

## **RE: Contract with Ozarks Clean Water Company**

### **Background:**

The attached Resolution authorizes the City Administrator to execute a contract with Ozarks Clean Water Company (OCWC) for Nixa to provide certain administrative services to OCWC for a fee.

### **Analysis:**

OCWC is the owner of a small sewer collection system (approximately 400 customers) for the English Village and surrounding area all located within the original RDE Water Company service territory. In the past, RDE provided full billing services to OCWC under a similar agreement. Because the City of Nixa now owns the RDE System, OCWC has approached the city and requested a similar agreement.

Upon evaluation, staff has determined that we would rather not take the liability of billing and collecting for OCWC services. We are, however, willing to share the necessary customer information and water usages so they can properly bill their customers on their own.

To do this, staff has worked through the internal issues to complete the process with the least amount of interruption and have also figured cost reimbursements necessary for the work. Each month, city staff will generate a current customer list along with the water meter readings for the billing period and send them to OCWC for their billing purposes. City staff will also track any customer changes or additions to the system for OCWC on an ongoing basis and provide them with other reports as necessary.

For this work, OCWC will reimburse the city \$1,000 per month. This agreement has a three-year initial term and will automatically renew annually. There is also a 90-day termination clause if for any reason one of the parties wishes to end the relationship early.

### **Recommendation:**

Adopt resolution 2022-000

### **MEMO SUBMITTED BY:**

**Doug Colvin** | Assistant City Administrator, Director Nixa Utilities and Public Works  
dcolvin@nixa.com | 417-725-2353

**RESOLUTION NO. 2022-128**

1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**  
2 **ADMINISTRATOR TO EXECUTE A CONTRACT WITH OZARKS CLEAN WATER**  
3 **COMPANY, FOR THE CITY TO PROVIDE CERTAIN SERVICES TO SAID COMPANY.**  
4

5  
6 **WHEREAS** the City now owns the water system serving the sewer customers of  
7 Ozarks Clean Water Company (“OCWC”); and  
8

9 **WHEREAS** OCWC has reached out to the City to provide certain administrative  
10 services on behalf of OCWC to assist with the operation of their sewer system.  
11

12 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**  
13 **NIXA, AS FOLLOWS, THAT:**  
14

15 **SECTION 1:** The City Administrator, or designee, is hereby authorized to execute  
16 the Contract attached hereto, and incorporated herein by this reference, as “Resolution  
17 Exhibit A,” with Ozarks Clean Water Company. Said Contract shall be in substantially  
18 similar form as the document attached hereto as “Resolution Exhibit A.” The City  
19 Administrator and the officers of the City are hereby authorized to do all things necessary  
20 or convenient to carry out the terms and intent of this Resolution.  
21

22 **SECTION 2:** This Resolution shall be in full force and effect from and after its final  
23 passage by the City Council and after its approval by the Mayor, subject to the provisions  
24 of section 3.11(g) of the City Charter.  
25

26 **ADOPTED BY THE COUNCIL THIS 12<sup>th</sup> DAY OF December, 2022.**  
27

28 ATTEST:  
29

30 \_\_\_\_\_  
31 PRESIDING OFFICER  
32

30 \_\_\_\_\_  
31 CITY CLERK  
32

33  
34 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.**  
35

36 ATTEST:  
37

38 \_\_\_\_\_  
39 MAYOR  
40

38 \_\_\_\_\_  
39 CITY CLERK  
40

41  
42 APPROVED AS TO FORM:  
43

44 \_\_\_\_\_  
45 CITY ATTORNEY

**RESOLUTION EXHIBIT A**

**ROUTE ORDER:** OCWC signs, route to City Clerk, City Admin signs two originals, Clerk adds date, City Attorney signs, return one original by mail to Organization and City Clerk retains one original.

<b>EFFECTIVE DATE:</b>	<b>TERMINATION DATE:</b>	<b>CONTRACT NUMBER:</b>
( ) <b>NEW CONTRACT</b>		( ) <b>ADDENDUM NO. __</b>
<b>CITY</b>		<b>OCWC</b>
Name: City of Nixa, Missouri Address: 715 W. Mt. Vernon St., PO Box 395 Nixa, MO 65714 Phone: 417.725.3785 Email: jliles@nixa.com, with CC to dcolvin@nixa.com Attn: Jimmy Liles, City Administrator		Name: Ozarks Clean Water Company Address: 11 Oak Drive, Kimberling City, MO 65686 Phone: 417.739.4119 Email: contact@ozarkscleanwater.org Attn: Jesse Deets

**CONTRACT FOR ADMINISTRATIVE SERVICES**

**THIS CONTRACT** (“Contract”) is made and entered into upon its execution by the parties identified above.

**WHEREAS** the City operates a public drinking water system in an unincorporated area north of the corporate limits of City; and

**WHEREAS** OCWC operates a wastewater collection system, referred to as the “English Village Sewer System,” within the unincorporated area referenced above; and

**WHEREAS** OCWC desires to contract with the City whereby the City will provide certain administrative services related to OCWC’s operation of the English Village Sewer System.

**NOW, THEREFORE,** for the considerations herein expressed, it is mutually agreed by and between the City and the OCWC as follows:

**1. Customer List and detailed report on the English Village Sewer System.** Within 14 days of the execution of this Contract, OCWC shall provide to City a written list (in paper and digital formats) detailing OCWC’s then current customers which are connected to the City’s water system and are located within the English Village Sewer System (hereinafter “Customer List”). The Customer List shall include customer names, billing addresses, service addresses, a designation of whether the customer is residential or commercial, and any other information which the City deems necessary. OCWC shall also, within 14 days of execution of this Contract, provide the City with detailed information on the boundaries of the English Village Sewer System service area such that the City can fulfil its obligations under this Contract. OCWC shall provide the City with updated information on said boundaries when a change in the boundaries occurs. The City’s performance of this Contract, as said performance relates to activities occurring within the English Village Sewer System service area, shall be limited to the information provided by OCWC regarding the boundaries of said service area.

**2. Monthly Reports and Special Reports.**

**a. Monthly Reports.** Thirty days after OCWC provides the Customer List and during the City’s next billing cycle thereafter, the City shall provide the following information to OCWC:

1. The names, location, and contact information for new City water customers which are located in the English Village Sewer System service area;
2. The names, location, and contact information of City water customers who have moved out of the English Village Sewer System service area, along with any forwarding addresses which have been provided to the City;
3. The names, location, and contract information of City water customers who have moved into the English Village Sewer System service area and have requested new water service from the City;
4. Meter readings showing water usage for commercial customers within the English Village Sewer System service area who are customers of the City's water system and OCWC's sewer system; and
5. The monthly total water usage for all OCWC customers within the English Village Sewer System service area.

The information referenced in **Paragraph 2.a.** shall be provided by the City at least every 30 days after the initial report is provided.

b. *Special Reports.* City agrees to notify OCWC of the following situation occurring within the English Village Sewer System service area when the City has actual knowledge of such situations:

1. Dumping of waste into drains other than what is normally collected in residential sewers and by non-industrial commercial users.
2. Apparent wastewater leaks from the English Village Sewer System.
3. Liquids entering the English Village Sewer System other than from conventional connections.
4. Vandalism and other destruction of components of the English Village Sewer System.
5. Fires, storm damage, and other catastrophic events affecting sewer collection services for residential and commercial customers of the English Village Sewer System.

With respect to items included in **Paragraph 2.b.** City's is not required to make inspections of the English Village Sewer System, but only to report such situations when the City has actual knowledge of such situations.

**3. Administrative Fee.** OCWC shall pay City an administrative fee of \$1,000 every month for the services rendered by City herein. Such payment shall be paid to the City by the last calendar day of each month. The City shall be paid the full amount of the administrative fee even if this Contract is terminated prior to last calendar day of the month.

**4. Term.** This Contract shall terminate three years from its execution by the Parties. The term of this Contract shall automatically renew for additional one-year terms at the conclusion of the initial three-year term, subject to the Termination provisions of Paragraph 5.

**5. Termination.**

**a. Termination for Convenience.** Either party shall have the right at any time upon 90 days written notice to the other to terminate and cancel this Contract, without cause, for convenience.

**b. Non-appropriation.** This Contract shall be terminated upon the failure of the City Council of City to appropriate funds to perform this Contract in any term of said Contract.

**6. Conflict of Interest.** OCWC certifies that no member or officer of its firm or organization 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.

**7. Liability and Indemnity.**

**a.** In no event shall the City be liable to the OCWC 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 OCWC under this contract.

**b.** OCWC 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 OCWC 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 OCWC, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

**c.** The OCWC 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 OCWC hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the OCWC, 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.** OCWC affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price. OCWC'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 OCWC under this Contract.

**g.** The OCWC 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.

**8. Contract Documents.** This Contract constitutes the entire agreement amongst the Parties. 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.

**9. Notices.** All notices required or permitted hereinunder and required to be in writing may be given by Electronic Mail or by first class mail addressed to City and OCWC at the addresses shown above. The date of delivery of any notice given by mail shall be the date falling on the second full day after the day of its mailing. The date of delivery of notice by Electronic Mail transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party. The designation and titles of the persons to be notified or the address of such persons may be changed at any time by written notice to the other party.

**10. City Benefits.** The OCWC 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.

**11. 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.

**12. 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 OCWC is associated with a business entity, OCWC 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, OCWC must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

**(Remainder of page intentionally left blank. Signature page to follow.)**

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

**CITY OF NIXA**

**OZARKS CLEAN WATER CORPORATION**

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

By: \_\_\_\_\_  
David Casaletto, President

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

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

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Rebekka Coffey, City Clerk

By: \_\_\_\_\_  
Jesse Deets, Operations Manager

APPROVED AS TO FORM

By: \_\_\_\_\_  
Nick Woodman, City Attorney