, 2022, personally appeared John Twitty to me personally known, who, being by me duly sworn, did say that he is the President and CEO of the Missouri Joint Municipal Electric Utility Commission, a joint utility commission organized and existing under the laws of the State of Missouri, and that said instrument was signed in behalf of said commission by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said commission.

Given under my hand and seal of office this day and year last above written.

Notary Public

My commission expires: _____.

ASSIGNOR

CITY OF NIXA, MISSOURI

By: _____
Brian Steele
Mayor

STATE OF MISSOURI)
) ss.
CHRISTIAN COUNTY)

Before me, a Notary Public in and for this state on this ____ day of _____, 2022, personally appeared Brian Steele to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City of Nixa, Missouri, a home rule charter city and political subdivision organized and existing under the laws of the State of Missouri, and that said instrument was signed in behalf of said city by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said city.

Given under my hand and seal of office this day and year last above written.

Notary Public

My commission expires: _____.

EXHIBIT A

EASEMENT #01 – Book 374, Page 5942 [Easement #151 – Clemmons]

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI; THENCE SOUTH TO THE SOUTH RIGHT-OF-WAY OF MISSOURI HIGHWAY 14 FOR THE POINT OF BEGINNING; THENCE WEST ALONG SAID SOUTH RIGHT-OF-WAY OF MISSOURI HIGHWAY 14, 850 FEET; THENCE SOUTH 20 FEET; THENCE EAST AND PARALLEL WITH THE SOUTH RIGHT-OF-WAY OF MISSOURI HIGHWAY 14, 850 FEET; THENCE NORTH 20 FEET TO THE POINT OF BEGINNING, CONTAINING 0.39 ACRES. ALSO INCLUDING ANY EXISTING GUY AND ANCHOR ASSEMBLIES.

ALSO A 30 FOOT TEMPORARY CONSTRUCTION EASEMENT ADJACENT TO AND ON THE SOUTH SIDE OF THE ABOVE DESCRIBED PERMANENT EASEMENT.

EASEMENT #02 – Book 394, Page 1621 [Easement #017 - Gonzales]

ALL OF THE EAST FIFTEEN (15) FEET OF THE FOLLOWING DESCRIBED TRACT: LOT TWENTY-THREE KINDER INDUSTRIAL PARK, ADDITION TO CITY OF NIXA, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 174, CHRISTIAN COUNTY RECORDER'S OFFICE. ALL IN NW1/4 SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #03 – Book 394, Page 1625 [Easement #018 – EDI Plus]

ALL OF THE EAST FIFTEEN (15) FEET OF THE FOLLOWING DESCRIBED TRACTS: LOT FIFTEEN (15), LOT SIXTEEN (16) AND LOT SEVENTEEN (17) KINDER INDUSTRIAL PARK, ADDITION TO CITY OF NIXA, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 174, CHRISTIAN COUNTY RECORDER'S OFFICE. ALL IN NW1/4 SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #04 – Book 394, Page 1629 [Easement #019 - Kinder]

A THIRTY (30) FOOT UTILITY EASEMENT FROM PROPERTY LINE TO PROPERTY LINE ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 6, KINAHAN INDUSTRIAL PARK, RECORDED IN PLAT BOOK G AT PAGE 404 CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S02°31'40"W, 223.7 FEET; THENCE S87°11'39"E, 208.7 FEET; THENCE S02°31'40"W, 187.7 FEET TO THE POINT OF BEGINNING; THENCE N87°22'35"W, 208.2 FEET FOR A TERMINUS. ALL IN SW1/4 SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #05 – Book 394, Page 1633 [Easement #020 – Bingham]

A SIXTY (60) FOOT UTILITY EASEMENT FROM PROPERTY LINE TO PROPERTY LINE ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 28 NORTH, RANGE 21 WEST; THENCE S10°42'00"W, 696.10 FEET TO THE POINT OF BEGINNING; THENCE N01°22'05"E, 815.4 FEET TO A POINT HEREINAFTER DESIGNATED POINT "A"; THENCE S87°07'00"E, 1231.5 FEET TO A POINT HEREINAFTER DESIGNATED POINT "B"; THENCE N50°04'00"E, 113.3 FEET TO A POINT HEREINAFTER DESIGNATED POINT "C"; THENCE N01°08'40"E, 2448.0 FEET FOR A TERMINUS.

ALSO, ANCHOR EASEMENTS BEING (10) FEET IN WIDTH THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT POINT "A" REFERENCED ABOVE, THENCE N01°22'05"E, (70) FEET FOR A TERMINUS;

ALSO BEGINNING AT POINT "A" REFERENCED ABOVE; THENCE N87°07'00"W, (70) FEET FOR A TERMINUS.

ALSO BEGINNING AT POINT "B" REFERENCED ABOVE; THENCE S87°07'00"E, (60) FEET FOR A TERMINUS.

ALSO BEGINNING AT POINT "C" REFERENCED ABOVE; THENCE S01°08'40"W, (60) FEET FOR A TERMINUS. ALL IN E1/2 SECTION 31, TOWNSHIP 28 NORTH, RANGE 21 WEST AND NW1/4 SECTION 32, TOWNSHIP 28 NORTH, RANGE 21 WEST.

EASEMENT #06 – Book 394, Page 1637 [Easement #021 – Harmon]

ALL OF THE EAST FIFTEEN (15) FEET OF THE FOLLOWING DESCRIBED TRACT: LOT EIGHTEEN (18) KINDER INDUSTRIAL PARK, ADDITION TO CITY OF NIXA, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 174, CHRISTIAN COUNTY RECORDER'S OFFICE. ALL IN NW1/4 SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #07 – Book 394, Page 1641 [Easement #022 – Stonel]

ALL OF THE EAST FIFTEEN (15) FEET OF THE FOLLOWING DESCRIBED TRACTS: LOT NINETEEN (19) & LOT TWENTY (20), KINDER INDUSTRIAL PARK, ADDITION TO CITY OF NIXA, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 174, CHRISTIAN COUNTY RECORDER'S OFFICE. ALL IN NW1/4 SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #08 – Book 394, Page 1645 [Easement #023 - Carnahan]

ALL OF THE EAST FIFTEEN (15) FEET OF THE FOLLOWING DESCRIBED TRACT: LOT TWENTY-FOUR (24), KINDER INDUSTRIAL PARK, ADDITION TO CITY OF NIXA, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 174, CHRISTIAN COUNTY RECORDER'S OFFICE. ALL IN NW1/4 SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #09 – Book 394, Page 1649 [Easement #024 – Washington]

A THIRTY (30) FOOT WIDE UTILITY EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 6, KINAHAN INDUSTRIAL PARK, RECORDED IN BOOK G AT PAGE 404, CHRISTIAN COUNTY

RECORDER'S OFFICE; THENCE S02°31'40"W, 43.70 FEET; THENCE N86°43'18"W, 393.95 FEET; THENCE N01°54'50"E, 842.72 FEET; THENCE N57°04'41"E, 85.27 FEET; THENCE S87°01'43"E, 600.36 FEET; THENCE N02°05'41"E, 137.2 FEET; THENCE S87°06'26"E, 2650.0 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S87°06'26"E, 157.6 FEET FOR A TERMINUS ON THE EAST LINE OF THE GRANTOR'S TRACT. ALL IN SE1/4 SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #10 – Book 394, Page 1653 [Easement #025 – Mills]

A THIRTY (30) FOOT UTILITY EASEMENT FROM PROPERTY LINE TO PROPERTY LINE ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE NORTHEAST CORNER OF A TRACT OF LAND RECORDED IN BOOK 333 PAGE 1296 CHRISTIAN COUNTY RECORDER'S OFFICE, THENCE N88°21'13"W, 37.80 FEET TO THE POINT OF BEGINNING; THENCE S01°55'48"W, 1077.2 FEET FOR A TERMINUS ON THE SOUTH LINE OF THE GRANTOR'S TRACT. ALSO, AN ADDITIONAL 15 FEET ALONG THE EAST SIDE OF THE ABOVE DESCRIBED EASEMENT. ALL IN SE1/4 SECTION 36, TOWNSHIP 28 NORTH, RANGE 22 WEST.

EASEMENT #11 – Book 394, Page 1657 [Easement #026 – Mills]

A THIRTY (30) FOOT UTILITY EASEMENT FROM PROPERTY LINE TO PROPERTY LINE ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE NORTHEAST CORNER OF A TRACT OF LAND RECORDED IN BOOK 284 PAGE 3967 CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE N88°21'13"W, 37.80 FEET TO THE POINT OF BEGINNING; THENCE S01°55'48"W, 240.00 FEET FOR A TERMINUS ON THE SOUTH LINE OF THE GRANTOR'S TRACT.

ALSO, AN ADDITIONAL 15 FEET ALONG THE ENTIRE EAST SIDE OF THE ABOVE DESCRIBED EASEMENT. ALL IN SE1/4 SECTION 36, TOWNSHIP 28 NORTH, RANGE 22 WEST.

EASEMENT #12 – Book 394, Page 1661 [Easement #027 – Yates]

A THIRTY (30) FOOT WIDE UTILITY EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 6, KINAHAN INDUSTRIAL PARK, RECORDED IN BOOK G AT PAGE 404, CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S02°31'40"W, 43.70 FEET; THENCE N86°43'18"W, 393.95 FEET; THENCE N01°54'50"E, 842.72 FEET; THENCE N57°04'41"E, 85.27 FEET; THENCE S87°01'43"E, 600.36 FEET; THENCE N02°05'41"E, 137.2 FEET; THENCE S87°06'26"E, 655.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S87°06'26"E, 1328.3 FEET FOR A TERMINUS ON THE EAST LINE OF THE GRANTOR'S TRACT. ALL IN SW1/4 SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #13 – Book 394, Page 1665 [Easement #028 - Gilbert]

A THIRTY (30) FOOT UTILITY EASEMENT FROM PROPERTY LINE TO PROPERTY LINE ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 6, KINAHAN INDUSTRIAL PARK, RECORDED IN PLAT BOOK G AT PAGE 404 CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S02°31'40"W, 43.70 FEET; THENCE N86°43'18"W, 393.95 FEET; THENCE N01°54'50"E, 842.72 FEET; THENCE N57°04'41"E, 85.27 FEET TO THE POINT OF BEGINNING; THENCE S87°01'43"E, 286.0 FEET FOR A TERMINUS.

ALSO AN EASEMENT FOR A POWER POLE ANCHOR BEING TEN (10) FEET IN WIDTH WITH FIVE (5) FEET ON EACH OF THE FOLLOW DESCRIBED CENTERLINE: BEGINNING AT THE POINT OF BEGINNING REFERENCED ABOVE; THENCE N87°01'43"W, 70.0 FEET FOR A TERMINUS. ALL IN SW1/4 SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #14 – Book 394, Page 1669 [Easement #029 – Duffy]

A THIRTY (30) FOOT UTILITY EASEMENT FROM PROPERTY LINE TO PROPERTY LINE ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 6, KINAHAN INDUSTRIAL PARK, RECORDED IN PLAT BOOK G AT PAGE 404, CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S02°31'40"W, 43.70 FEET; THENCE N86°43'18"W, 393.95 FEET; THENCE N01°54'50"E, 842.72 FEET; THENCE N57°04'41"E, 85.27 FEET; THENCE S87°01'43"E, 286.0 FEET TO THE POINT OF BEGINNING; THENCE S87°01'43", 298.4 FEET FOR A TERMINUS.

ALSO AN EASEMENT FOR A POWER POLE ANCHOR BEING TEN (10) FEET IN WIDTH WITH FIVE (5) FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE POINT OF TERMINUS REFERENCES ABOVE; THENCE S87°01'43"E, 16.0 FEET; THENCE N02°05'41"E, 137.2 FEET TO THE POINT OF BEGINNING; THENCE N87°06'26"W, 60.0 FEET FOR A TERMINUS. ALL IN SW1/4 SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #15 – Book 394, Page 1673 [Easement #030 – BGC]

A THIRTY (30) FOOT UTILITY EASEMENT FROM PROPERTY LINE TO PROPERTY LINE ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 6, KINAHAN INDUSTRIAL PARK, RECORDED IN PLAT BOOK G AT PAGE 404 CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S02°31'40"W, 43.70 FEET; THENCE N86°43'18"W, 393.95 FEET TO THE POINT OF BEGINNING; THENCE N01°54'50"E, 842.72 FEET TO A POINT HEREINAFTER DESIGNATED POINT "A"; THENCE N57°04'41"E, 85.27 FEET TO A POINT HEREINAFTER DESIGNATED POINT "B"; THENCE S87°01'43"E, 600.36 FEET TO A POINT HEREINAFTER DESIGNATED AS POINT "C" FOR A TERMINUS.

ALSO EASEMENTS FOR POWER POLE ANCHORS BEING TEN (10) FEET IN WIDTH WITH FIVE (5) FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT POINT "A" REFERENCED ABOVE; THENCE N01°54'50"E, 50.0 FEET; BEGINNING AT POINT "B" REFERENCED ABOVE; THENCE N87°01'43"W, 70.0 FEET; BEGINNING AT POINT "C" REFERENCED ABOVE; THENCE S02°05'41"W, 40.0 FEET;

ALSO BEGINNING AT POINT "C" REFERENCED ABOVE; THENCE S87°01'43"E, 60.0 FEET. ALL IN SW1/4 SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #16 – Book 394, Page 1677 [Easement #001 – Graves]

A SIXTY (60) FOOT UTILITY EASEMENT FROM PROPERTY LINE TO PROPERTY LINE ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 16 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI; THENCE N02°11'50"E, 320.00 FEET; THENCE N87°55'10"W, 49.42 FEET TO THE POINT OF BEGINNING; THENCE S01°43'51"W, 320.05 FEET FOR A TERMINUS ON THE SOUTH LINE OF THE GRANTOR'S TRACT. ALL IN NE1/4 SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #17 – Book 394, Page 1680 [Easement #031 – River Haven]

A SIXTY (60) FOOT UTILITY EASEMENT FROM PROPERTY LINE TO PROPERTY LINE ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 28 NORTH, RANGE 21 WEST; THENCE S11°24'39"W, 647.32 FEET TO THE POINT OF BEGINNING; THENCE S01°22'05"W, 581.65 FEET TO A POINT HEREINAFTER DESIGNATED POINT "A"; THENCE S47°17'10"W, 97.40 FEET TO A POINT HEREINAFTER DESIGNATED POINT "B"; THENCE N86°47'45"W, 1136.8 FEET; THENCE N87°42'45"W, 3239.0 FEET TO A POINT HEREINAFTER DESIGNATED POINT "C"; THENCE S01°55'48"W, 30.4 FEET TO A POINT HEREINAFTER DESIGNATED POINT "D" FOR A TERMINUS ON THE SOUTH LINE OF THE GRANTORS TRACT. ALL IN S1/2 SECTION 31, TOWNSHIP 28 NORTH, RANGE 21 WEST AND NE1/4 SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST.

ALSO:

COMMENCING AT POINT "D" REFERENCED ABOVE; THENCE S01°55'48"W, 1317.2 FEET TO THE POINT OF BEGINNING; THENCE S01°55'48"W, 30.3 FEET; THENCE S07°53'25"W, 234.7 FEET; THENCE S01°43'51"W, 1271.9 FEET FOR A TERMINUS.

ALSO, ANCHOR EASEMENTS BEING (10) FEET IN WIDTH THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT POINT "A" REFERENCED ABOVE; THENCE S01°22'05"W, (70) FEET FOR A TERMINUS; BEGINNING AT POINT "B" REFERENCED ABOVE; THENCE S86°47'45"E, (70) FEET FOR A TERMINUS; BEGINNING AT POINT "C" REFERENCED ABOVE; THENCE N87°42'45"W, 70.0 FEET FOR A TERMINUS.

ALSO A STUB POLE AND ANCHOR EASEMENT BEING (10) FEET IN WIDTH THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT POINT "C" REFERENCED ABOVE, THENCE N01°55'48"E, (125) FEET FOR A TERMINUS.

EASEMENT #18 – Book 396, Page 6533 [Easement #205 - MSP]

ALL OF THE WEST 7.5 FEET OF LOT 1D TOGETHER WITH THE EAST 7.5 FEET OF LOTS 1C AND 1B AS DESCRIBED ON THE REPLAT OF LOT 1 GREAT SOUTHERN – NIXA NORTH.

EASEMENT #19 – Book 398, Page 4802 [Easement #011 Rook-Knight]

A THIRTY (30) FOOT UTILITY EASEMENT FROM PROPERTY LINE TO PROPERTY LINE ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 6, KINAHAN INDUSTRIAL PARK, RECORDED IN PLAT BOOK G AT PAGE 404 CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S02°31'40"W, 223.7 FEET, THENCE S87°11'39"E, 208.7 FEET; THENCE S02°31'40"W, 187.7 FEET TO THE POINT OF BEGINNING; THENCE S87°22'35"E, 58.9 FEET; THENCE S02°43'47"W, 22.4 FEET FOR A TERMINUS.

EASEMENT #20 – Book 398, Page 4805 [Easement #003 -Taylor]

A THIRTY-FOUR (34) FOOT UTILITY EASEMENT, RESTRICTED TO OVERHEAD ELECTRIC LINES AND ASSOCIATED UTILITY FIBER OPTIC COMMUNICATIONS, ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTIONS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 16 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI; THENCE N87°55'10"W, 46.81 FEET TO THE POINT OF BEGINNING; THENCE S01°43'51"W, 743.0 FEET TO A POINT HEREINAFTER DESIGNATED POINT "A"; THENCE S10°37'38"E, 62.0 FEET FOR A TERMINUS ON THE SOUTH LINE OF THE GRANTOR'S TRACT.

ALSO, COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 16 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI; THENCE S02°04'57"W, 240.0 FEET; THENCE N87°55'10"W, 270.00 FEET TO THE POINT OF BEGINNING; THENCE N02°11'50"E, 180.0 FEET; THENCE N87°55'10"W, 1013.3 FEET TO A POINT HEREINAFTER DESIGNATED POINT "B"; THENCE S06°48'53"W, 743.0 FEET FOR A TERMINUS.

ALSO EASEMENTS FOR POWER POLE ANCHORS BEING TEN (10) FEET IN WIDTH WITH FIVE (5) FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE; BEGINNING AT POINT "A" REFERENCED ABOVE; THENCE S85°33'06"W, 40.0 FEET FOR A TERMINUS;

BEGINNING AT POINT "B" REFERENCED ABOVE, THENCE N06°48'52"E, 60.0 FEET FOR A TERMINUS;

ALSO BEGINNING AT POINT "B" REFERENCED ABOVE; THENCE N87°55'10"W, 60.0 FEET FOR A TERMINUS.

EASEMENT #21 – Book 398, Page 4808 [Easement #009 Kabrett]

ALL OF THE SOUTH FIFTEEN (15) FEET OF THE FOLLOWING DESCRIBED TRACT: LOT FOURTEEN (14) KINDER INDUSTRIAL PARK, ADDITION TO CITY OF NIXA, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 174, CHRISTIAN COUNTY RECORDER'S OFFICE. PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #22 – Book 398, Page 4811 [Easement #010 Srhiver]

ALL OF THE SOUTH SEVEN AND ONE-HALF (7.5) FEET LYING NORTH OF AND ADJOINING THE EXISTING SEVEN AND ONE-HALF FOOT UTILITY EASEMENT ON LOT FOURTEEN (14) AND LOT FIFTEEN (15) C & K CORNERS SUBDIVISION, CHRISTIAN COUNTY, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 139, CHRISTIAN COUNTY RECORDER'S OFFICE. PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER, SECTION 11, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #23 – Book 398, Page 4814 [Easement #008 Frizzell]

ALL OF THE SOUTH SEVEN AND ONE-HALF (7.5) FEET LYING NORTH OF AND ADJOINING THE EXISTING SEVEN AND ONE-HALF FOOT UTILITY EASEMENT ON LOT SEVENTEEN (17) C & K CORNERS SUBDIVISION, CHRISTIAN COUNTY, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 139, CHRISTIAN COUNTY RECORDER'S OFFICE. PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER, SECTION 11, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #24 – Book 398, Page 4817 [Easement #005 Frizzell]

ALL OF THE SOUTH FIFTEEN (15) FEET OF THE FOLLOWING DESCRIBED TRACTS: LOT TWELVE (12) & LOT THIRTEEN (13), KINDER INDUSTRIAL PARK, ADDITION TO CITY OF NIXA, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 174, CHRISTIAN COUNTY RECORDER'S OFFICE. PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #25 – Book 398, Page 4820 [Easement #006 – Gamell]

ALL OF THE EAST FIFTEEN (15) FEET OF THE FOLLOWING DESCRIBED TRACTS: LOT TWENTY-ONE (21) AND LOT TWENTY-TWO (22), KINDER INDUSTRIAL PARK, ADDITION TO CITY OF NIXA, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 174, CHRISTIAN COUNTY RECORDER'S OFFICE.

EASEMENT #26 – Book 398, Page 4824 [Easement #007 JRMCD]

A THIRTY (30) FOOT UTILITY EASEMENT FROM PROPERTY LINE TO PROPERTY LINE ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 6, KINAHAN INDUSTRIAL PARK, RECORDED IN PLAT BOOK G AT PAGE 404 CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S02°31'40"W, 223.7 FEET; THENCE S02°21'25"W, 188.33 FEET TO THE POINT OF BEGINNING; THENCE N87°22'35"W, 390.5 FEET; THENCE N01°54'50"E, 372.92 FEET FOR A TERMINUS.

EASEMENT #27 – Book 399, Page 7777 [Easement #016 - Thompson]

A THIRTY-FOUR (34) FOOT UTILITY EASEMENT RESTRICTED TO OVERHEAD ELECTRIC LINES AND ASSOCIATED UTILITY FIBER OPTIC COMMUNICATIONS ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 16 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI; THENCE N87°55'10"W, 270.00 FEET; THENCE S02°11'50"W, 60.00 FEET; THENCE N87°10'55"W, 1013.3 FEET; THENCE S06°48'53"W, 466.8 FEET TO THE POINT OF BEGINNING; THENCE S06°48'53"W, 275.8 FEET FOR A TERMINUS.

EASEMENT #28 – Book 399, Page 7780 [Easement #015 – EDI Plus]

ALL OF THE SOUTH FIFTEEN (15) FEET OF THE FOLLOWING DESCRIBED TRACT: LOT FIFTEEN (15) KINDER INDUSTRIAL PARK, ADDITION TO CITY OF NIXA, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 174, CHRISTIAN COUNTY RECORDER'S OFFICE. PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST.

ALSO A 30' WIDE UTILITY EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF LOT 15, KINDER INDUSTRIAL PARK ADDITION TO CITY OF NIXA MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 174, CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE N03°20'26"E, 48.5 FEET TO THE POINT OF BEGINNING; THENCE S35°08'00"W, 56.94 FEET FOR A TERMINUS.

EASEMENT #29 – Book 399, Page 7783 [Easement #013 - Skyline]

ALL OF THE SOUTH FIFTEEN (15) FEET OF THE FOLLOWING DESCRIBED TRACT: LOT TEN A (10 A), KINDER INDUSTRIAL PARK, ADDITION TO CITY OF NIXA, MISSOURI, RECORDED IN PLAT BOOK H AT PAGE 359, CHRISTIAN COUNTY RECORDER'S OFFICE. PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 12, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #30 – Book 399, Page 7786 [Easement #014 - Larson]

ALL OF THE SOUTH SEVEN AND ONE-HALF (7.5) FEET LYING NORTH OF AND ADJOINING THE EXISTING SEVEN AND ONE-HALF FOOT UTILITY EASEMENT ON LOT SIXTEEN (16) C & K CORNERS SUBDIVISION, CHRISTIAN COUNTY, MISSOURI, RECORDED IN PLAT BOOK G AT PAGE 139, CHRISTIAN COUNTY RECORDER'S OFFICE. PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER, SECTION 11, TOWNSHIP 27 NORTH, RANGE 22 WEST.

EASEMENT #31 – Book 400, Page 1869 [Easement #002 – Graves]

ALL OF THE EAST THIRTY-FOUR (34) FEET OF THE FOLLOWING DESCRIBED TRACT: ALL OF THE EAST FIFTEEN (15) ACRES OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 27, RANGE 22, BEING 30 RODS EAST AND WEST AND 80 RODS NORTH AND SOUTH.

ALSO:

A SIXTY (60) FOOT WIDE UTILITY EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT AN EXISTING IRON PIPE MARKING THE NORTHWEST CORNER OF FAIRWAY TERRACE, RECORDED IN PLAT BOOK G PAGE 249, CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S01°31'05"W 1118.68 FEET; THENCE N88°28'55"W 17.00 FEET TO THE POINT OF BEGINNING; THENCE S46°56'33"W, 72.64 FEET FOR A TERMINUS.

ALSO:

A THIRTY (30) FOOT WIDE UTILITY EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF TERMINUS REFERENCED ABOVE; THENCE N87°38'00"W, 443.81 FEET FOR A TERMINUS ON THE WEST LINE OF THE GRANTOR'S TRACT.

ALSO:

A TEN (10) FOOT WIDE STUB POLE AND ANCHOR EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE IRON PIPE MARKING THE NORTHWEST CORNER OF FAIRWAY TERRACE, RECORDED IN PLAT BOOK G PAGE 249, CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S01°31'05"W, 62.51 FEET; THENCE N88°28'55"W, 17.00 FEET TO THE POINT OF BEGINNING; THENCE N85°58'55"W, 83.00 FEET FOR A TERMINUS.

EASEMENT #32 – Book 400, Page 4888 [Easement #004 – Mid Continent]

ALL OF THE SOUTH FIFTEEN (15) FEET OF THE FOLLOWING DESCRIBED TRACT: THE EAST TEN (10) ACRES OF THE NE1/4 OF THE NE1/4 OF SECTION 11, TOWNSHIP 27, RANGE 22, EXCEPT ANY PART THEREOF TAKEN FOR ROAD OR HIGHWAY PURPOSES. PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER, SECTION 11, TOWNSHIP 27 NORTH, RANGE 22 WEST.

ALSO AN EASEMENT FOR POWER POLE ANCHORS BEING TEN (10) FEET IN WIDTH THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE EAST TEN (10) ACRES OF THE NE1/4 OF THE NE1/4 OF SECTION 11,

TOWNSHIP 27, RANGE 22; THENCE WEST FIVE (5) FEET ALONG THE SOUTH PROPERTY LINE TO A POINT OF BEGINNING; THENCE NORTH FORTY FEET PARALLEL TO THE EAST PROPERTY LINE FOR A TERMINUS.

EASEMENT #33 – Book 401, Page 6391 [Easement #012 - Gericke]

A TEN (10) FOOT WIDE OVERHEAD STUB POLE AND ANCHOR EASEMENT ACROSS THE FOLLOWING DESCRIBED PARCEL OF REAL PROPERTY IN THE COUNTY OF CHRISTIAN, STATE OF MISSOURI, TO-WIT:

CENTERLINE DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1, OAKMONT SUBDIVISION RECORDED IN PLAT BOOK G AT PAGE 2, CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S0°40'31"W, ALONG THE WEST LINE OF SAID LOT 1, 16.20 FEET TO THE POINT OF BEGINNING; THENCE S88°07'00"E, 88.70 FEET FOR A TERMINUS.

EASEMENT #34 – Book 2010, Page 9960 [Easement #295 - Lane Cabinets]

AN EASEMENT CONSISTING OF THE SOUTH 15' OF THE PROPERTY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 15, TOWNSHIP 27 NORTH, RANGE 22 WEST, THENCE N88°48'01"W ALONG THE SOUTH LINE OF THE SAID NE1/4 OF THE SW1/4 A DISTANCE OF 30.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF STATE ROUTE 'M', AS IT NOW EXISTS; THENCE N01°26'38"E ALONG SAID WEST RIGHT-OF-WAY LINE AND PARALLEL WITH THE EAST LINE OF THE SAID NE1/4 OF THE SW1/4, A DISTANCE OF 166.65 FEET; THENCE N88°47'27"W, A DISTANCE OF 261.36 FEET FOR A POINT OF BEGINNING; THENCE S01°26'38"W AND PARALLEL WITH THE SAID EAST LINE OF THE NE1/4 OF THE SW 1/4; THENCE N88°48'01"W ALONG THE SOUTH LINE OF THE NE1/4 OF THE SW1/4, A DISTANCE OF 261.40 FEET; THENCE N01°26'38"E AND PARALLEL WITH THE SAID EAST LINE OF THE NE1/4 OF THE SW1/4, A DISTANCE OF 166.74 FEET; THENCE S88°47'28"E, A DISTANCE OF 261.40 FEET TO THE POINT OF BEGINNING, SUBJECT TO ANY EASEMENTS OF RECORD, ALL IN CHRISTIAN COUNTY, MISSOURI. BEARINGS ARE BASED ON THE SOUTH LINE OF THE NE1/4 OF THE SW1/4 AS BEING N88°48'01"W.

EASEMENT #35 – Book 2010, Page 9961 [Easement #154 – Deatherage]

AN EASEMENT CONSISTING OF THE SOUTH 15' OF THE PROPERTY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 15, TOWNSHIP 27 NORTH, RANGE 22 WEST, THENCE N88°48'01"W ALONG THE SOUTH LINE OF THE SAID NE1/4 OF THE SW1/4, A DISTANCE OF 30.00 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING N88°48'01"W ALONG THE SAID SOUTH LINE OF THE NE1/4 OF THE SW1/4, A DISTANCE OF 261.40 FEET; THENCE N01°26'38"E AND PARALLEL WITH THE SAID EAST LINE OF THE NE1/4 OF THE SW1/4, A DISTANCE OF 166.69 FEET; THENCE S88°47'27"E, A DISTANCE OF 281.40 FEET; THENCE S01°26'38"W AND PARALLEL WITH THE SAID EAST LINE OF THE NE1/4 OF THE SW1/4, A DISTANCE OF 166.65 FEET TO THE POINT OF BEGINNING, SUBJECT TO ANY EASEMENT OF RECORD, ALL IN CHRISTIAN COUNTY, MISSOURI, BEARINGS ARE BASED ON THE SOUTH LINE OF THE NE1/4 OF THE SW1/4 AS BEING N88°48'01"W.

EASEMENT #36 – Book 2010, Page 9963 [Easement #304 - Schatz]

AN EASEMENT CONSISTING OF THE SOUTH 15' OF THE PROPERTY DESCRIBED AS FOLLOWS:

SCHATZ INVESTMENTS #27 TRACT 4

AN EASEMENT CONSISTING OF THE SOUTH 15' OF THE PROPERTY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 15, TOWNSHIP 27 NORTH, RANGE 22 WEST, THENCE NORTH 88 DEGREES 48 MINUTES 01 SECONDS WEST ALONG THE SOUTH LINE OF THE SAID NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4), A DISTANCE OF 30.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF STATE ROUTE "M", AS IT NOW EXISTS; THENCE NORTH 01 DEGREE 26 MINUTES 38 SECONDS EAST ALONG THE SAID WEST RIGHT-OF-WAY LINE AND PARALLEL WITH THE EAST LINE OF THE SAID NORTHEAST QUARTER (NE 1/4) OF THE SOUTHWEST QUARTER (SW 1/4), A DISTANCE OF 166.65 FEET; THENCE NORTH 88 DEGREES 47 MINUTES 27 SECONDS WEST, A DISTANCE OF 522.76 FEET FOR A POINT OF BEGINNING; THENCE SOUTH 01 DEGREE 26 MINUTES 38 SECONDS WEST AND PARALLEL WITH THE EAST LINE OF THE SAID NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4), A DISTANCE OF 166.74 FEET TO A POINT ON THE SOUTH LINE OF THE SAID NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4); THENCE NORTH 88 DEGREES 48 MINUTES 01 SECOND WEST ALONG THE SOUTH LINE OF THE SAID NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4), A DISTANCE OF 261.40 FEET; THENCE NORTH 01 DEGREE 26 MINUTES 38 SECONDS EAST AND PARALLEL WITH THE EAST LINE OF THE SAID NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4), A DISTANCE OF 166.78 FEET; THENCE SOUTH 88 DEGREES 47 MINUTES 28 SECONDS EAST, A DISTANCE OF 261.40 FEET TO THE POINT OF BEGINNING. SUBJECT TO ANY EASEMENTS OF RECORDS, ALL IN CHRISTIAN COUNTY, MISSOURI, BEARINGS ARE BASED ON THE SOUTH LINE OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4) AS BEING NORTH 88 DEGREES 48 MINUTES 01 SECOND WEST.

SCHATZ INVESTMENTS #27 TRACT 7

AN EASEMENT CONSISTING OF THE SOUTH 15' AND THE WEST 15' OF THE PROPERTY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF THE SECTION 15, TOWNSHIP 27 NORTH, RANGE 22 WEST, THENCE NORTH 88 DEGREES 48 MINUTES 01 SECOND WEST ALONG THE SOUTH LINE OF THE SAID NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4), A DISTANCE OF 814.21 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING NORTH 88 DEGREES 48 MINUTES 01 SECOND WEST ALONG THE SAID SOUTH LINE OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4), A DISTANCE OF 519.92 FEET TO THE SOUTHWEST CORNER OF THE SAID NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4); THENCE NORTH 01 DEGREE 21 MINUTES 59 SECONDS EAST ALONG THE WEST LINE OF THE SAID NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4), A DISTANCE OF 333.72 FEET, THENCE SOUTH 88 DEGREES 46 MINUTES 54 SECONDS EAST, A DISTANCE OF 520.37 FEET; THENCE SOUTH 01 DEGREE

26 MINUTES 38 SECONDS WEST AND PARALLEL WITH THE EAST LINE OF THE SAID NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4), A DISTANCE OF 333.55 FEET TO THE POINT OF BEGINNING. SUBJECT TO ANY EASEMENTS OF RECORD, ALL IN CHRISTIAN COUNTY, MISSOURI, BEARINGS ARE BASED ON THE SOUTH LINE OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4) AS BEING NORTH 88 DEGREES 48 MINUTES 01 SECOND WEST.

EASEMENT #37 – Book 2015, Page 14169 [Easement #336 – Teaguel]

A 20 FOOT PERMANENT EASEMENT FOR PURPOSES OF CONSTRUCTING A 69-KV OVERHEAD ELECTRICAL LINE DESCRIBED AS FOLLOWS: BEGINNING AT THE NW CORNER OF THE SW1/4 OF THE SE1/4 OF SECTION 15, TOWNSHIP 27, RANGE 22 WEST; THENCE EAST ALONG THE NORTH LINE OF SAID SW1/4 TO THE NE CORNER OF SAID SW1/4; THENCE SOUTH 20 FEET; THENCE WEST PARALLEL TO THE NORTH LINE OF SAID SW1/4 TO THE WEST LINE OF SAID SW1/4; THENCE NORTH 20 FEET TO THE POINT OF BEGINNING, CONTAINING 0.60 ACRE MORE OR LESS.

ALSO A 30 FOOT TEMPORARY CONSTRUCTION EASEMENT ADJACENT TO AND ON THE SOUTH SIDE OF THE ABOVE DESCRIBED PERMANENT EASEMENT.

EASEMENT #38 – Book 2015, Page 14170 [Easement #292 – Life Enhancement]

A 20 FOOT PERMANENT EASEMENT FOR PURPOSES OF CONSTRUCTING A 69-KV ELECTRIC LINE DESCRIBED AS FOLLOWS: BEGINNING AT THE NE CORNER OF SAID PROPERTY WHICH IS THE NE CORNER OF THE SE1/4 OF THE SE1/4 OF SECTION 15, TOWNSHIP 27, RANGE 22; THENCE WEST TO THE NW CORNER OF THE SE1/4 OF SAID SE1/4; THENCE SOUTH 20 FEET ALONG THE WEST LINE OF THE SE1/4 OF THE SAID SE1/4; THENCE EAST PARALLEL TO THE NORTH LINE OF THE SE1/4 OF SAID SE1/4 TO THE EAST LINE OF SAID SE1/4; THENCE NORTH 20 FEET TO THE POINT OF BEGINNING. CONTAINING 0.60 ACRE MORE OR LESS.

ALSO A 30 FOOT TEMPORARY CONSTRUCTION EASEMENT ADJACENT TO AND ON THE SOUTH SIDE OF THE ABOVE DESCRIBED PERMANENT EASEMENT.

EASEMENT #39 – Book 2015, Page 14171 [Easement #308 – Souter]

A PERMANENT EASEMENT FOR PURPOSES OF CONSTRUCTING A 69-KV OVERHEAD ELECTRIC LINE DESCRIBED AS FOLLOWS: BEGINNING AT THE NW CORNER OF THE SW1/4 OF SECTION 15, TOWNSHIP 27, RANGE 22 WEST; THENCE EAST 1,320 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF HIGHWAY 14; THENCE SOUTH 1,330 FEET ALONG THE EAST LINE OF THE WEST HALF OF THE SW1/4 OF SAID SECTION 15; THENCE WEST 32 FEET; THENCE NORTH 1,310 FEET; THENCE WEST 1,288 FEET PARALLEL TO THE SOUTH RIGHT-OF-WAY LINE OF HIGHWAY 14; THENCE NORTH 20 FEET TO THE POINT OF BEGINNING, CONTAINING 1.57 ACRE MORE OR LESS.

ALSO A TEMPORARY CONSTRUCTION EASEMENT FOR PURPOSES OF CONSTRUCTING A 69-KV OVERHEAD ELECTRIC LINE DESCRIBED AS FOLLOWS: COMMENCING AT THE NW CORNER OF THE SW1/4 OF SECTION 15, TOWNSHIP 27, RANGE 22 WEST; THENCE EAST 1,320 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF HIGHWAY 14; THENCE SOUTH

1,330 FEET ALONG THE EAST LINE OF THE WEST HALF OF THE SW1/4 OF SAID SECTION 15; THENCE WEST 32 FEET FOR A NEW POINT OF BEGINNING; THENCE NORTH 1,310 FEET THENCE WEST 1,288 FEET; THENCE SOUTH 30 FEET; THENCE EAST 1,270 FEET; THENCE SOUTH 1,280 FEET; THENCE EAST 18 FEET TO THE POINT OF BEGINNING.

EASEMENT #40 – Book 2016, Page 524 (also filed of record in Book 2006, Page 1468) [Easements #460 – Smithwick and #461 - Knetzer]

TRACT I:

ALL OF THE EAST THIRTY-FOUR (34) FEET OF THE FOLLOWING DESCRIBED TRACT: ALL OF THE EAST FIFTEEN (15) ACRES OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 27, RANGE 22, BEING 30 RODS EAST AND WEST AND 80 RODS NORTH AND SOUTH.

ALSO:

A THIRTY (30) FOOT WIDE UTILITY EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHWEST CORNER OF FAIRWAY TERRACE SUBDIVISION ON THE SOUTH RIGHT OF WAY OF STATE HIGHWAY “CC”; THENCE SOUTH ALONG THE WEST LINE OF FAIRWAY TERRACE SUBDIVISION, 1170.7 FEET TO THE POINT OF BEGINNING; THENCE N87°06’26”W, 509.7 FEET FOR A TERMINUS ON THE WEST LINE OF THE GRANTOR’S TRACT.

TRACT II:

A THIRTY (30) FOOT WIDE UTILITY EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 6, KINAHAN INDUSTRIAL PARK, RECORDED IN BOOK G AT PAGE 404, CHRISTIAN COUNTY RECORDER’S OFFICE; THENCE S02°31’40”W, 43.70 FEET; THENCE N86°43’18”W, 393.95 FEET; THENCE N01°54’50”E, 842.72 FEET; THENCE N57°04’41”E, 85.27 FEET; THENCE S87°01’43”E, 600.36 FEET; THENCE N02°05’41”E, 137.2 FEET; THENCE S87°06’26”E, 1983.3 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S87°06’26”E, 666.7 FEET FOR A TERMINUS ON THE EAST LINE OF THE GRANTOR’S TRACT.

TRACT III:

A THIRTY (30) FOOT WIDE UTILITY EASEMENT THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 6, KINAHAN INDUSTRIAL PARK, RECORDED IN BOOK G AT PAGE 404, CHRISTIAN COUNTY RECORDER’S OFFICE; THENCE S02°31’40”W, 43.70 FEET; THENCE N86°43’18”W, 393.95 FEET; THENCE N01°54’50”E, 842.72 FEET; THENCE N57°04’41”E, 85.27 FEET; THENCE S87°01’43”E, 600.36 FEET TO THE POINT OF BEGINNING, HEREINAFTER DESIGNATED POINT “A”; THENCE N02°05’41”E, 137.2 FEET TO A POINT HEREINAFTER DESIGNATED POINT “B”; THENCE S87°06’26”E, 655.00 FEET FOR A TERMINUS.

ALSO EASEMENTS FOR POWER POLE ANCHORS BEING TEN (10) FEET IN WIDTH WITH FIVE (5) FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT POINT “A” REFERENCED ABOVE; THENCE S87°01’43”E, 60.0 FEET;

ALSO BEGINNING AT POINT “B” REFERENCED ABOVE;

THENCE N02°05'41"E, 60.0 FEET FOR A TERMINUS.

EASEMENT #41 – Book 396, Page 6535

ALL OF THE EAST 7.5 FEET OF LOT 1A AS DESCRIBED ON THE REPLAT OF LOT 1 GREAT SOUTHERN – NIXA NORTH.

EASEMENT #42 – Book 310, Page 221

A UTILITY EASEMENT 20 FT. WIDE ALONG THE NORTH PROPERTY LINE OF CARNAHAN INDUSTRIAL PARK FROM N. MAIN TO HWY 160



Issue: COUNCIL BILL #2022-032 FRANCHISE AGREEMENT FOR SPIRE

Date: 03.04.2022

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

Background

Pursuant to Article XI of the City Charter, City Council is authorized to grant public franchises or privileges and Spire Missouri Inc. (“Spire”) has approached the city with a request for a new twenty-year franchise.

Analysis

It is typical for third party utility companies to seek permission to use public rights-of-way and City owned utility easements for placement of their distribution facilities to serve their customers located within the City. Such permission is granted by the local governing body with approval of a Franchise Agreement.

Spire, formerly Missouri Gas Energy, is the local natural gas utility company that serves the city and citizens. Spire has had the privileges for many years to utilize public rights of way and seeks to continue that arrangement for a twenty-year period.

As set forth in the Nixa City Charter, a franchise can only be granted by Ordinance and for no more than 20 years. Because of the significant investment of gas distribution facilities, a long-term agreement is requested by Spire.

Staff has identified no violations during the previous franchise and does not anticipate any in the future.

Recommendation

Staff recommends passing Council Bill #2022-032 to a second reading at your next meeting. Provided there are any questions or concerns, staff is available to address them.

1 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA GRANTING A**
2 **FRANCHISE TO OPERATE A NATURAL GAS DISTRIBUTION SYSTEM WITHIN**
3 **THE CITY TO SPIRE MISSOURI INC.**

4 _____
5
6 **WHEREAS** Section 82.230 RSMo., grants constitutional charter cities the
7 authority to grant, regulate, and control the exercise of any public franchise or privilege
8 involving the use of the streets or public ways of such cities; and
9

10 **WHEREAS** the City Council, pursuant to Article XI of the City Charter, is
11 authorized to grant public franchises or privileges; and
12

13 **WHEREAS** Spire Missouri Inc. (“Spire”) has approached the City with a request
14 to extend the franchise granted to Spire for an additional twenty-year term; and
15

16 **WHEREAS** the City Council desires to extend said franchise to Spire under the
17 terms and conditions provided in this Ordinance.
18

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

22 **SECTION 1:** The right, permission and authority, for a period of twenty years, is
23 hereby granted to Spire Missouri Inc., a corporation of the State of Missouri (hereinafter
24 referred to as “Spire”), its successors and assigns, to construct, reconstruct, excavate for,
25 place, replace, extend and maintain all necessary or appropriate mains, service pipes,
26 conduits, conductors, vaults, vaporizers, regulators, meters, sensors, routers, poles,
27 antennae, and any and all other equipment, appurtenances and fixtures as may be
28 reasonably necessary or desirable in the operation of a natural gas distribution system,
29 in, along, across, over and under the streets, roads, alleys, sidewalks, squares, and
30 bridges within the corporate limits of the City of Nixa, as now established or as may be
31 hereafter extended, and areas dedicated to the City for public utility use, for the purpose
32 of transmitting, furnishing, transporting and distributing natural gas for light, heat, power
33 and other purposes within the City, and in territory adjacent to the City and for the purpose
34 of transporting and transmitting natural gas through said City; all such equipment,
35 appliances and apparatus to be installed and maintained with due regard to the rightful
36 use by other persons with vehicles or otherwise, of the streets, roads, alleys, sidewalks,
37 squares, bridges and other public places and areas dedicated to the City for public utility
38 use; and exercise of the rights, permission and authority hereby granted shall at all times
39 be subject to lawful regulation by the City in the exercise of its police powers. For
40 purposes of this Ordinance, unless the context clearly indicates otherwise, the term “right-
41 of-way” or “rights-of-way” shall include streets, roads, alleys, sidewalks, squares, bridges,
42 and areas dedicated to the City for public utility use.
43

44 **SECTION 2:** Extensions of, and additions to, the distribution system maintained
45 by Spire, its successors or assigns, in the City, shall be made in accordance with the rules
46 and regulations governing such extensions and additions by Spire now on file with the

47 Public Service Commission of Missouri or in accordance with such amended rules and
 48 regulations governing such extensions and additions by Spire, its successors or assigns,
 49 as may hereafter become effective in the manner provided by law. The financial
 50 responsibility for relocations of the Spire's facilities within the City's rights-of-way shall be
 51 determined by State law as shall be specified by statute or common law at the time of the
 52 relocation, and nothing herein shall be construed to confer upon Spire or the City any
 53 rights inconsistent therewith. The City shall, prior to vacating any public right-of-way
 54 containing any Spire facilities, notify Spire using reasonable means of the vacation. City
 55 shall reasonably cooperate with Spire to obtain replacement rights but failure to acquire
 56 such replacement rights shall not prohibit the City from proceeding with the vacation. .

57
 58 **SECTION 3:** Spire shall indemnify and hold City harmless from all liability,
 59 judgments, decrees, costs, expenses and attorneys' fees incurred or imposed on account
 60 of injury or damage to persons or property arising from the negligent acts or omissions or
 61 mismanagement of Spire or its subcontractors in the construction, reconstruction,
 62 excavation, extension, restoration, or maintenance of the mains, service pipes, conduits,
 63 conductors or other equipment in along, across, over or under any of the streets, roads,
 64 alleys, sidewalks, squares, bridges or other public places in the City in the exercise of any
 65 of the rights and privileges conferred by this ordinance.

66
 67 **SECTION 4:** The rights, privileges and authority granted herein shall inure to and
 68 be vested in Spire, its successors and assigns, successively, subject to all of the terms,
 69 provisions and conditions herein contained, and each of the obligations hereby imposed
 70 upon Spire shall devolve and be binding upon its successors and assigns, successively,
 71 in the same manner.

72
 73 **SECTION 5:** As consideration for the rights and privileges conferred by this
 74 Ordinance, Spire shall, not later than February and August 1 respectively, provide a
 75 report to the City of Spire's gross receipts from the transportation, distribution, and sale
 76 of natural gas for domestic or commercial purposes within the corporate limits of the City
 77 for the six month period since the last report and at the time of making such report shall
 78 pay to City a sum equal to five percent of said gross receipts, or such other amount as
 79 may be lawfully prescribed by ordinance from time to time. In addition, Spire shall pay
 80 any applicable right-of-way management costs lawfully imposed by the City, subject to
 81 provisions of section 67.1840 RSMo. Spire agrees to recognize the fees referenced in
 82 this section as valid and binding and shall make the required payments.

83
 84 **SECTION 6:** Spire shall, within thirty days after the passage and approval of this
 85 Ordinance, file a memorandum detailing Spire's acceptance thereof with the City Clerk.
 86 Upon receipt by the City Clerk of such a memorandum, the franchise granted herein shall
 87 continue and remain in full force and effect for a period of twenty years.

88
 89 **SECTION 7:** Neither acceptance of, nor compliance with, the provisions of this
 90 Ordinance shall in any ways impair or affect, or constitute or be construed as a
 91 relinquishment or waiver of any right, permission or authority which Spire, its successors
 92 or assigns, may have independently of this Ordinance.

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SECTION 8: This Ordinance shall not relieve Spire of the obligation to comply with any lawful Ordinance now existing in the City or enacted in the future requiring Spire to obtain written permits or other approval from the City prior to commencement of construction of facilities within City right-of-way. Nothing in this Ordinance shall be construed as a limitation on the proper exercise of the City’s police power which may be exercised by the City in the management of its property, including rights-of-way.

SECTION 9: If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 10: The public franchise granted herein is expressly subject to the provisions of Article XI, of the City Charter. The City Council, pursuant to said Article, maintains the rights and authorities provided for therein, including without limitation Section 11.2 thereof.

SECTION 11: A covenant of good faith and fair dealing being implied into every Missouri contract, during the term of this Franchise, City shall not prohibit the connection of or service to new natural gas customers within its boundaries, nor take any action to require the discontinuance of natural gas service, other than as may be set forth in the rules and regulations of the Missouri Public Service Commission.

SECTION 12: This Ordinance shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

ADOPTED BY THE CITY COUNCIL THIS _____ DAY OF _____ 2022.

ATTEST:

CITY CLERK

PRESIDING OFFICER

APPROVED BY THE MAYOR.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

DATE OF APPROVAL

CITY ATTORNEY



Issue: Missouri Highways and Transportation Commission STBG
Program Agreement, Council Bill # 2022-033

Date: March 9th, 2022

Submitted By: Jeff Roussell, Street Superintendent

Background

A Resolution allowing Nixa to enter into an agreement with the Highway Transportation Commission for Surface Transportation Block Grant funds was passed by Council at the February 28th Council meeting. After passage of this Resolution, the Missouri Department of Transportation requested that this be passed as an Ordinance, although no reason was given other than it would not be accepted otherwise.

Due to time constraints and the importance of this Main Street project, staff is now requesting that Council pass this by Ordinance so that progress continues with this worthwhile endeavor.

Analysis

The attached agreement would allow the City to utilize Surface Transportation Block Grant funds for the improvement of North Main Street. The agreement would commit the City to a cost share for the project with a total project cost of \$2,341,432.00. Twenty percent of this total (\$468,286.00) will be the responsibility of the City with the remaining eighty percent (\$1,873,146.00) being reimbursed to the City after completion.

An example of the improvements would be Main Street from Aldersgate to Tracker Road. A center turn lane would be added along with curb and gutter, sidewalks on both sides, storm water upgrades and new asphalt. Another aspect of this project would be to provide better sight distances by cutting and filling within the high and low places of the roadway.

This agreement, if executed, does not provide the needed improvements to the intersection of Main Street and Highway CC. Current budget talks between City staff, the Ozarks Transportation Organization and the Missouri Department of Transportation have reiterated the need and desire for this intersection improvement.

Recommendation

Staff recommends passage of this agreement by Ordinance

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY
2 ADMINISTRATOR TO EXECUTE A CONTRACT WITH THE MISSOURI HIGHWAYS
3 AND TRANSPORTATION COMMISSION TO PROVIDE FEDERAL SURFACE
4 TRANSPORTATION BLOCK GRANT FUNDING FOR CERTAIN IMPROVEMENTS ON
5 NORTH MAIN STREET.

6 _____
7

8 **WHEREAS** the City desires to enter into a contract with the Missouri Highways
9 and Transportation Commission to utilize federal Surface Transportation Program funding
10 to fund improvements on North Main Street; and

11 **WHEREAS** the improvements are anticipated to occur on Main Street from Tracker
12 Road to State Highway CC and include the addition of a center turn lane, sidewalks, and
13 storm water improvements.
14

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

17 **SECTION 1:** The City Administrator, or designee, is hereby authorized to enter
18 into the "Missouri Highways and Transportation Commission STBG Program Agreement"
19 ("Contract") attached hereto, and incorporated herein by this reference, as "Council Bill
20 Exhibit A," with the Missouri Highways and Transportation Commission. Said Contract
21 shall be in substantially similar form as the document attached hereto as "Council Bill
22 Exhibit A." The City Administrator and the officers of the City are hereby authorized to do
23 all things necessary or convenient to carry out the terms and intent of this Ordinance.
24
25

26 **SECTION 2:** This Ordinance shall be in full force and effect from and after its final
27 passage by the City Council and after its approval by the Mayor, subject to the provisions
28 of section 3.11(g) of the City Charter.
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30 **[Remainder of page intentionally left blank. Signatures follow on next page.]**
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47 **ADOPTED BY THE CITY COUNCIL THIS _____ DAY OF _____ 2022.**

48

49 ATTEST:

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51 _____

52 CITY CLERK

53

54 **APPROVED BY THE MAYOR.**

55

56 ATTEST:

57

58 _____

59 CITY CLERK

60

61 APPROVED AS TO FORM:

62

63 _____

64 CITY ATTORNEY

PRESIDING OFFICER

MAYOR

DATE OF APPROVAL

CCO Form: FS11
Approved: 07/96 (KMH)
Revised: 03/17 (MWH)
Modified: 02/22 (MWH)

CFDA Number: CFDA #20.205
CFDA Title: Highway Planning and Construction
Award name/number: STBG-9901(831)
Award Year: FY2022
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
STBG PROGRAM AGREEMENT**

THIS STBG 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, the FAST Act converted the STP into the Surface Transportation Block Grant (**STBG**) Program; 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 STBG funds to the City. The improvement contemplated by this Agreement and designated as Project STBG-9901(831) involves:

Design and construction of street widening, sidewalks, and associated required improvements from Route CC to Tracker Rd in Nixa, MO.

The City shall be responsible for all aspects of the construction of the improvement.

(2) LOCATION: The contemplated improvement designated as Project STBG-9901(831) 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:

From south of State Highway CC to north of Tracker 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 STBG 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 STBG 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 not to exceed \$1,873,146. 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(831) 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 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 STBG 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:
Garrett Evans, MoDOT Southwest District
3025 E Kearney Street, Springfield, MO 65803
Phone # 417-872-2224 email: garrett.evans@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

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

By _____

Title _____

[If needed to authorize a city official
to execute the agreement.]

Ordinance No: _____

Exhibit A - Location of Project

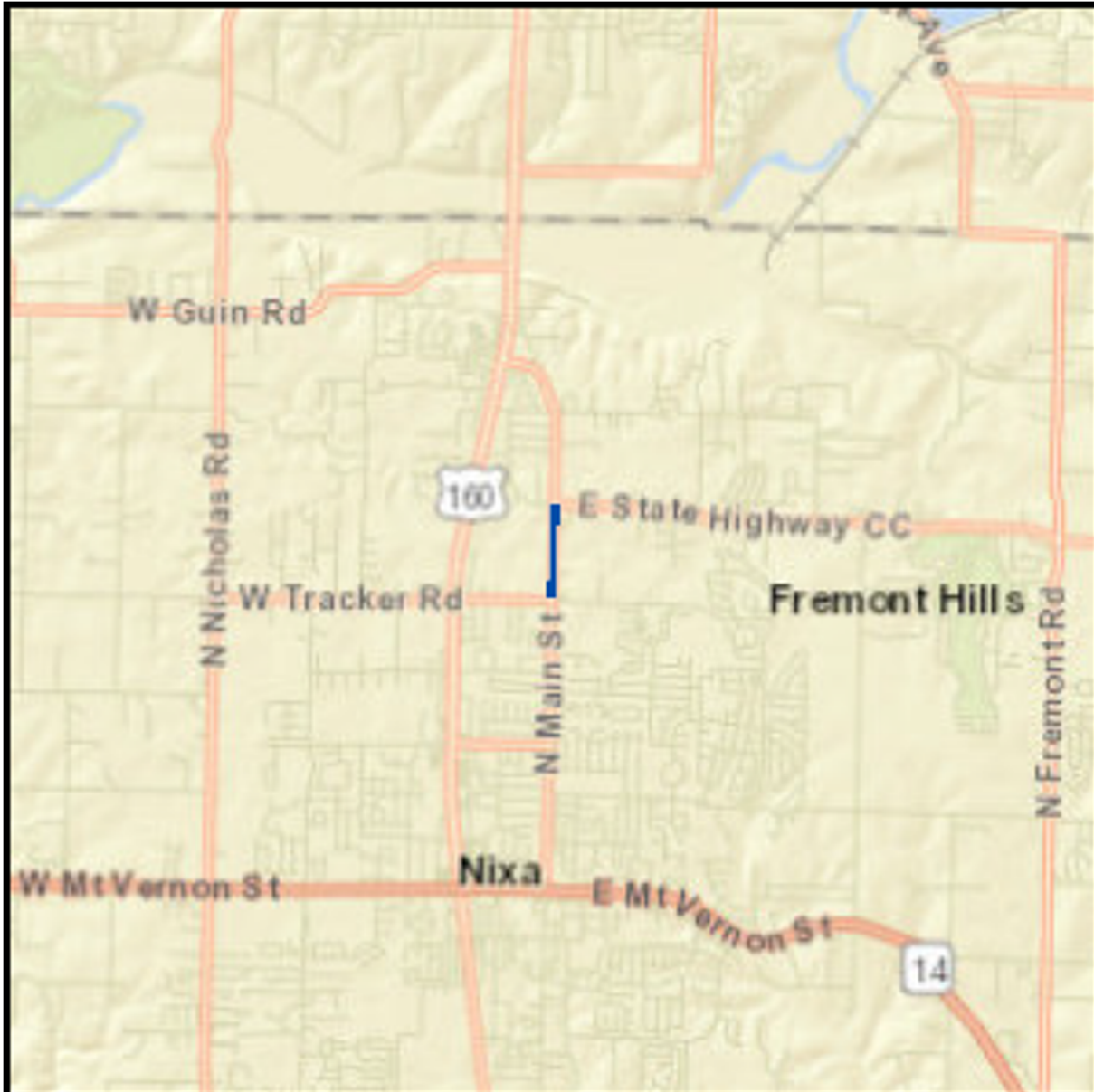


Exhibit B – Project Schedule

Project Description: STBG-9901(831) roadway widening, addition of sidewalk, and associated improvements along Main between State Highway CC and Tracker Rd in Nixa, Christian County, MO.

Task	Date
Date funding is made available or allocated to recipient	7/23/2021
Solicitation for Professional Engineering Services (advertised)	3/14/2022
Engineering Services Contract Approved	7/8/2022
Preliminary and Right-of-Way Plans Submittal (if Applicable)	9/2/2022
Plans, Specifications & Estimate (PS&E) Submittal	3/24/2023
Plans, Specifications & Estimate (PS&E) Approval	5/10/2023
Advertisement for Letting	5/15/2023
Bid Opening	6/16/2023
Construction Contract Award or Planning Study completed (REQUIRED)	7/31/2023

*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.

**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 is 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.



Issue: COUNCIL BILL 2022-027: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING CHAPTER 2 OF THE NIXA CITY CODE TO ADD PROVISIONS RELATED TO THE PROCEDURES OF CITY COUNCIL.

Date: February 23, 2022.

Submitted: Nick Woodman, City Attorney

Background

As a legislative body, the Council has the authority, as reflected in City Charter Section 3.11(b), to determine its own rules and procedures for the conduct of its business. Generally, the governing bodies of cities will adopt these rules by ordinance. Currently, Council is governed by unwritten rules based on prior practices and a few provisions of the City Charter.

It is better practice to have written rules for City Council procedures. Written rules provide for more transparency as the rules can then be provided to the public. Additionally, by adopting these rules by ordinance the process of amending the rules is more transparent as such amendments will require Council action after a public comment period. Written and adopted rules will also provide for a definitive document to reference in the event of questions or disputes. It will also provide justification for many of the City's processes related to Council and Council meetings.

To provide for the above policy goals Council Bill 2022-027 is offered for Council's consideration. The provisions of this bill are based on a combination of the City's current unwritten practices and the City's prior Council procedure ordinance. Adoption of this Bill would place these provisions within the City Code.

Analysis

One aspect of the Bill is to codify previously adopted policies that relate to the Council or its procedures. The three specific policies placed in the Code by this Bill relate to Council's compensation, the voting procedure utilized by Council, and Council's videoconferencing policy. These provisions are now found at Section 2-29, Section 2-40, and Section 2-38, respectively.

However, the bulk of the Bill's provisions provide for written rules of procedures for the conduct of Council. These provisions are found in Section 3 of the Bill. This portion of the memo will detail the noteworthy components of these provisions.



Section 2-30. – Meetings of the City Council.

The section provides that the Mayor, or any three members of the Council, may call for special meetings – this is based on similar language contained in Section 3.11 of the City’s Charter. Further, this section allows the Mayor to change the location of meetings or to cancel meetings in the event of an emergency, inclement weather, or when a quorum of Council will not be present for the meeting. Currently, the City has no written or adopted procedures to allow for changing a meeting location or canceling a meeting altogether.

Section 2-31. – Tentative agenda for regular city council meetings.

This section authorizes the Mayor to set the agenda for each regular meeting. This section also authorizes the City Clerk to provide the agenda to the full council and to post the agenda in compliance with the State’s open meetings law. There is no current procedure detailing who has authority over what is added to the agenda. This section clarifies that this is the Mayor’s responsibility. However, this authority cannot be used to block the introduction of ordinances or resolutions.

Section 2-32. – Presiding officer – how determined; authority and duties.

This section designates who the presiding officer is at all Council meetings. This will be the Mayor or the Mayor Pro tempore. Importantly, the section authorizes the Council to appoint a temporary presiding officer if the Mayor or Mayor Pro tempore are both absent. This section also provides the presiding officer with certain duties concerning the conduct of the meeting. These include preserving the order and decorum of meetings, deciding on rules of order, and signing the ordinances or resolutions which are adopted in their presence.

Section 2-34. – Applicability of Robert’s Rules of Order, additional parliamentary procedures – established.

This section adopts Robert’s Rules of Order as the guiding rules for the Council on matters of parliamentary procedure. It is important to note that the section stresses that Robert’s is a guiding authority and actions taken by the Council, even if they are not in line with Robert’s, shall control over Robert’s. This provision also provides additional guidance on the motion to postpone to a certain time. Mainly that if the Council is unable to meet the next time the item is to be considered, it is automatically postponed to the next available meeting.

Section 2-35. – Times when citizens may address the council – manner of such communication.

This section codifies the Council’s current practice regarding the public hearing and visitor’s sections of regular meetings. It requires that an opportunity for public



comment must be offered before the adoption of any ordinance or resolution. Additionally, it requires that there must be an opportunity for other public comments (the visitor's section) at each regular City Council meeting.

Section 2-36. – Decorum.

This section provides rules on the conduct of the Council, Mayor, staff, and the public during meetings. Meetings of the Council are business meetings and should be conducted civilly without any interruptions, while also respecting the rights of interested persons to make their comments without interruption. Additionally, this section prohibits the display of signs or other visual devices during council meetings. The section speaks for itself on the policy rationale for this provision.

Section 2-37. – Voting via videoconferencing – limitation.

This provision was discussed earlier in the memo. It codifies the Council's current policy on the use of videoconferencing instead of physical attendance at meetings. Some changes were made to make this provision more flexible and more in line with State statutes on this topic.

Section 2-38. – Ordinances, resolutions, and other actions – provisions related thereto.

This section guides how ordinances and resolutions get to Council. This section authorizes the Mayor, City Administrator, and City Attorney to bring ordinances and resolutions to the Council. Council itself is also authorized to direct staff to bring ordinances and resolutions to the Council by motion. This provision is largely based on similar provisions found in the City's prior code of ordinances.

Section 2-39. – Manner of voting.

This section was discussed earlier in the memo, but it is worth expanding on this more here. The Charter requires Council to provide for when roll call voting is required. This section codifies the Council's current practice of conducting roll call votes for the approval of ordinances and voice votes for the approval of resolutions. Additionally, this section guides how to treat abstentions for purposes of the mayoral tie vote. Under the Charter, the Mayor has the power to vote when there is a tie amongst Council. A member of the Council can deprive the Mayor of their tie vote by abstaining. To deter such a tactic, the Code will interpret the abstention as a no vote, thereby not depriving the Mayor of their tie vote.

Division 5 – Procedures related to committees of Council.

Sections 2-40 through 2-43 provide regulations on Council committees. Currently, City Council does not have any established standing committees, but Council has utilized special or ad hoc committees from time to time. The code provisions in this division



provide procedures on how special committees can be established and how committees can call meetings once established. This section also authorizes the Council to meet as the committee of the whole, which is a parliamentary tool utilized by governing bodies to meet in an informal committee setting instead of as the full Council. There can be advantages to meeting as an informal unit of the Council as committee meetings are supposed to be more informal than business meetings of the full Council. For example, when considering board or commission appointments, it may be more advantageous for Council to meet as a committee of the whole.

Recommendation

Staff recommends approval of the above referenced Council Bill. This Bill furthers several public policy goals of the City. Specifically, the codification of these provisions would allow for more transparent operations of the City as the rules governing the Council's conduct will be published in a public document. Additionally, the process to amend these rules will be a public process involving a public hearing and public debate by the Council. Further, this Bill will provide a written document that can be referenced and interpreted when questions or disputes over Council's procedures arise. Finally, this Bill would provide written justification for some of the City's processes.

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING CHAPTER
2 2 OF THE NIXA CITY CODE TO ADD PROVISIONS RELATED TO THE
3 PROCEDURES OF THE CITY COUNCIL.
4

5
6 WHEREAS City Charter section 3.11(b) authorizes the City Council to determine
7 its own rules and order of business; and
8

9 WHEREAS from time to time the Council has provided for rules regarding how it
10 is to conduct its business; and
11

12 WHEREAS said rules and regulations have existed in the form of ordinances,
13 policies, and practices over time; and
14

15 WHEREAS the City Council desires to adopt and codify said rules and regulations
16 so they are readily available to the public and so that there is clear legal authority for the
17 procedures applicable to Council’s business.
18

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

22 SECTION 1: Chapter 2, Article II, of the Nixa City Code is hereby amended by
23 adding thereto a new section which shall read as follows:
24

25 (Note: Language to be added is indicated by being underlined. Language to be removed
26 is indicated by being ~~stricken~~.)
27

28 Sec. 2-29. – Councilmember and Mayor Compensation.
29

30 (a) Compensation for city councilmembers. Pursuant to Section 3.3 of the City Charter,
31 members of the city council shall receive an annual salary of \$960.00.
32

33 (b) Compensation for the mayor. Pursuant to Section 4.3 of the City Charter, the mayor
34 shall receive an annual salary of \$3,600.00.
35

36 SECTION 2: When codifying this Ordinance Sections 2-25 through 2-29 shall be
37 designated as Division 1 of Chapter 2, Article II. Said Division shall be titled as “General
38 Provisions.”
39

40 SECTION 3: Chapter 2, Article II, of the Nixa City Code is hereby amended by
41 adding thereto several new sections, which said sections shall read as follows:
42

43 (Note: Language to be added is indicated by being underlined. Language to be removed
44 is indicated by being ~~stricken~~.)
45

46 DIVISION 2. – PROCEDURES RELATED TO SCHEDULING AND CALLING CITY
47 COUNCIL MEETINGS.

48
49 Sec. 2-30. – City Council Meetings.
50

51 (a) Regular meetings. The city council shall hold its regular meetings, not less than
52 monthly, as required by the City Charter. Regular meetings of the council shall be held
53 in the council chambers located in city call.
54

55 (b) Special meetings. The mayor, or three members of city council, may call special
56 meetings of the council whenever, in their opinion, the public business may require it.
57 Special meetings shall be called by providing the city clerk with written notice that a
58 special meeting is to be called along with a proposed tentative agenda for the special
59 meeting. The city clerk shall then provide notice of the special meeting in the same
60 manner as provided in section 2-31 of the city code.
61

62 (c) Mayor authorized to change meeting location or cancel meeting. The mayor, or in their
63 absence the mayor pro tempore, is authorized to change the location, date, and time
64 of any regular or special meeting if the council chambers, city hall, or other location of
65 the meeting is inaccessible or in the event of an emergency, inclement weather, or
66 any other occurrence which may cause unreasonable difficulty in attending the
67 meeting. When changing the location of the meeting the mayor shall provide the
68 changed location, date, and time on the modified tentative agenda for said meeting.
69 The mayor is also authorized to cancel a meeting of the council if an emergency,
70 inclement weather, or any other occurrence which cause unreasonable difficulty in
71 attending said meeting. The mayor is also authorized to cancel a meeting of the
72 council if the mayor has received written communication from a quorum of
73 councilmembers that they will not be in attendance at said meeting. Notice of such a
74 canceled meeting shall be provided to members of city council as soon as practicable.
75

76 Sec. 2-31. – Tentative agenda for regular city council meetings.
77

78 (a) Setting of council’s regular meeting tentative agenda.
79

80 (1) The mayor, or in their absence the mayor pro tempore, in coordination with the city
81 administrator and the city clerk, shall prepare a tentative agenda for each regular
82 meeting of the city council. Said tentative agenda shall at a minimum include the
83 date, location, time, and whether the meeting or any portion thereof, is to be closed
84 to the public.
85

86 (2) The mayor, or mayor pro tempore, as the case may be, shall not refuse to include
87 on any tentative agenda any ordinance or resolution which has been requested for
88 introduction by a motion of the council or which has been requested in writing by
89 the city administrator or city attorney.
90

91 (b) Notice of council’s regular meeting tentative agenda – how provided.

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(1) After the tentative agenda for a regular meeting has been prepared and provided to the city clerk, the city clerk shall provide a copy of the agenda as soon as practicable and in the following manner:

- a. Electronically mailed to each member of council, or in lieu thereof provided to each member of council by other reasonable means. However, the attendance of any member of council at such meeting shall be deemed to be a waiver of this requirement by the members of council in attendance;
- b. Posted by the city clerk at a conspicuous location at city hall; and
- c. In compliance with any applicable provisions of chapter 610 RSMo.

DIVISION 3. – PROCEDURES RELATED TO THE CONDUCT OF CITY COUNCIL MEETINGS.

Sec. 2-32. – Presiding officer – how determined; authority and duties.

(a) The presiding officer of all meetings of the city council shall be the mayor, or in their absence the mayor pro tempore. In the absence of the mayor and the mayor pro tempore, the city clerk, or their designee, shall call the council to order, whereupon a temporary presiding officer shall be elected by the members of council present. Such temporary presiding officer shall continue to serve for the duration of the meeting or upon the arrival of the mayor or mayor pro tempore.

(b) The presiding officer shall have the authority and duty to:

- (1) Preserve order and decorum at all meetings of the city council.
- (2) State every question coming before the council, announce the decision of the council on all subjects, and decide all questions of order. The presiding officer’s authority regarding questions of order shall be subject only to an appeal of the city council. Upon such a motion to appeal, a majority vote of the members of council present shall govern and conclusively determine such questions of order. Motions to appeal shall be immediately presented and voted upon by the council.
- (3) Sign all ordinance, resolutions, or other measures adopted by the council in the presence of the presiding officer for the purpose of attesting to the adoption of said measure, their signature being authenticated by the city clerk or designee.
- (4) Call the city council to order.
- (5) During any meeting, and with the consent of the city council, arrange the agenda in any order necessary to accomplish the city’s business in the most convenient manner for council.

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(6) From time to time, during a meeting, the presiding officer may make such rules as they deem necessary to fulfill and carry out the intent of the provisions of this article. Such rules may be overturned by a majority vote of the members of the council present at the meeting.

(c) The presiding officer shall not be deprived of any rights or privileges that they may enjoy as the mayor or as a councilmember due to their role as presiding officer.

Sec. 2-33. – General provisions related to city council meetings.

(a) At each meeting of the city council, the following procedures shall be observed:

(1) Quorum. A majority of the city council shall constitute a quorum at any meeting of the council. In the absence of a quorum, a smaller number may adjourn from time to time and may compel the attendance of absent members.

(2) Roll call. Before the business of the city council proceeds, the city clerk, or their designee, shall call the roll of the members, and the names of those present shall be entered into the minutes.

(3) Meetings open to the public – exceptions. All meetings of the city council shall be open to the public, except city council may close such meetings as authorized by law.

(4) Sergeant-at-arms. The chief of police, or such members of the police department as they may designate, shall be sergeant-at-arms of city council meetings. They shall carry out all lawful orders and instructions given by the presiding officer to maintain order and decorum at city council meetings.

Sec. 2-34. – Applicability of Robert’s Rules of Order, additional parliamentary procedures – established.

(a) Robert’s Rules of Order – applicability. Except as it conflicts with the city charter and the provisions of the city code, the city council shall be guided in matters of parliamentary procedure by the most recent compilation of rules known as Robert’s Rules of Order, Newly Revised. However, any motion or action approved by a majority of council shall control over the text of Robert’s Rules of Order. Council intends that Robert’s Rules of Order shall merely guide the parliamentary proceedings of the council.

(b) Motion to postpone to a certain time. A motion to postpone to a certain time shall delay the consideration of an item to a date certain. Should the city council not conduct a meeting on the date certain referenced in such motion, the item shall be automatically postponed to the next available regular city council meeting. The council may, by

183 motion, consider a postponed item any time prior to the date certain expressed in the
184 original motion.

185
186 Sec. 2-35. – Times when citizens may address the council – manner of such
187 communication.

188
189 (a) The presiding officer shall provide an opportunity during council meetings for public
190 comment on each ordinance and resolution before its final passage. Comments
191 provided during such period shall be related to the proposed item. Persons providing
192 public comments shall give their comments from the podium or other designated area,
193 shall give their name and address for the record, and shall limit their comments to five
194 minutes. Nothing herein shall be construed as prohibiting the council or the mayor
195 from inquiring further of the speaker and allowing the speaker to respond.

196
197 (b) Any person may direct written communication to the city council on any matter
198 concerning the city’s business by directing the communication to the city council
199 through the city clerk.

200
201 (c) The city council shall allow for time during all regular meetings for persons to address
202 the council on any matter not then before the council. Any person desiring to
203 personally address city council at a regular meeting on any matter not then before the
204 council shall notify the city clerk in writing of their intent to speak and the topic of their
205 remarks prior to the Council arriving at that portion of the agenda. Persons desiring to
206 address the City Council in this manner shall give their comments from the podium or
207 other designated area, shall give their name and address for the record, and shall limit
208 their comments to five minutes. Nothing herein shall be construed as prohibiting the
209 council or the mayor from inquiring further of the speaker and allowing the speaker to
210 respond.

211
212 (d) All remarks or comments from the public shall be addressed to the council as a body
213 and not to any individual member.

214
215 (e) No person, other than the council and individuals recognized to address the council,
216 shall be permitted to enter the discussion with the council.

217
218 Sec.2-36. – Decorum.

219
220 (a) Councilmembers and the mayor. While the city council is in session, members of
221 council and the mayor shall preserve order and decorum, and shall not disturb any
222 other member while speaking, or refuse to obey the orders of the council or the
223 presiding officer.

224
225 (b) All other persons. No person shall disturb or interfere with the order, decorum, or
226 proceedings of any council meeting. The sergeant-at-arms, at the direction of the
227 presiding officer, shall remove any person violating the provisions of this subsection.

228

229 (c) Signs, displays, or other devices. No person shall carry or display a sign or other visual
 230 device which may obstruct the view of others inside any location where the council
 231 may be meeting or any other similar type of written communication that is carried or
 232 displayed. Nothing contained in this section shall be construed to prohibit members of
 233 city staff or other agents of the city or those invited by the council to speak on a topic
 234 from using visual materials when presenting to the city council. The city council hereby
 235 determines that signs or displays in the council chambers, or any other location where
 236 the council may be meeting, may obstruct the view of citizens, can cause injury, and
 237 negatively affect the decorum of city council meetings, and are hereby prohibited for
 238 such reasons.

239
 240 Sec. 2.37. – Voting via videoconferencing – limitation.

241
 242 Pursuant to section 610.015 RSMo, members of the city council and the mayor are
 243 authorized to participate in roll call voting via videoconferencing. Notwithstanding the
 244 authorization contained in section 610.015 RSMo, councilmembers and the mayor shall
 245 be prohibited from voting on items that require a roll call vote via videoconference if they
 246 have utilized said authorization for the prior three consecutive meetings.

247
 248 DIVISION 4. – PROCEDURES RELATED TO CITY COUNCIL ACTIONS.

249
 250 Sec. 2-38. – Ordinances, resolutions, and other actions – provisions related thereto.

251
 252 (a) Preparation of ordinances and resolutions. All ordinances and resolutions shall be
 253 prepared or approved by the city attorney.

254
 255 (b) Prior approval by City Administrator. All ordinances or resolutions shall, before city
 256 council consideration, have first been examined and approved by the city
 257 administrator. If the city administrator shall not approve of a measure, then they shall
 258 provide a written memorandum detailing the reasons for lack of approval. The city
 259 administrator shall advise the council of the reasons for lack of approval and the
 260 council may then proceed with consideration of the ordinance or resolution.

261
 262 (c) Introduction of ordinances and resolutions. No ordinance or resolution shall be
 263 considered by city council unless the introduction of such ordinance or resolution has
 264 been requested by a motion of the council; requested in writing by the city
 265 administrator or the city attorney; or if the item was provided to the council after its
 266 review by a council committee.

267
 268 (d) Motions shall be made in the affirmative. To avoid confusion, all motions of the city
 269 council shall be made in the affirmative.

270
 271 Sec. 2-39. – Manner of voting.

272
 273 (a) Ordinances. When the question before city council is the approval of an ordinance,
 274 the council shall vote by roll call. When the presiding officer calls for a roll call vote,

275 the city clerk, or designee, shall randomly call on the names of councilmembers and
276 record the vote of each councilmember. Pursuant to City Charter section 3.11(c), the
277 affirmative vote of a majority of the entire council is required to adopt an ordinance.
278

279 (b) Resolutions and motions. Resolutions and motions may be approved by a voice vote
280 of the council. A roll call vote is not required for the approval of such actions. Any
281 member of council may request that a resolution or motion be considered by a roll call
282 vote, in which event, the procedures in section 2-39(a) shall apply to said vote. The
283 affirmative vote of a majority of councilmembers present at the meeting is required to
284 adopt any resolution.
285

286 (c) Abstentions – how counted for purposes of mayoral vote in the event of a tie. For
287 purposes of determining whether the mayor is authorized to vote on an item pursuant
288 to City Charter section 4.4, abstentions by members of council shall be considered a
289 no vote for the purpose of determining whether a tie vote has occurred.
290

291 DIVISION 5 – PROCEDURES RELATED TO COMMITTEES OF THE COUNCIL.
292

293 Sec. 2-40. – Standing committees.
294

295 (reserved)
296

297 Sec. 2-41. – Special committees.
298

299 The council is authorized to establish, from time to time, special committees of the
300 city council, which shall investigate and report to the council on specific items referred
301 thereto. Special committees are intended to have a limited duration and shall be
302 established by resolution.
303

304 Sec. 2-42. – Committee of the whole.
305

306 (a) City council authorized to meet as the committee of the whole. The mayor, or any
307 three members of the Council, may call a meeting of the committee of the whole.
308 When the City Council shall meet as the committee of the whole, or when any matter
309 is referred to the committee of the whole, it shall meet at a time fixed by the mayor, or
310 the three members of the Council calling for the meeting. The committee of the whole
311 may adjourn its meetings from time to time and may make its report at any subsequent
312 meeting of the Council.
313

314 (b) Mayor shall preside; rules of council to apply. The mayor shall be the presiding officer
315 of the committee of the whole, and the provisions of this Article shall be observed by
316 the committee of the whole, so far as such provisions may be applicable and provided
317 that discussion in the committee of the whole shall be as informal as possible,
318 consistent with order and decorum.
319

320 (c) Committee of the whole distinct from city council. When meeting as the committee of
321 the whole, the City Council is acting as a committee of the Council. Therefore, the
322 committee of the whole is not authorized to adopt ordinances, resolutions, or items
323 which require the approval or action of the City Council and a meeting of the committee
324 of the whole shall not be considered a meeting of the City Council.

325
326 Sec. 2-43. – Committees generally.

327
328 (a) Except for the committee of the whole, each committee shall meet at the call of the
329 chair, or upon the call of at least half of the committee, with reasonable notice to the
330 other members. Meetings of all committees may be held at such time and place as
331 the committee shall determine for its convenience.

332
333 (b) The chair shall prepare a tentative agenda for each meeting of the committee. Said
334 agenda shall include the date, location, time, and whether the meeting, or any portion
335 thereof, is to be closed to the public.

336
337 (c) No committee shall take up any matter unless the City Council shall have first referred
338 such matter to the committee.

339
340 (d) The committee may allow for public comment.

341
342 (e) The chair shall have the authority to preserve the strict order and decorum at all
343 meetings of the committee.

344
345 (f) All committees of the City Council shall make their recommendations or reports to the
346 entire Council and such actions shall be included in the minutes of the committee.

347
348 **SECTION 4:** Ordinance No. 1942 and Ordinance No. 1945 are hereby repealed
349 and of no further force and effect.

350
351 **SECTION 5:** The City Attorney, when codifying the provisions of this Ordinance, is
352 authorized to provide for different section numbers, subsection numbers, and different
353 internal citation references than those provided herein when such section numbers,
354 subsection numbers, or internal citation references are in error or are contrary to the intent
355 of this Ordinance.

356
357 **SECTION 6:** Savings Clause. Nothing in this Ordinance shall be construed to
358 affect any suit or proceeding now pending in any court or any rights acquired, or liability
359 incurred nor any cause or causes of action occurred or existing, under any act or
360 ordinance repealed hereby.

361
362 **SECTION 7:** Severability Clause. If any section, subsection, sentence, clause, or
363 phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect
364 the validity of the remaining portions of this Ordinance. The Council hereby declares that
365 it would have adopted the Ordinance and each section, subsection, sentence, clause, or

366 phrase thereof, irrespective of the fact that any one or more sections, subsections,
367 sentences, clauses, or phrases be declared invalid.

368
369 **SECTION 8:** This Ordinance shall be in full force and effect from and after its final
370 passage by the City Council and after its approval by the Mayor, subject to the provisions
371 of section 3.11(g) of the City Charter.

372

373

374 **ADOPTED BY THE CITY COUNCIL THIS 14TH DAY OF MARCH 2022.**

375

376 ATTEST:

377

378 _____

379 CITY CLERK

380

381 **APPROVED BY THE MAYOR.**

382

383 ATTEST:

384

385 _____

386 CITY CLERK

387

388 APPROVED AS TO FORM:

389

390 _____

391 CITY ATTORNEY

PRESIDING OFFICER

MAYOR

DATE OF APPROVAL



Issue: BUDGETARY AMENDMENT ENTERPRISE VEHICLE LEASE

Date: March 8, 2022

Submitted By: Joe Campbell, Chief of Police

Background

As part of the 2022 police department budget process the decision to utilize Enterprise Leasing to acquire new police vehicles was made. A vehicle rotation plan was developed and the decision to lease 12 new police vehicles in 2022 through Enterprise Leasing was budgeted. The total amount of this lease was estimated to cost approximately \$368,838.00.

Because of the major impacts of the pandemic on the automotive industry, particularly microchip shortages, we were informed we would likely not take delivery of our vehicles until the third quarter of 2022. Because our lease was structured in a manner that stated we (the city) would not make a lease payment until we took physical delivery of the fully outfitted vehicle(s), we knew it would not be necessary to budget the total annual lease costs for 2022.

As a result, an estimated cost of the vehicle lease was calculated using the projected third quarter delivery date and \$212,000.00 was budgeted and approved.

As we entered 2022, we continued to be updated by Enterprise Leasing on the status of the automotive industry. Additional delays and vehicle order cancellations were beginning to happen with all the manufacturers. We were informed there was no good timeline on delivery dates of vehicle in 2022 and even told at one point we may not take delivery of any vehicles in 2022.

Our own fleet manager, while at a conference, was able to make a connection and locate a dealership in Kentucky which could fulfill our police vehicle order immediately with in-stock 2022 Chevy Tahoe police vehicles. We put the dealership in touch with Enterprise leasing and an agreement was reached. The fact we were able to locate vehicles that were available was lucky to say the least. We are now looking at a May 2022 date for our first vehicles to be in service. This unexpected option to fill our vehicle order accelerated our vehicle lease payments by several months.

Additionally purchasing through a dealership versus the manufacturer, will cause us pay slightly more for the vehicles mostly in the form of shipping fees to get the vehicles here from out of state. The additional costs total \$19,875.00 for the 12 vehicles we have ordered.

Analysis

By locating these in-stock vehicles, we can ensure we take delivery of much needed police vehicles in 2022 therefore avoiding the potential of being forced to drive an aged fleet which has already costing



the department more than necessary in repair costs to keep them on the road. The additional money we are spending to acquire these vehicles through the dealership has a nominal effect on the overall cost savings originally presented as part of the vehicle lease program.

However, by bringing our police vehicle online much sooner in the year, we will incur a shortfall in the vehicle lease budget line. We anticipate this shortfall to be in the range of \$100,000. We respectfully request a budgetary amendment in the amount \$100,329.00. This will ensure we have enough money budgeted for a May 2022 implementation date for our police fleet.

Recommendation

Staff recommends approval of this budget amendment.

1 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AMENDING THE 2022**
2 **ANNUAL BUDGET TO APPROPRIATE FUNDS FOR THE LEASE OF POLICE**
3 **VEHICLES.**

4 _____
5
6 **WHEREAS** Section 67.040 RSMo. provides that after a budget has been approved
7 no increase in the revenues or expenditures from any fund shall be made unless the
8 governing body adopts a measure setting forth the facts and reasons making the increase
9 necessary and authorizing the increase; and

10
11 **WHEREAS** Section 8.7 of the City Charter authorizes the City Council to amend
12 budgeted revenues and expenditures upon the request of the City Administrator; and

13
14 **WHEREAS** the City Administrator has requested a budget amendment in the
15 amount of \$100,329.00 and for the purposes contemplated by this Ordinance; and

16
17 **WHEREAS** the City Council desires to amend the City’s 2022 budget for the
18 purposes identified herein.

19
20 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
21 **NIXA, AS FOLLOWS, THAT:**

22
23 **SECTION 1:** The City of Nixa’s 2022 Annual Budget is hereby amended in the
24 accounts and the amounts as shown on “Council Bill Exhibit A,” which is attached hereto
25 and incorporated herein by this reference.

26
27 **SECTION 2:** City Council finds that the budget amendment enacted by this
28 Ordinance has been recommended by the City Administrator. The City Administrator is
29 directed to cause the appropriate accounting entries to be made in the books and records
30 of the City to reflect the budget amendment enacted by this Ordinance.

31
32 **SECTION 3:** This Ordinance shall be in full force and effect from and after its final
33 passage by the City Council and after its approval by the Mayor, subject to the provisions
34 of section 3.11(g) of the City Charter.

35
36
37 **[Remainder of page intentionally left blank. Signatures follow on next page.]**
38
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46

47 **ADOPTED BY THE CITY COUNCIL THIS 14th DAY OF MARCH 2022.**

48

49 ATTEST:

50

51 _____

52 CITY CLERK

53

54 **APPROVED BY THE MAYOR.**

55

56 ATTEST:

57

58 _____

59 CITY CLERK

60

61 APPROVED AS TO FORM:

62

63 _____

64 CITY ATTORNEY

PRESIDING OFFICER

MAYOR

DATE OF APPROVAL

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>
\$100,329	11	Vehicle Lease	11-200-5184900	Current

Explanation: To amend the current budget of the City of Nixa to appropriate additional funds for the vehicle lease program for the Police Department.

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

Jimmy Liles, City Administrator

Authorized by Passage of Ordinance No. _____

Date of Passage: _____

Total Budget Amendments by Department Year to Date:

Electric	
Water	
Wastewater	
ARPA	
Admin	\$40,000
Police	
Street	
Park	\$7,500
Planning & Development	
TOTAL	<u>\$47,500</u>



Issue: Establishing a Nixa Home Rule Charter Review Commission

Date: March 8, 2022

Submitted By: Jimmy Liles, City Administrator

Background

In December of 2021, we began receiving interest forms from Citizens to serve on the Nixa Home Rule Charter Review Commission. The Deadline for submittal was January 3rd, 2022. We received twelve interest forms from District 1, fourteen from District 2, and thirteen from District 3, for a total of thirty-nine forms. The applicants were sent to the Mayor and City Council for review.

Analysis

Based on City Council Member's input for their districts, the citizens listed below are recommended to be appointed to the Nixa Home Rule Charter Review Commission. The recommendations include five men and four women, ranging in age from 36 to 72. They include a prior Council Member, three prior members that were either a member of the 2010 or 2020 Home Rule Charter Committees, and five have not previously served on a city committee.

If for some reason a member cannot fulfill their duties, Council can appoint a replacement by resolution. There are three potential replacements listed for future consideration if needed.

District	Name
District 1	Greg Anderson
District 1	Kendal Dingus
District 1	Kiri Horne
District 2	Andrew Carl
District 2	David Larsen
District 2	Ruth Maynard
District 3	Charlotte Stapleton
District 3	Mark Hartsock
District 3	Karen Keever
Potential replacement D1	Sandy Karnes
Potential replacement D2	Caleb Carter
Potential replacement D3	Bryce Booher



Recommendation

The above recommendations have been verified to be eligible to serve their respective Districts. Staff would recommend approval of the above recommendations.

1 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA ESTABLISHING A**
2 **CHARTER REVIEW COMMISSION TO REVIEW THE CITY’S CHARTER AND**
3 **RECOMMEND ANY PROPOSED AMENDMENTS THERETO.**
4

5
6 **WHEREAS** Section 13.8 of the City Charter authorizes the City Council to, from
7 time to time, establish a Charter Review Commission; and
8

9 **WHEREAS** said Charter Review Commission is charged with reviewing and
10 recommending amendments to the City’s Charter; and
11

12 **WHEREAS** the City Council desires to establish a Charter Review Commission at
13 this time.
14

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

18 **SECTION 1:** City Council, pursuant to City Charter Section 13.8, hereby
19 establishes a Charter Review Commission. Said Commission is charged with reviewing
20 the City Charter and recommending any amendments the Commission may deem
21 advisable. The Commission is authorized and empowered to exercise any other powers
22 or duties deemed advisable by the Commission to carry out the charge set forth herein.
23

24 **SECTION 2:** City Council hereby appoints the following individuals to the Charter
25 Review Commission established by this Ordinance, further appointments or
26 reappointments may be made by Resolution of the Council:
27

- 28 • Greg Anderson – District 1
- 29 • Kendal Dingus – District 1
- 30 • Kiri Horne – District 1
- 31 • Andrew Carl – District 2
- 32 • David Larsen – District 2
- 33 • Ruth Maynard – District 2
- 34 • Charlotte Stapleton – District 3
- 35 • Mark Hartsock – District 3
- 36 • Karen Keever – District 3
37

38 **SECTION 3:** The Commission shall, at its first meeting, elect a Chair and a Vice
39 Chair. The Chair of the Commission shall preside over all meetings of the Commission,
40 set the agenda of the Commission, and perform any other functions or duties that the
41 Commission may provide. The Commission shall meet upon the call of the Chair,
42 provided that notice is provided to the other members of the Commission and an agenda
43 for the meeting is provided. The Commission is authorized to establish rules of order and
44 decorum for the conduct of its meetings, which shall be enforced by the Chair, and may,
45 at the discretion of the Commission, take public testimony on any item considered by the
46 Commission. The Vice Chair is authorized and empowered to perform the duties of the

47 Chair in the absence of the Chair. The Commission is further authorized and empowered
48 to do all things which may be necessary or convenient to carry out the terms and intent
49 of this Ordinance.

50
51 **SECTION 4:** The Commission shall report any recommended amendments to the
52 City Charter to the Council within one year of the Commission’s first meeting. The
53 Commission shall expire one year after the Commission’s first meeting.

54
55 **SECTION 5:** This Ordinance shall be in full force and effect from and after its final
56 passage by the City Council and after its approval by the Mayor, subject to the provisions
57 of section 3.11(g) of the City Charter.

58
59
60 **ADOPTED BY THE CITY COUNCIL THIS 14TH DAY OF MARCH 2022.**

61
62 ATTEST:
63
64 _____
65 CITY CLERK PRESIDING OFFICER _____

66
67 **APPROVED BY THE MAYOR.**
68
69 ATTEST:
70
71 _____
72 CITY CLERK MAYOR _____

73
74 APPROVED AS TO FORM:
75 _____
76 DATE OF APPROVAL _____
77 CITY ATTORNEY



Issue: **A RESOLUTION OF THE NIXA CITY COUNCIL AUTHORIZING THE SELL OR DISTRIBUTE BEER AND WINE FOR THE 2022 NIXA SUCKER DAYS MULTI-DAY SPECIAL EVENT**

Date: March 14, 2021

Submitted By: Garrett Tyson, Director of Planning and Development

Background

Section 16-325 of the Nixa City Code requires that any special event that extends across multiple days or involves the sale or distribution of fermented malt beverages (beer) or wine first receive authorization from the City Council.

Analysis

The 2022 Nixa Sucker Days is scheduled for May 19th – May 22nd and is planned to involve the use of public property for the temporary sale/distribution of beer and wine during the event. The specific location identified for the consumption of alcohol is the city-owned and maintained parking lot shown on the map enclosed with this exhibit and incorporated into the resolution by reference.

Section 16-325 provides for several conditions that must be satisfied for the sale or distribution of alcohol for special events, including:

1. The applicant must obtain the appropriate permits or licenses from the Missouri Department of Liquor Control.
2. The applicant shall receive a special event permit from the Planning and Development Department prior to the event.
3. The person whose name is on the application shall be present at the special event throughout the event.
4. A designated, fenced area shall be provided with one entrance and one exit. The applicant shall man the facility with adult security personnel who will be responsible for verifying, with proper identification, any patron's legal drinking age.
5. No person who is under or appears to be under the influence of alcohol consumption shall be sold or provided with additional beer or wine.
6. The organizer of the vent shall provide enhanced security (auxiliary police, contracted security, or of like-kind personnel) at the expense of the organizer during the event.
7. Beer or wine shall not be distributed or sold after 10:30pm and no alcohol shall be left on the premises after the event closes.
8. The designated area, along with all distribution equipment used for the sale and distribution of beer or wine shall be removed from the facility by noon the following day.



The resolution accompanying this exhibit restates these codified requirements as conditions of the resolution that must be satisfied prior to the commencement of the event or its planned activities.

Recommendation

Staff recommends the approval of this resolution.

Sucker Days Alcohol Distribution/Consumption Location



S MAIN ST

W ELM ST

E ELM ST



RESOLUTION NO. 2022-031

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE SALE OR DISTRIBUTION OF ALCOHOL ON CITY PROPERTY AND AUTHORIZING A MULTI-DAY EVENT FOR THE PROPOSED 2022 SUCKER DAYS SPECIAL EVENT.

WHEREAS Chapter 16, Article IX of the Nixa City Code contains the City's regulations regarding special events; and

WHEREAS said Article authorizes the Director of Planning and Development to issue Special Event Permits under certain terms and conditions; and

WHEREAS Section 16-325 requires City Council's authorization prior to the issuance of a Special Event Permit for any special event which includes: (1) the selling or distribution of fermented malt beverages on City-owned property or (2) for any multi-day special event; and

WHEREAS it is anticipated that an application for a Special Event Permit will be filed for an event referred to as "2022 Nixa Sucker Days"; and

WHEREAS it is anticipated that said event will include the sale or distribution of fermented malt beverages or wine on City-owned property and that the event will be conducted over the course of multiple days; and

WHEREAS City Council desires to authorize the sale or distribution of alcohol on City-owned property and authorized the event as a multi-day event, provided that all applicable provisions of the Nixa City Code are complied with.

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

SECTION 1: City Council hereby provides authorization to allow for the sale or distribution of fermented malt beverages or wine upon the City-owned property which comprises the public parking lot generally located at the northeast corner of Main Street and Elm Street and further authorizes a multi-day event, as required by Section 16-325 of the Nixa City Code, for the proposed special event "2022 Nixa Sucker Days," which is anticipated to occur on May 19, 2022 through May 22, 2022. Said authorization is expressly subject to full compliance with all applicable provisions of the Nixa City Code, including, without limitation, the provisions of Chapter 16, Article IX of the Nixa City Code.

SECTION 2: The City Administrator, or designee, is hereby authorized to do all things necessary or convenient to carry out the terms of this Resolution provided that such actions are consistent with the terms and intent of this Resolution.

RESOLUTION NO. 2022-031

45 **SECTION 3:** This Resolution shall be in full force and effect from and after its final
46 passage by the City Council and after its approval by the Mayor, subject to the provisions
47 of section 3.11(g) of the City Charter.
48

49

50 **ADOPTED BY THE CITY COUNCIL THIS 14th DAY OF MARCH 2022.**

51

52 ATTEST:

53

54 _____
55 CITY CLERK

PRESIDING OFFICER

56

57 **APPROVED BY THE MAYOR.**

58

59 ATTEST:

60

61 _____
62 CITY CLERK

MAYOR

63

64 APPROVED AS TO FORM:

65

DATE OF APPROVAL

66

67 _____
CITY ATTORNEY



Issue: TRAFFIC SIGNAL UPGRADE AT MAIN ST. AND ALDERSGATE, RESOLUTION #2022-032

Date: March 7th, 2022

Submitted By: Jeff Roussell, Street Superintendent

Background

A directive within the Strategic Plan under Reliable Infrastructure, Action Plan #2 is to “Improve intersections to enhance safety and alleviate congestion”. While the upgrade of this intersection traffic signal is not a mentioned Action Step, it is a cost-effective way to provide a more reliable signal therefore a safer intersection.

Analysis

Current components controlling signal timing, the newly installed crosswalk signal on Main St. and conflict monitor (this ensures proper lighting operations so green lights are not in opposition of one another) have reached the end on their life cycle and are obsolete. The proposed upgrade would allow for faster repairs if necessary due to shorter lead times on up to date more reliable electronics.

Two bids were received with Ewing Signal being the lowest responsible bidder with a bid price of \$9,035.00. This project is a Street Department CIP and is within the budgeted amount.

Recommendation

It is staffs recommendation to pass Resolution 2022-032

RESOLUTION NO. 2022-032

1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**
2 **ADMINISTRATOR TO EXECUTE A CONTRACT WITH EWING SIGNAL**
3 **CONSTRUCTION, LLC, FOR CERTAIN TRAFFIC SIGNAL IMPROVEMENTS AT THE**
4 **INTERSECTION OF MAIN STREET AND ALDERSGATE DRIVE.**

5 _____
6
7 **WHEREAS** City staff have solicited bids for certain improvements to the traffic
8 signals located at the intersection of Mains Street and Aldersgate Drive (RFB-010-
9 2022/Street); and

10
11 **WHEREAS** after evaluating all submitted bids, staff have recommended Ewing
12 Signal Construction, LLC, as the most qualified firm.

13
14 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**
15 **NIXA, AS FOLLOWS, THAT:**

16
17 **SECTION 1:** The City Administrator, or designee, is hereby authorized to execute
18 the Contract attached hereto, and incorporated herein by this reference, as "Resolution
19 Exhibit A," with Ewing Signal Construction, LLC. Said Contract shall be in substantially
20 similar form as the document attached hereto as "Resolution Exhibit A." The City
21 Administrator and the officers of the City are hereby authorized to do all things necessary
22 or convenient to carry out the terms and intent of this Resolution.

23
24 **SECTION 2:** This Resolution shall be in full force and effect from and after its final
25 passage by the City Council and after its approval by the Mayor, subject to the provisions
26 of section 3.11(g) of the City Charter.

27
28
29 **ADOPTED BY THE CITY COUNCIL THIS 14th DAY OF MARCH 2022.**

30
31 ATTEST:

32 _____
33
34 CITY CLERK

35
36 **APPROVED BY THE MAYOR.**

37
38 ATTEST:

39 _____
40
41 CITY CLERK

42
43 APPROVED AS TO FORM:

44
45 _____
46 CITY ATTORNEY

RESOLUTION EXHIBIT A

ROUTE ORDER: Contractor signs, route to City Clerk, City Admin signs two originals, Clerk adds date, City Attorney signs, return one original by mail to Organization and City Clerk retains one original.

EFFECTIVE DATE:	TERMINATION DATE:	CONTRACT NUMBER:
------------------------	--------------------------	-------------------------

NEW CONTRACT **RENEWAL OF CONTRACT NO.** **Addendum No. __**

CITY	CONTRACTOR
Name: City of Nixa, Missouri Address: 715 W. Mt. Vernon St., PO Box 395 Nixa, MO 65714 Phone: 417.725.3785 Attn: Jeff Roussell Dept: Street Email: jroussell@nixa.com	Name: Ewing Signal Construction, LLC Address: 1730 N. Gregory Dr. Nixa, MO 65714 Phone: 417-724-9405 Email: daveewing@ewingsignals.com Attn: Dave Ewing

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT ("Contract") is made and entered into upon its execution by the parties identified above.

WHEREAS the City, after conducting a Request for bid solicitation process, referenced as RFB-010-2022/Street desires to engage Contractor to perform certain construction work; and

WHEREAS the City desires to engage Contractor to perform such work under the terms and conditions of this Contract; and

WHEREAS contractor desires to perform such work under the terms and conditions of this Contract.

NOW, THEREFORE, for the considerations herein expressed, it is mutually agreed by and between the City and the Contractor as follows:

1. Manner and Time for Completion. The City agrees to engage the services of the Contractor and the Contractor agrees to perform said Construction Services in accordance with the standard of care, skill, and expertise ordinarily used by members of the Contractor's profession in the performance of similar services. The Construction Services are more specifically described in Exhibit A, which is attached hereto and incorporated herein by this reference. Contractor shall furnish all supervision, labor, tools, equipment, materials, and supplies necessary to perform the Services at Contractor's own expense in accordance with the contract documents, any applicable City ordinances, and any applicable state or federal laws within 120 calendar days from the date Contractor is ordered to proceed, which order shall be issued by the City Administrator within 30 days after the date of execution of this Contract.

2. Insurance Requirements. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City against all hazards or risks of loss as hereunder specified or which may arise out of the performance of this Contract. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City. Regardless of such approval, it shall be the responsibility of the

Contractor to maintain adequate insurance coverage at all times during the term of this Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under this Contract.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the City within 10 days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. All insurance policies shall require that the insurance company in question provide 30 days written notice prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to the address for the City listed at the top of this Contract.

As of January 1, 2022, the minimum coverage for the insurance referred to herein shall be as set out below:

- a. **Workers' Compensation** – Statutory coverage per RSMo. 287.010 et seq.
Employer's Liability – \$1,000,000.00
- b. **Commercial General Liability Insurance**, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and blasting if blasting is required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Three Million Sixty-Five Thousand Nine Hundred Fifty-Two and no/100 Dollars (\$3,065,952.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Fifty-Nine Thousand Eight Hundred Ninety-Three and no/100 Dollars (\$459,893.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least \$1,000,000 for all claims to property arising out of a single occurrence and at least \$100,000 to any one owner with respect to damages to property. Contractor 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, before payment of any award, damages, costs or attorney's fees of Contractor, its employees, officers or agents. Contractor agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.
- c. **Automobile Liability Insurance** covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at Three Million Sixty-Five Thousand Nine Hundred Fifty-Two and no/100 Dollars (\$3,065,952.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Fifty-Nine Thousand Eight Hundred Ninety-Three and no/100 Dollars (\$459,893.00) with respect to injuries and/or death of any one person in a single accident or occurrence.
- d. **Owner's and Contractor's Protective Liability Insurance.** To protect the City, its agents, servants, and employees from claims which may arise from the performance of this Contract, with limits of at least Three Million Sixty-Five Thousand Nine Hundred Fifty-Two and no/100 Dollars (\$3,065,952.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Fifty-Nine Thousand Eight Hundred Ninety-Three and no/100 Dollars (\$459,893.00) with respect to injuries and/or death of any one person in a single accident or occurrence. The Owner's and Contractor's Protective Liability Insurance must:

1. Be a separate policy with the named insured being: The City of Nixa, Missouri; and

2. Be with the same insurance company with which the Contractor carries its Commercial General Liability Insurance and Automotive Liability Insurance; and
3. Contain an endorsement that disclaims coverage for any claim barred by the doctrines of sovereign immunity or official immunity, except attorney's fees and other litigation costs incurred in defending a claim. Nothing contained in this policy (or this endorsement thereto) shall constitute any waiver of whatever kind of these defenses or sovereign immunity or official immunity for any monetary amount whatsoever.

e. Subcontracts. In case any or all of the performance of this Contract is sublet, the Contractor shall require the subcontractor to procure and maintain all insurance required in subparagraphs (a), (b) and (c) hereof and in like amounts. Contractor shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City through insurance against applicable hazards or risks and shall, upon request of the City, provide evidence of such insurance.

f. Notice. The Contractor and/or subcontractor shall furnish to the City prior to beginning the work contemplated by this Contract, the policy as specified in subparagraph (d), and satisfactory proof of bearing all the insurance required by this Contract, with the provision that policies shall not be canceled, modified or non-renewed without 30 days written notice to the City.

g. Legislative or Judicial Changes. 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 Contract by legislative or judicial action, the City may require Contractor, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, 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 an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

3. Performance and Payment Bonds. The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the City and on the forms approved by the City, each bond shall be in the amount of \$9,035.00 conditioned upon the full and faithful performance of all major terms and conditions of this Contract and payment of all labor and material suppliers. It is further mutually agreed between the parties that if at any time after the execution of this Contract the City deems the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within 5 days after the receipt of notice from the City to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Contractor shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the City. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds \$25,000.00 must be listed in United States Treasury Circular 570.

4. Contractor's responsibility for subcontractors. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Contractor

shall cause appropriate provisions to be inserted in all subcontracts relating to this Contract, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City.

5. General Independent Contractor Clause. This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor shall be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation, and unemployment insurance laws. The Contractor shall retain sole and absolute discretion as to the judgment and manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Contract shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City shall not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

6. Liquidated Damages. The parties mutually and expressly agree that time of completion of work by the Contractor is of the essence. Should Contractor, or in the case of default, the surety, fail to substantially complete the work within the time specified in this Contract, or within such extra time as may be allowed, Contractor (or surety) shall be liable to the City in the amount of \$500 per day for each and every calendar day that the performance of this Contract remains uncompleted after the time allowed for substantial completion, as liquidated damages, and not as a penalty, it being stipulated that actual damages to the City and the public arising from Contractor's failure to timely complete the work would be difficult, if not impossible, to ascertain. The amount assessed as liquidated damages may be withheld from any moneys otherwise due to Contractor from the City. The project is not considered complete until final acceptance by the City.

7. Termination.

a. For Cause. The City reserves the right to terminate this Contract by giving at least five days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract.

b. For Convenience. The City shall have the right at any time by written notice to Contractor to terminate and cancel this Contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the Contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and

consequential damages shall not be recoverable by Contractor.

8. City's Right to Proceed. In the event this Contract is terminated, the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this Contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

9. Liability and Indemnity.

a. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the Contractor under this contract.

b. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

c. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this Contract or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

d. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents, and employees, for which indemnification is sought.

e. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

f. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price. Contractor's obligation under this Contract to defend, indemnify, and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance required of the Contractor under this Contract.

g. The Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or

local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

10. Payment for Labor and Materials. The Contractor agrees and binds itself to pay for all labor done, and for all the materials used in the construction of the work to be completed pursuant to this contract.

11. Payment. Provided that Contractor performs the services in the manner set forth herein, the City shall pay the Contractor in accordance with the rate set forth in Exhibit B, which shall constitute full and complete compensation for the Contractor's work provided hereunder. No partial payment to the Contractor shall operate as approval of acceptance of work done or materials furnished hereunder. Such compensation will be paid in progress payments, as established by the City, subject to receipt of a requisition for payment and a statement of work provided by the Contractor and Contract by both the City and the Contractor that the Contractor has fully performed the work to be paid for in such progress payments in conformance with the contract. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Contractor under the terms of this Contract exceed the sum of **Nine Thousand Thirty-Five dollars and No Cents (\$9,035.00)** unless specifically and mutually agreed to in writing by both the City and the Contractor.

12. Contract Documents. The entire Contract of the parties shall consist of the following documents:

- a. This Contract
- b. Exhibit A-Scope of Work
- c. Exhibit B- Submitted Bid Response with contractor rate
- d. Exhibit C- Original RFB

The above listed documents are attached hereto and incorporated by their reference herein as though fully set forth herein. No modification, amendment, or waiver of any of the provisions of this Contract shall be effective unless in writing specifically referring hereto and signed by both parties.

13. Conflict of Interest. Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Nixa, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest in this contract which would violate any applicable federal regulations or the provisions of RSMo Section 105.450 et seq.

14. Assignment. The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this Contract, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this Contract.

15. Nondiscrimination. The Contractor agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate

the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

a. This Contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

b. This Contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime Contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

16. Nonresident/Foreign Contractors. The Contractor shall procure and maintain during the life of this Contract:

a. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 RSMo.

b. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

17. Notices. All notices required or permitted hereinunder and required to be in writing may be given by Email or by first class mail addressed to City and Contractor at the addresses shown above. The date of delivery of any notice given by mail shall be the date falling on the second full day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

18. Right to Audit. Contractor agrees to furnish sufficient supporting details as may be required by the City to support any charges or invoices submitted to the City for payment under this Contract. Contractor shall make available for the City's inspection all records covering or relating charges submitted to the City for payment. Contractor shall make appropriate adjustments in the event that discrepancies are found. The City shall have the right to audit the Offeror's records pertaining to the work/product for a period of three (3) years after final payment.

19. Occupational License. The Contractor shall obtain and maintain an occupational license or business registration with the City of Nixa, Missouri, if required by city code and any required state or federal requirement. The cost for this occupational license shall be borne by the Contractor. No contract will be executed by the City until this occupational license has been obtained.

20. Safety Training. Pursuant to Missouri Revised Statute Section 292.675, Contractors and subcontractors who sign a contract to work on public works projects must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within sixty (60) days of beginning work on the construction project. The Contractor shall provide an acceptable notarized affidavit stating that Contractor has verified the completion of a 10-hour constructions safety program with respect to the employees working in connection with the contracted services. Contractors and subcontractors in

violation of this provision will forfeit to the public body \$2,500.00 plus \$100 a day for each employee who is employed without training. Public bodies and contractors may withhold assessed penalties from the payment due to those Contractors and subcontractors. The penalties shall not begin to accrue until the time periods in the statute have elapsed (60 days after notice to proceed and 20 days to produce documentation for employee found in violation).

21. Affidavit for Contracts Over \$5,000.00. That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, if this contract exceeds the amount of \$5,000.00 and Contractor is associated with a business entity, Contractor shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Contractor must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

22. Affidavit for Compliance with Anti-Discrimination against Israel Act. Pursuant to Missouri Revised Statute Section 34.600, if this Contract exceeds the amount of \$100,000 for Contractors with ten or more employees, Contractor shall provide an acceptable notarized affidavit stating that the associated business is not currently engaged in and shall not for the duration of the contract, engage in a boycott of goods or services from the State of Israel; is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or is not currently engaged in and shall not for the duration of this contract, engage in a boycott of goods or services from persons or entities doing business in the state of Israel.

23. Compliance with Laws. Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

24. City Benefits. The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

25. Jurisdiction. This Contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Contract be litigated, venue shall be proper only in the Circuit Court of Christian County, Missouri.

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

THE CITY OF NIXA, MISSOURI

THE CITY OF NIXA, MISSOURI

By: _____
Jimmy Liles, City Administrator

ATTEST

By: _____
Rebekka Coffey, City Clerk

CONTRACTOR

By: _____

Printed Name

ATTEST

By: _____

Printed Name

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

SCOPE OF WORK

Removal of existing hardware and replacement with the items listed below.

- McCain 2070ATC Controller: 2070ATC CPU, 2E, 3B, 4A
- EDI-2010ECLIP
- Model 200 Load Switch
- Model 204 Flasher
- TR-200-Flash transfer relay

Any wiring, signal timing and installation for the signal's operation.



RFB-010-2022/Street Addendum 1

Ewing Signal Construction LLC

Ewing Signal Construction LLC

Supplier Response

Event Information

Number: RFB-010-2022/Street Addendum 1
Title: Signal Replacement
Type: Request for Bid
Issue Date: 2/16/2022
Deadline: 3/4/2022 10:15 AM (CT)
Notes: The City of Nixa is issuing a Request for Bid for Signal replacement.

The City highly encourages electronic submissions via this online bidding system as it expedites the process and helps to alleviate errors.

Paper bids will still be accepted. All bid content must be in a sealed envelope. Bids must be delivered by the stated close date and time. **NO EMAILED OR FAXED** bids will be accepted.

Public unsealing of bid responses will take place at:
City of Nixa
Purchasing
715 W. Mt. Vernon St.
Nixa, MO 65714

Please submit any questions regarding this bid in writing to the

Purchasing Manager, Stephanie Ewing at sewing@nixa.com.

The City of Nixa reserves the right to accept or refuse any or all bids.

Contact Information

Contact: Stephanie Ewing

Address: Purchasing

715 W. Mt. Vernon St.

Nixa, MO 65714

Phone: (417) 449-0555

Email: sewing@nixa.com

Ewing Signal Construction LLC Information

Contact: Dave Ewing
Address: 1730 N Gregory Dr
NIXA, MO 65714-9815
Phone: (417) 724-9405
Email: daveewing@ewingsignals.com
Web Address: ewingsignals.com

By signing below, the bidder shall hereby declare understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions. The bidder shall further agree that the language of this RFB shall govern in the event of a conflict with his/her bid. In addition, the bidder shall further agree that upon receipt of an authorized purchase order from the City of Nixa or when a Contract Resolution is signed and issued by an authorized official of the City of Nixa, a binding contract shall exist between the bidder and the City of Nixa.

David Ewing

Signature

Submitted at 3/3/2022 2:51:56 PM

daveewing@ewingsignals.com

Email

Requested Attachments

Additional Documentation

No response

Additional Documentation may be added to provide information regarding your product.

E-Verify

Affidavit of Business Entity.pdf

Please download the "Affidavit of Business Entity", located on the Attachment tab. Complete the document and upload it here.

OSHA Affidavit of Compliance

OSHA Affidavit of Compliance.pdf

Please download the "OSHA Affidavit of compliance ", located on the Attachment tab. Complete the document and upload it here.

No Response Form

No response

If you are not planning on responding to this bid, please download the "No Response Form", located on the Attachment tab. Complete the document and upload it here.

Bid Attributes

1 Introduction

There are attributes, including this one, associated with this bid. Some are notes and require no response, but most have a required response. **Please select each page on the right-hand side of the blue bar below (at the bottom of this list of attributes) in order to view the next page of Bid Attributes**

2 Attachments Required

Be sure to upload all required documents and forms to the "Response Attachments" Tab.

3 Proposal Opening

Any bid received later than the specified time shall be disqualified.

Questions pertaining to the bid should be addressed in the Questions Tab or directly to the Purchasing Department at 417.449.0555.

If the City of Nixa office where bids/proposals are to be submitted is closed due to inclement weather, natural disaster, or for any other cause including if the electronic bid system is unavailable on the due date, the deadline for submission shall be extended until the next City calendar business day, unless the bidder is otherwise notified. The time of day for submission shall remain the same.

4 Section 2

PROPOSAL REQUIREMENTS
The following items require an answer

5 General Terms and Conditions

Download the General Terms and Conditions, located on the "Attachments" tab. Thoroughly review and indicate below.

I have downloaded, read and agree. (I have downloaded, read and agree.)

6 Scope of Work

Download the Scope of Work, located on the "Attachments" tab. Thoroughly review and indicate below.

I have downloaded, read and agree. (I have downloaded, read and agree.)

7 Anti-Collusion Statement

By offering a submission to this Bid, the bidder certifies the bidder has not divulged, discussed, or compared the Bid with other bidders and has not colluded with any other bidder or parties whatsoever. The bidder also certifies, and in the case of a joint Bid, each party thereto certifies as to their own organization, that in connection with this Bid:

Any prices and/or cost data submitted have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices and/or cost data, with any other bidder or with any competitor.

Any prices and/or cost data for this Bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the scheduled opening directly or indirectly to any other bidder or to any competitor.

No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.

The only person or persons interested in this Bid, principal or principals are named therein and that no person other than therein mentioned has any interest in this Bid or in the contract to be entered into.

No person or agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee exempting bona fide employees or established commercial agencies maintained by the Purchaser for the purpose of doing business.

I affirm that I am duly authorized to execute this contract; that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other Bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid.

I agree. (I agree.)

8	<p>No Deviations or Exceptions</p> <p>I certify that there are NO deviations or exceptions from the attached specific terms, conditions, and specifications.</p> <p><input type="text" value="Agree - No Deviations"/></p>
----------	---

9	<p>Deviations and Exceptions</p> <p>If your company intends to deviate from the Specifications listed in the attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The City will consider any deviations or exceptions in its bid award decisions. The City reserves the right to accept or reject any proposals based upon any deviations indicated below. If none, please enter N/A (Not Applicable).</p> <p><input type="text" value="N/A"/></p>
----------	--

10	<p>Affidavit of Business Entity</p> <p>By marking the checkbox, I acknowledge that my company participates in the E-Verify system and can provide documentation.</p> <p><input checked="" type="checkbox"/> I agree. (I agree.)</p>
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11	<p>OSHA Affidavit</p> <p>Download the OSHA Affidavit, located on the "Attachments" tab. Thoroughly review and indicate below.</p> <p><input checked="" type="checkbox"/> I have downloaded, read and agree to comply. (I have downloaded, read and agree to comply.)</p>
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12	<p>Sample Contract</p> <p>By marking the checkbox, I acknowledge I have read and understand my company will be asked to sign the Sample Contract as stated as it applies to the response submitted.</p> <p><input checked="" type="checkbox"/> I agree. (I agree.)</p>
-----------	---

Bid Lines

1	<p>Please give the total cost amount to complete the signal replacement, which shall include:</p> <ul style="list-style-type: none"> • Removal of existing hardware and replacement with the items listed below. <ul style="list-style-type: none"> ◦ McCain 2070ATC Controller: 2070ATC CPU, 2E, 3B, 4A ◦ EDI-2010ECLIP ◦ Model 200 Load Switch ◦ Model 204 Flasher ◦ TR-200-Flash transfer relay • Any wiring, signal timing and installation for the signal's operation. <p>Quantity: <u> 1 </u> UOM: <u> Total cost of Replacement </u> Price: <input type="text" value="\$9,035.00"/> Total: <input type="text" value="\$9,035.00"/></p>
----------	---

Item Attributes

1. Timeframe to complete

Please state what the estimated timeframe will be for completion.

1 week from receipt of the materials which is currently 12-16 week lead-time

Response Total: \$9,035.00

**BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION,
AND AFFIDAVIT OF WORK AUTHORIZATION**

BUSINESS ENTITY CERTIFICATION:

The bidder/contractor must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.

- BOX A:** To be completed by a non-business entity as defined below.
- BOX B:** To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at http://www.dhs.gov/files/programs/gc_1185221678150.shtm.
- BOX C:** To be completed by a business entity who has current work authorization documentation on file with a Missouri state agency including Division of Purchasing and Materials Management.

Business entity, as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term “**business entity**” shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term “**business entity**” shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term “**business entity**” shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities (other than stated in Box C), out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

BOX A – CURRENTLY NOT A BUSINESS ENTITY

I certify that _____ (Company/Individual Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- I am a self-employed individual with no employees; **OR**
- The company that I represent employs the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if _____ (Company/Individual Name) is awarded a contract for the services requested herein under _____ (Bid/SFS/Contract Number) and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, then, prior to the performance of any services as a business entity, _____ (Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the _____ (insert agency name) with all documentation required in Box B of this exhibit.

Authorized Representative's Name (Please Print)

Authorized Representative's Signature

Company Name (if applicable)

Date

(Complete the following if you DO NOT have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box B, do not complete Box C.)

BOX B – CURRENT BUSINESS ENTITY STATUS

I certify that _____ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530.

Authorized Business Entity Representative's
Name (Please Print)

Authorized Business Entity
Representative's Signature

Business Entity Name

Date

E-Mail Address

As a business entity, the bidder/contractor must perform/provide each of the following. The bidder/contractor should check each to verify completion/submission of all of the following:

- Enroll and participate in the E-Verify federal work authorization program (Website: http://www.dhs.gov/files/programs/gc_1185221678150.shtm; Phone: 888-464-4218; Email: e-verify@dhs.gov) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND
- Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include EITHER the E-Verify Employment Eligibility Verification page listing the bidder's/contractor's name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the bidder's/contractor's name and the MOU signature page completed and signed, at minimum, by the bidder/contractor and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the bidder's/contractor's name and company ID, then no additional pages of the MOU must be submitted; AND
- Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

(Complete the following if you have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box C, do not complete Box B.)

BOX C – AFFIDAVIT ON FILE - CURRENT BUSINESS ENTITY STATUS

I certify that Ewing Signal Construction, LLC (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri. We have previously provided documentation to a Missouri state agency or public university that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ The E-Verify Employment Eligibility Verification page OR a page from the E-Verify Memorandum of Understanding (MOU) listing the bidder's/contractor's name and the MOU signature page completed and signed by the bidder/contractor and the Department of Homeland Security – Verification Division
- ✓ A current, notarized Affidavit of Work Authorization (must be completed, signed, and notarized within the past twelve months).

Name of **Missouri State Agency or Public University*** to Which Previous E-Verify Documentation Submitted: MO DOT

(*Public University includes the following five schools under chapter 34, RSMo: Harris-Stowe State University – St. Louis; Missouri Southern State University – Joplin; Missouri Western State University – St. Joseph; Northwest Missouri State University – Maryville; Southeast Missouri State University – Cape Girardeau.)

Date of Previous E-Verify Documentation Submission: 3/4/2021

Previous **Bid/Contract Number** for Which Previous E-Verify Documentation Submitted: 210219-B07
(if known)

David Ewing
Authorized Business Entity Representative's Name (Please Print)

Dave
Authorized Business Entity Representative's Signature

198568
E-Verify MOU Company ID Number

daveewing@ewingssignals.com
E-Mail Address

Ewing Signal Construction, LLC
Business Entity Name

3/3/2022
Date

FOR STATE USE ONLY

Documentation Verification Completed By:

Buyer

Date

OSHA Safety Program Affidavit of Compliance
Section 292.675 R.S.Mo
For all Public Works Projects
Effective August 28, 2009

STATE OF Missouri)
COUNTY OF Christian) ss.

My name is David Ewing. I am an authorized agent of Ewing Signal Construction, LLC (Company/Bidder). I am aware of the requirements for OSHA training set out in 292.675 R.S.Mo for those working on public works. All requirements of said statute have been fully satisfied and there has been no exception to the full and complete compliance with said provisions relating to the required OSHA training for all this who performed services for the City of Nixa.

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



Signature: [Handwritten Signature]
Printed Name: David Ewing

Subscribed and sworn to before me this 3 day of March, 2022
Kelly M Herren
Notary Public

My commission expires: 9/21/22



RFB-010-2022/Street

Signal Replacement

Issue Date: 2/11/2022

Questions Deadline: 2/25/2022 08:40 AM (CT)

Response Deadline: 3/4/2022 10:15 AM (CT)

Contact Information

Contact: Stephanie Ewing
Address: Purchasing
715 W. Mt. Vernon St.
Nixa, MO 65714
Phone: (417) 449-0555
Email: sewing@nixa.com

Event Information

Number: RFB-010-2022/Street
Title: Signal Replacement
Type: Request for Bid
Issue Date: 2/11/2022
Question Deadline: 2/25/2022 08:40 AM (CT)
Response Deadline: 3/4/2022 10:15 AM (CT)
Notes: The City of Nixa is issuing a Request for Bid for Signal replacement.

The City highly encourages electronic submissions via this online bidding system as it expedites the process and helps to alleviate errors.

Paper bids will still be accepted. All bid content must be in a sealed envelope. Bids must be delivered by the stated close date and time. **NO EMAILED OR FAXED** bids will be accepted.

Public unsealing of bid responses will take place at:
City of Nixa
Purchasing
715 W. Mt. Vernon St.
Nixa, MO 65714

Please submit any questions regarding this bid in writing to the Purchasing Manager, Stephanie Ewing at sewing@nixa.com.

The City of Nixa reserves the right to accept or refuse any or all bids.

Ship To Information

Contact: Jeff Roussell
Address: Street
Public Works
1111 Kathryn St.
Nixa, MO 65714
Phone: (417) 725-2353

Billing Information

Address: 715 W. Mt. Vernon Street
PO Box 395
Nixa, MO 65714

Bid Attachments

Terms and Conditions-Formal RFB.pdf

Terms and Conditions RFB

[View Online](#)

Services Sample Contract.pdf

Contract for Services

[View Online](#)

Affidavit of Business Entity.pdf

E-Verify

[View Online](#)

OSHA Affidavit of Compliance.pdf

OSHA Affidavit

[View Online](#)

No Bid Response Form

Requested Attachments

Additional Documentation

Additional Documentation may be added to provide information regarding your product.

E-Verify

(Attachment required)

Please download the "Affidavit of Business Entity", located on the Attachment tab. Complete the document and upload it here.

OSHA Affidavit of Compliance

(Attachment required)

Please download the "OSHA Affidavit of compliance ", located on the Attachment tab. Complete the document and upload it here.

No Response Form

If you are not planning on responding to this bid, please download the "No Response Form", located on the Attachment tab. Complete the document and upload it here.

Bid Attributes

1	<p>Introduction</p> <p>There are attributes, including this one, associated with this bid. Some are notes and require no response, but most have a required response. **Please select each page on the right-hand side of the blue bar below (at the bottom of this list of attributes) in order to view the next page of Bid Attributes**</p>
2	<p>Attachments Required</p> <p>Be sure to upload all required documents and forms to the "Response Attachments" Tab.</p>
3	<p>Proposal Opening</p> <p>Any bid received later than the specified time shall be disqualified.</p> <p>Questions pertaining to the bid should be addressed in the Questions Tab or directly to the Purchasing Department at 417.449.0555.</p> <p>If the City of Nixa office where bids/proposals are to be submitted is closed due to inclement weather, natural disaster, or for any other cause including if the electronic bid system is unavailable on the due date, the deadline for submission shall be extended until the next City calendar business day, unless the bidder is otherwise notified. The time of day for submission shall remain the same.</p>
4	<p>Section 2</p> <p>PROPOSAL REQUIREMENTS</p> <p>The following items require an answer</p>
5	<p>General Terms and Conditions</p> <p>Download the General Terms and Conditions, located on the "Attachments" tab. Thoroughly review and indicate below.</p> <p><input type="checkbox"/> I have downloaded, read and agree.</p> <p><i>(Required: Check if applicable)</i></p>

6 Scope of Work

Download the Scope of Work, located on the "Attachments" tab. Thoroughly review and indicate below.

I have downloaded, read and agree.

(Required: Check if applicable)

7 Anti-Collusion Statement

By offering a submission to this Bid, the bidder certifies the bidder has not divulged, discussed, or compared the Bid with other bidders and has not colluded with any other bidder or parties whatsoever. The bidder also certifies, and in the case of a joint Bid, each party thereto certifies as to their own organization, that in connection with this Bid:

Any prices and/or cost data submitted have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices and/or cost data, with any other bidder or with any competitor.

Any prices and/or cost data for this Bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the scheduled opening directly or indirectly to any other bidder or to any competitor.

No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.

The only person or persons interested in this Bid, principal or principals are named therein and that no person other than therein mentioned has any interest in this Bid or in the contract to be entered into.

No person or agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee exempting bona fide employees or established commercial agencies maintained by the Purchaser for the purpose of doing business.

I affirm that I am duly authorized to execute this contract; that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other Bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid.

I agree.

(Required: Check if applicable)

8 No Deviations or Exceptions

I certify that there are NO deviations or exceptions from the attached specific terms, conditions, and specifications.

Agree - No Deviations Do Not Agree - Please see below

(Required: Check only one)

9 Deviations and Exceptions

If your company intends to deviate from the Specifications listed in the attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The City will consider any deviations or exceptions in its bid award decisions. The City reserves the right to accept or reject any proposals based upon any deviations indicated below. If none, please enter N/A (Not Applicable).

(Required: Maximum 4000 characters allowed)

1
0 **Affidavit of Business Entity**
By marking the checkbox, I acknowledge that my company participates in the E-Verify system and can provide documentation.
 I agree.
(Required: Check if applicable)

1
1 **OSHA Affidavit**
Download the OSHA Affidavit, located on the "Attachments" tab. Thoroughly review and indicate below.
 I have downloaded, read and agree to comply.
(Required: Check if applicable)

1
2 **Sample Contract**
By marking the checkbox, I acknowledge I have read and understand my company will be asked to sign the Sample Contract as stated as it applies to the response submitted.
 I agree.
(Required: Check if applicable)

Bid Lines

1 Please give the total cost amount to complete the signal replacement, which shall include:

- Removal of existing hardware and replacement with the items listed below.
 - ◊ McCain 2070ATC Controller: 2070ATC CPU, 2E, 3B, 4A
 - ◊ EDI-2010ECLIP
 - ◊ Model 200 Load Switch
 - ◊ Model 204 Flasher
 - ◊ TR-200-Flash transfer relay
- Any wiring, signal timing and installation for the signal's operation.

(Response required)

UOM: Total cost of Replacement Price: \$ Total: \$

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

<p>Ship To Information</p> <p>Contact: Jeff Roussell Address: Street Public Works 1111 Kathryn Street Nixa, MO 65714 Phone: (417) 725-2353</p>	<p>Bill To Information</p> <p>Address: 715 W. Mt. Vernon Street PO Box 395 Nixa, MO 65714</p>
--	--

Item Attributes

1. Timeframe to complete
Please state what the estimated timeframe will be for completion.

(Required: Maximum 1000 characters allowed)

Supplier Information

Company Name: _____

Contact Name: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Supplier Notes

By signing below, the bidder shall hereby declare understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions. The bidder shall further agree that the language of this RFB shall govern in the event of a conflict with his/her bid. In addition, the bidder shall further agree that upon receipt of an authorized purchase order from the City of Nixa or when a Contract Resolution is signed and issued by an authorized official of the City of Nixa, a binding contract shall exist between the bidder and the City of Nixa.

Print Name

Signature



Issue: 711 W. MORNING GLORY STORM WATER REPAIR. RESOLUTION #2022-033

Date: March 7th, 2022

Submitted By: Jeff Roussell, Street Superintendent

Background

In 2021, the residents of 711 W. Morning Glory reported settling within the drainage easement on their property. After investigating the system, it was discovered the thirty-inch plastic piping had indeed failed throughout the 200-foot easement allowing the erosion and therefore settling. Street Dept. crews were able to unearth the existing pipe and make temporary repairs in the location causing the soil to collapse but did not expose the entire system due to budget constraints and depth of the pipe. During budget discussion for 2022 the estimated repair costs were added to the Storm Water budget allowing for the needed repair.

Analysis

After requesting bids for this repair, two bids were received with D&E Plumbing being the lowest responsible bidder with the amount of \$111,600.00. This project is a Storm Water CIP and is within the budgeted amount.

Recommendation

It is staffs recommendation to pass Resolution #2022-033

RESOLUTION NO. 2022-033

1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**
2 **ADMINISTRATOR TO EXECUTE A CONTRACT WITH D&E PLUMBING & HEATING,**
3 **INC, FOR THE REPLACEMENT OF STORMWATER INFRASTRUCTURE ALONG**
4 **MORNING DRIVE.**

5 _____
6
7 **WHEREAS** City staff have solicited bids for the replacement of certain stormwater
8 infrastructure along Morning Glory Drive (RFB-009-2022/Street); and
9

10 **WHEREAS** after evaluating all submitted bids, staff have recommended D&E
11 Plumbing & Heating, Inc, as the most qualified firm.
12

13 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**
14 **NIXA, AS FOLLOWS, THAT:**
15

16 **SECTION 1:** The City Administrator, or designee, is hereby authorized to execute
17 the Contract attached hereto, and incorporated herein by this reference, as “Resolution
18 Exhibit A,” with D&E Plumbing & Heating, Inc. Said Contract shall be in substantially
19 similar form as the document attached hereto as “Resolution Exhibit A.” The City
20 Administrator and the officers of the City are hereby authorized to do all things necessary
21 or convenient to carry out the terms and intent of this Resolution.
22

23 **SECTION 2:** This Resolution shall be in full force and effect from and after its final
24 passage by the City Council and after its approval by the Mayor, subject to the provisions
25 of section 3.11(g) of the City Charter.
26
27

28 **ADOPTED BY THE CITY COUNCIL THIS 14th DAY OF MARCH 2022.**

29
30 ATTEST:

31 _____
32
33 CITY CLERK

PRESIDING OFFICER

34
35 **APPROVED BY THE MAYOR.**

36
37 ATTEST:

38 _____
39
40 CITY CLERK

MAYOR

41
42 APPROVED AS TO FORM:

DATE OF APPROVAL

43
44 _____
45 CITY ATTORNEY

ROUTE ORDER: Contractor signs, route to City Clerk, City Admin signs two originals, Clerk adds date, City Attorney signs, return one original by mail to Organization and City Clerk retains one original.

EFFECTIVE DATE:	TERMINATION DATE:	CONTRACT NUMBER:
------------------------	--------------------------	-------------------------

NEW CONTRACT **RENEWAL OF CONTRACT NO.** **Addendum No.** ___

CITY	CONTRACTOR
Name: City of Nixa, Missouri Address: 715 W. Mt. Vernon St., PO Box 395 Nixa, MO 65714 Phone: 417.725.3785 Attn: Jeff Roussell Dept: Street Email: jroussell@nixa.com	Name: D & E Plumbing & Heating, Inc. Address: 1112 Falcon Crest Cr. Nixa, MO 65714 Phone: 417-725-5300 Attn: Steve Eoff Email: deplbg01@yahoo.com

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT ("Contract") is made and entered into upon its execution by the parties identified above.

WHEREAS the City, after conducting a Request for Bid solicitation process, referenced as RFB-009-2022/Street desires to engage Contractor to perform certain construction work; and

WHEREAS the City desires to engage Contractor to perform such work under the terms and conditions of this Contract; and

WHEREAS contractor desires to perform such work under the terms and conditions of this Contract.

NOW, THEREFORE, for the considerations herein expressed, it is mutually agreed by and between the City and the Contractor as follows:

1. Manner and Time for Completion. The City agrees to engage the services of the Contractor and the Contractor agrees to perform said Construction Services in accordance with the standard of care, skill, and expertise ordinarily used by members of the Contractor's profession in the performance of similar services. The Construction Services are more specifically described in Exhibit A, which is attached hereto and incorporated herein by this reference. Contractor shall furnish all supervision, labor, tools, equipment, materials, and supplies necessary to perform the Services at Contractor's own expense in accordance with the contract documents, any applicable City ordinances, and any applicable state or federal laws within 45 calendar days from the date Contractor is ordered to proceed, which order shall be issued by the City Administrator within 30 days after the date of execution of this Contract.

2. Prevailing Wage. In compliance with sections 290.210 through 290.340 RSMo, all workers performing work under this Contract shall be paid a wage of no less than the "prevailing hourly rate of wages" for work of a similar character in this locality or the public works contracting minimum wage, whichever is applicable, as set out in the Wage Order attached hereto as Exhibit C and made part of this Contract. If at any time the Contractor is found to not have paid prevailing wages, the Contractor shall forfeit as a penalty to the City \$100.00 for each calendar day or portion of a calendar day for each worker paid less than the stipulated required rates for any work done under this Contract by the

Contractor or by any subcontractor under the Contractor. Notwithstanding the foregoing, if the engineer's estimate of the total project cost or the bid accepted by the City is \$75,000.00 or less, then all labor utilized in the construction of the improvements shall not be required to pay the "prevailing rate of wages" or the public works minimum wage. However, if the project becomes subject to a change order that increases the total project cost to more than \$75,000.00, a "prevailing hourly rate of wages" or the public works contracting minimum wage, whichever is applicable, shall be paid for all labor utilized in the construction of the improvements but only for that portion of the project which exceeds \$75,000.00.

3. Insurance Requirements. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City against all hazards or risks of loss as hereunder specified or which may arise out of the performance of this Contract. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City. Regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times during the term of this Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under this Contract.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the City within 10 days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. All insurance policies shall require that the insurance company in question provide 30 days written notice prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to the address for the City listed at the top of this Contract.

As of January 1, 2022, the minimum coverage for the insurance referred to herein shall be as set out below:

- a. **Workers' Compensation** – Statutory coverage per RSMo. 287.010 et seq.
Employer's Liability – \$1,000,000.00

- b. **Commercial General Liability Insurance**, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and blasting if blasting is required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Three Million Sixty-Five Thousand Nine Hundred Fifty-Two and no/100 Dollars (\$3,065,952.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Fifty-Nine Thousand Eight Hundred Ninety-Three and no/100 Dollars (\$459,893.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least \$1,000,000 for all claims to property arising out of a single occurrence and at least \$100,000 to any one owner with respect to damages to property. Contractor 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, before payment of any award, damages, costs or attorney's fees of Contractor, its employees, officers or agents. Contractor agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

c. Automobile Liability Insurance covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at Three Million Sixty-Five Thousand Nine Hundred Fifty-Two and no/100 Dollars (\$3,065,952.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Fifty-Nine Thousand Eight Hundred Ninety-Three and no/100 Dollars (\$459,893.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

d. Owner's and Contractor's Protective Liability Insurance. To protect the City, its agents, servants, and employees from claims which may arise from the performance of this Contract, with limits of at least Three Million Sixty-Five Thousand Nine Hundred Fifty-Two and no/100 Dollars (\$3,065,952.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Fifty-Nine Thousand Eight Hundred Ninety-Three and no/100 Dollars (\$459,893.00) with respect to injuries and/or death of any one person in a single accident or occurrence. The Owner's and Contractor's Protective Liability Insurance must:

1. Be a separate policy with the named insured being: The City of Nixa, Missouri; and
2. Be with the same insurance company with which the Contractor carries its Commercial General Liability Insurance and Automotive Liability Insurance; and
3. Contain an endorsement that disclaims coverage for any claim barred by the doctrines of sovereign immunity or official immunity, except attorney's fees and other litigation costs incurred in defending a claim. Nothing contained in this policy (or this endorsement thereto) shall constitute any waiver of whatever kind of these defenses or sovereign immunity or official immunity for any monetary amount whatsoever.

e. Subcontracts. In case any or all of the performance of this Contract is sublet, the Contractor shall require the subcontractor to procure and maintain all insurance required in subparagraphs (a), (b) and (c) hereof and in like amounts. Contractor shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City through insurance against applicable hazards or risks and shall, upon request of the City, provide evidence of such insurance.

f. Notice. The Contractor and/or subcontractor shall furnish to the City prior to beginning the work contemplated by this Contract, the policy as specified in subparagraph (d), and satisfactory proof of bearing all the insurance required by this Contract, with the provision that policies shall not be canceled, modified or non-renewed without 30 days written notice to the City.

g. Legislative or Judicial Changes. 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 Contract by legislative or judicial action, the City may require Contractor, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, 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 an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

4. Performance and Payment Bonds. The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the City and on the forms approved by the City, each bond shall be in the amount of \$111,600.00 conditioned upon the full and faithful performance of all major terms and conditions of this Contract and payment of all labor and material suppliers. It is further mutually agreed between the parties that if at any time after the execution of this Contract the City deems the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within 5 days after the receipt of notice from the City to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Contractor shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the City. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds \$25,000.00 must be listed in United States Treasury Circular 570.

5. Contractor's responsibility for subcontractors. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this Contract, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City.

6. General Independent Contractor Clause. This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor shall be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation, and unemployment insurance laws. The Contractor shall retain sole and absolute discretion as to the judgment and manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Contract shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City shall not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

7. Liquidated Damages. The parties mutually and expressly agree that time of completion of work by the Contractor is of the essence. Should Contractor, or in the case of default, the surety, fail to substantially complete the work within the time specified in this Contract, or within such extra time as may be allowed, Contractor (or surety) shall be liable to the City in the amount of \$500 per day for each and every calendar day that the performance of this Contract remains uncompleted after the time allowed for substantial completion, as liquidated damages, and not as a penalty, it being stipulated that actual damages to the City and the public arising from Contractor's failure to timely complete the work would be difficult, if not impossible, to ascertain. The amount assessed as liquidated damages may be withheld from any moneys otherwise due to Contractor from the City. The project is not considered complete until final acceptance by the City.

8. Termination.

a. For Cause. The City reserves the right to terminate this Contract by giving at least five days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract.

b. For Convenience. The City shall have the right at any time by written notice to Contractor to terminate and cancel this Contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the Contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

9. City's Right to Proceed. In the event this Contract is terminated, the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this Contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

10. Liability and Indemnity.

a. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the Contractor under this contract.

b. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

c. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this Contract or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any

claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

d. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents, and employees, for which indemnification is sought.

e. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

f. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price. Contractor's obligation under this Contract to defend, indemnify, and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance required of the Contractor under this Contract.

g. The Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

11. Payment for Labor and Materials. The Contractor agrees and binds itself to pay for all labor done, and for all the materials used in the construction of the work to be completed pursuant to this contract.

12. Payment. Provided that Contractor performs the services in the manner set forth herein, the City shall pay the Contractor in accordance with the rate set forth in Exhibit B, which shall constitute full and complete compensation for the Contractor's work provided hereunder. No partial payment to the Contractor shall operate as approval of acceptance of work done or materials furnished hereunder. Such compensation will be paid in progress payments, as established by the City, subject to receipt of a requisition for payment and a statement of work provided by the Contractor and Contract by both the City and the Contractor that the Contractor has fully performed the work to be paid for in such progress payments in conformance with the contract. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Contractor under the terms of this Contract exceed the sum of **One Hundred-Eleven Thousand Six Hundred Dollars and No Cents (\$111,600.00)** unless specifically and mutually agreed to in writing by both the City and the Contractor.

13. Contract Documents. The entire Contract of the parties shall consist of the following documents:

- a. This Contract
- b. Exhibit A- Scope of Work
- c. Exhibit B-Submitted Bid Response with contractor rate
- d. Exhibit C- Original RFB

The above listed documents are attached hereto and incorporated by their reference herein as though fully set forth herein. No modification, amendment, or waiver of any of the provisions of this Contract shall be effective unless in writing specifically referring hereto and signed by both parties.

14. Conflict of Interest. Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Nixa, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest in this contract which would violate any applicable federal regulations or the provisions of RSMo Section 105.450 et seq.

15. Assignment. The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this Contract, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this Contract.

16. Nondiscrimination. The Contractor agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

a. This Contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

b. This Contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime Contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

17. Nonresident/Foreign Contractors. The Contractor shall procure and maintain during the life of this Contract:

a. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 RSMo.

b. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

18. Notices. All notices required or permitted hereinunder and required to be in writing may be given by Email or by first class mail addressed to City and Contractor at the addresses shown above. The date of delivery of any notice given by mail shall be the date falling on the second full day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular

business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

19. Right to Audit. Contractor agrees to furnish sufficient supporting details as may be required by the City to support any charges or invoices submitted to the City for payment under this Contract. Contractor shall make available for the City's inspection all records covering or relating charges submitted to the City for payment. Contractor shall make appropriate adjustments in the event that discrepancies are found. The City shall have the right to audit the Offeror's records pertaining to the work/product for a period of three (3) years after final payment.

20. Occupational License. The Contractor shall obtain and maintain an occupational license or business registration with the City of Nixa, Missouri, if required by city code and any required state or federal requirement. The cost for this occupational license shall be borne by the Contractor. No contract will be executed by the City until this occupational license has been obtained.

21. Safety Training. Pursuant to Missouri Revised Statute Section 292.675, Contractors and subcontractors who sign a contract to work on public works projects must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within sixty (60) days of beginning work on the construction project. The Contractor shall provide an acceptable notarized affidavit stating that Contractor has verified the completion of a 10-hour construction safety program with respect to the employees working in connection with the contracted services. Contractors and subcontractors in violation of this provision will forfeit to the public body \$2,500.00 plus \$100 a day for each employee who is employed without training. Public bodies and contractors may withhold assessed penalties from the payment due to those Contractors and subcontractors. The penalties shall not begin to accrue until the time periods in the statute have elapsed (60 days after notice to proceed and 20 days to produce documentation for employee found in violation).

22. Affidavit for Contracts Over \$5,000.00. That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, if this contract exceeds the amount of \$5,000.00 and Contractor is associated with a business entity, Contractor shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Contractor must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

23. Affidavit for Compliance with Anti-Discrimination against Israel Act. Pursuant to Missouri Revised Statute Section 34.600, if this Contract exceeds the amount of \$100,000 for Contractors with ten or more employees, Contractor shall provide an acceptable notarized affidavit stating that the associated business is not currently engaged in and shall not for the duration of the contract, engage in a boycott of goods or services from the State of Israel; is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or is not currently engaged in and shall not for the duration of this contract, engage in a boycott of goods or services from persons or entities doing business in the state of Israel.

24. Compliance with Laws. Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by

Contractor is current.

25. City Benefits. The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

26. Jurisdiction. This Contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Contract be litigated, venue shall be proper only in the Circuit Court of Christian County, Missouri.

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

(Rest of page intentionally left blank)

THE CITY OF NIXA, MISSOURI

By: _____
Jimmy Liles, City Administrator

ATTEST

By: _____
Rebekka Coffey, City Clerk

CONTRACTOR

By: _____

Printed Name

ATTEST

By: _____

Printed Name

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

Scope of Work

- Remove existing 30-inch HDPE piping, 220 LF
- Install new HDPE, 220 LF, 30 inches with ¾ clean rock cover and bedding.
- Connect new piping to existing Storm Box with concrete pipe collar.
- Remove and Repair existing broken concrete spillway.
- Repair or replace existing wooden fencing to homeowner's satisfaction.
- Finish grading with topsoil.
- Sod all disturbed ground.

Approximate quantities:

30" HDPE PIPE	220	LF
Storm Box Connection	1	LS
Removals	1	LS
Topsoil, Finish Grade, Cleanup	6,000	SF
Repair, Replace or new Fence	250	LF
Sod replacement	6000	SF
Concrete Trickle Channel Repairs	142	SY



**RFB-009-2022/Street
D & E Plumbing & Heating, Inc.
Supplier Response**

Event Information

Number: RFB-009-2022/Street
Title: Morning Glory Stormwater Pipe Replacement
Type: Request for Bid
Issue Date: 2/11/2022
Deadline: 3/4/2022 10:00 AM (CT)
Notes: The City of Nixa is issuing a Request for Bid for Stormwater pipe replacement on Morning Glory.

The City highly encourages electronic submissions via this online bidding system as it expedites the process and helps to alleviate errors.

Paper bids will still be accepted. All bid content must be in a sealed envelope. Bids must be delivered by the stated close date and time. **NO EMAILED OR FAXED** bids will be accepted.

Public unsealing of bid responses will take place at:
City of Nixa
Purchasing
715 W. Mt. Vernon St.
Nixa, MO 65714

Please submit any questions regarding this bid in writing to the Purchasing Manager, Stephanie Ewing at sewing@nixa.com.

The City of Nixa reserves the right to accept or refuse any or all bids.

Contact Information

Contact: Stephanie Ewing
Address: Purchasing
715 W. Mt. Vernon St.
Nixa, MO 65714
Phone: (417) 449-0555
Email: sewing@nixa.com

Annual Wage Order 28.pdf

Prevailing Wage Order 28

[View Online](#)

Affidavit of Business Entity.pdf

E-Verify

[View Online](#)

OSHA Affidavit of Compliance.pdf

OSHA Affidavit

[View Online](#)

No Bid Response Form.pdf

No Bid Response Form

[View Online](#)

Requested Attachments

Additional Documentation

Additional Documentation may be added to provide information regarding your product.

E-Verify

(Attachment required)

Please download the "Affidavit of Business Entity", located on the Attachment tab. Complete the document and upload it here.

OSHA Affidavit of Compliance

(Attachment required)

Please download the "OSHA Affidavit of compliance ", located on the Attachment tab. Complete the document and upload it here.

No Response Form

If you are not planning on responding to this bid, please download the "No Response Form", located on the Attachment tab. Complete the document and upload it here.

Bid Attributes

1	<p>Introduction</p> <p>There are attributes, including this one, associated with this bid. Some are notes and require no response, but most have a required response. **Please select each page on the right-hand side of the blue bar below (at the bottom of this list of attributes) in order to view the next page of Bid Attributes**</p>
2	<p>Attachments Required</p> <p>Be sure to upload all required documents and forms to the "Response Attachments" Tab.</p>
3	<p>Proposal Opening</p> <p>Any bid received later than the specified time shall be disqualified.</p> <p>Questions pertaining to the bid should be addressed in the Questions Tab or directly to the Purchasing Department at 417.449.0555.</p> <p>If the City of Nixa office where bids/proposals are to be submitted is closed due to inclement weather, natural disaster, or for any other cause including if the electronic bid system is unavailable on the due date, the deadline for submission shall be extended until the next City calendar business day, unless the bidder is otherwise notified. The time of day for submission shall remain the same.</p>
4	<p>Section 2</p> <p>PROPOSAL REQUIREMENTS</p> <p>The following items require an answer</p>

5 General Terms and Conditions
Download the General Terms and Conditions, located on the "Attachments" tab. Thoroughly review and indicate below.
<input checked="" type="checkbox"/> I have downloaded, read and agree. <i>(Required: Check if applicable)</i>

6 Scope of Work
Download the Scope of Work, located on the "Attachments" tab. Thoroughly review and indicate below.
<input checked="" type="checkbox"/> I have downloaded, read and agree. <i>(Required: Check if applicable)</i>

7 Anti-Collusion Statement
By offering a submission to this Bid, the bidder certifies the bidder has not divulged, discussed, or compared the Bid with other bidders and has not colluded with any other bidder or parties whatsoever. The bidder also certifies, and in the case of a joint Bid, each party thereto certifies as to their own organization, that in connection with this Bid:
Any prices and/or cost data submitted have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices and/or cost data, with any other bidder or with any competitor.
Any prices and/or cost data for this Bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the scheduled opening directly or indirectly to any other bidder or to any competitor.
No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.
The only person or persons interested in this Bid, principal or principals are named therein and that no person other than therein mentioned has any interest in this Bid or in the contract to be entered into.
No person or agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee exempting bona fide employees or established commercial agencies maintained by the Purchaser for the purpose of doing business.
I affirm that I am duly authorized to execute this contract; that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other Bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid.
<input checked="" type="checkbox"/> agree. <i>(Required: Check if applicable)</i>

8 No Deviations or Exceptions
I certify that there are NO deviations or exceptions from the attached specific terms, conditions, and specifications.
<input checked="" type="checkbox"/> Agree - No Deviations <input type="checkbox"/> Do Not Agree - Please see below <i>(Required: Check only one)</i>

9 Deviations and Exceptions

If your company intends to deviate from the Specifications listed in the attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The City will consider any deviations or exceptions in its bid award decisions. The City reserves the right to accept or reject any proposals based upon any deviations indicated below. If none, please enter N/A (Not Applicable).

(Required: Maximum 4000 characters allowed)

10 Affidavit of Business Entity

By marking the checkbox, I acknowledge that my company participates in the E-Verify system and can provide documentation.

I agree.

(Required: Check if applicable)

11 OSHA Affidavit

Download the OSHA Affidavit, located on the "Attachments" tab. Thoroughly review and indicate below.

I have downloaded, read and agree to comply.

(Required: Check if applicable)

12 Prevailing Wage Order 28

Download the Prevailing Wage Order 28, located on the "Attachments" tab. Thoroughly review and indicate below.

I have downloaded, read and agree to comply.

(Required: Check if applicable)

13 Sample Contract

By marking the checkbox, I acknowledge I have read and understand my company will be asked to sign the Sample Contract as stated as it applies to the response submitted.

Any variances or if a different contract is requested from the Vendor, it must be uploaded in the "Additional Documents" upload for review by the City. This does not guarantee changes or differences will be accepted.

I agree.

(Required: Check if applicable)

Bid Lines

1 Please give the total cost amount to perform the following for Stormwater pipe replacement:

- Remove existing 30-inch HDPE piping, 220 LF
- Install new HDPE, 220 LF, 30 inches with ¾ clean rock cover and bedding.
- Connect new piping to existing Storm Box with concrete pipe collar.
- Remove and Repair existing broken concrete spillway.
- Repair or replace existing wooden fencing to homeowner's satisfaction.
- Finish grading with topsoil.
- Sod all disturbed ground.

(Response required)

UOM: Total cost of Repair Lump Price: \$106,000 Total: \$106,000

Item Notes: Approximate quantities:
30" HDPE PIPE 220 LF using Concrete Pipe
Storm Box Connection 1 LS
Removals 1 LS
Topsoil, Finish Grade, Cleanup 6,000 SF
Repair, Replace or new Fence 250 LF
Sod replacement 6000 SF
Concrete Trickle Channel Repairs 142 SY

No bid
 Additional notes
(Attach separate sheet)

Supplier Notes: ADD 4' Wide Channel Width 5,600⁰⁰

Ship To Information

Contact: Jeff Roussel
Address: Street
Public Works
1111 Kathryn Street
Nixa, MO 65714
Phone: (417) 725-2353

Bill To Information

Address: 715 W. Mt. Vernon Street
PO Box 395
Nixa, MO 65714

Item Attributes

1. Timeframe to complete

Please state what the estimated timeframe will be for completion.

4 Weeks

(Required: Maximum 1000 characters allowed)

By Steve Goff President
D & E Plumbing & Heating Inc

Supplier Information

Company Name: Scunlock
Contact Name: Chris Matson
Address: Springfield Mo

Phone: 417 862 5088
Fax: _____
Email: _____

Supplier Notes 30" RCP CL3 Pipe

By signing below, the bidder shall hereby declare understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions. The bidder shall further agree that the language of this RFB shall govern in the event of a conflict with his/her bid. In addition, the bidder shall further agree that upon receipt of an authorized purchase order from the City of Nixa or when a Contract Resolution is signed and issued by an authorized official of the City of Nixa, a binding contract shall exist between the bidder and the City of Nixa.

STEVE EOFF Steve Eoff
Print Name Signature

Company ID Number: 177139

THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION MEMORANDUM OF UNDERSTANDING

ARTICLE I

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Department of Homeland Security (DHS) and **D & E Plumbing & Heating, Inc.** (Employer) regarding the Employer's participation in the Employment Eligibility Verification Program (E-Verify). This MOU explains certain features of the E-Verify program and enumerates specific responsibilities of DHS, the Social Security Administration (SSA), and the Employer. E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of the Employment Eligibility Verification Form (Form I-9). For covered government contractors, E-Verify is used to verify the employment eligibility of all newly hired employees and all existing employees assigned to Federal contracts.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). Authority for use of the E-Verify program by Federal contractors and subcontractors covered by the terms of Subpart 22.18, "Employment Eligibility Verification", of the Federal Acquisition Regulation (FAR) (hereinafter referred to in this MOU as a "Federal contractor") to verify the employment eligibility of certain employees working on Federal contracts is also found in Subpart 22.18 and in Executive Order 12989, as amended.

ARTICLE II

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF SSA

1. SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all employees verified under this MOU and the employment authorization of U.S. citizens.
2. SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.
3. SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).



RFB-009-2022/Street

Morning Glory Stormwater Pipe Replacement

Issue Date: 2/11/2022

Questions Deadline: 2/25/2022 12:00 PM (CT)

Response Deadline: 3/4/2022 10:00 AM (CT)

Contact Information

Contact: Stephanie Ewing
Address: Purchasing
715 W. Mt. Vernon St.
Nixa, MO 65714
Phone: (417) 449-0555
Email: sewing@nixa.com

Event Information

Number: RFB-009-2022/Street
Title: Morning Glory Stormwater Pipe Replacement
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Public Works
1111 Kathryn St.
Nixa, MO 65714
Phone: (417) 725-2353

Billing Information

Address: 715 W. Mt. Vernon Street
PO Box 395
Nixa, MO 65714

Bid Attachments

Terms and Conditions-Formal RFB.pdf

Terms and Conditions RFB

[View Online](#)

Scope of Work.pdf

Scope of work

[View Online](#)

General Construction Contract 2022.pdf

Sample Construction Contract

[View Online](#)

Annual Wage Order 28.pdf

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OSHA Affidavit

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No Bid Response Form

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Requested Attachments

Additional Documentation

Additional Documentation may be added to provide information regarding your product.

E-Verify

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4 Section 2

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Any prices and/or cost data submitted have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices and/or cost data, with any other bidder or with any competitor.

Any prices and/or cost data for this Bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the scheduled opening directly or indirectly to any other bidder or to any competitor.

No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.

The only person or persons interested in this Bid, principal or principals are named therein and that no person other than therein mentioned has any interest in this Bid or in the contract to be entered into.

No person or agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee exempting bona fide employees or established commercial agencies maintained by the Purchaser for the purpose of doing business.

I affirm that I am duly authorized to execute this contract; that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other Bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid.

I agree.

(Required: Check if applicable)

8 No Deviations or Exceptions

I certify that there are NO deviations or exceptions from the attached specific terms, conditions, and specifications.

Agree - No Deviations Do Not Agree - Please see below

(Required: Check only one)

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If your company intends to deviate from the Specifications listed in the attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The City will consider any deviations or exceptions in its bid award decisions. The City reserves the right to accept or reject any proposals based upon any deviations indicated below. If none, please enter N/A (Not Applicable).

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- Remove and Repair existing broken concrete spillway.
- Repair or replace existing wooden fencing to homeowner's satisfaction.
- Finish grading with topsoil.
- Sod all disturbed ground.

(Response required)

UOM: Total cost of Repair

Price: \$

Total: \$

Item Notes: Approximate quantities:
30" HDPE PIPE 220 LF
Storm Box Connection 1 LS
Removals 1 LS
Topsoil, Finish Grade, Cleanup 6,000 SF
Repair, Replace or new Fence 250 LF
Sod replacement 6000 SF
Concrete Trickle Channel Repairs 142 SY

- No bid
 Additional notes
(Attach separate sheet)

Supplier Notes: _____

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Item Attributes

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Please state what the estimated timeframe will be for completion.

(Required: Maximum 1000 characters allowed)

Supplier Information

Company Name: _____

Contact Name: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Supplier Notes

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Print Name

Signature