



**NIXA CITY COUNCIL
Tentative Agenda
September 13, 2021
7:00 PM
NIXA CITY HALL
715 W. MT. VERNON**

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

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

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

Nixa Arts Council Sculpture Sharing Program

Proclamations:

Constitution Week September 17th-September 23rd
Recycle Week September 20th-September 26th

Presentations:

Garrett Tyson Redistricting Update

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

Council Bill #2021-091 Rezoning the Real Property Generally Located Along the 300 Block of South Nicholas Road from an R-1 District to a M-1 District

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

Council Bill #2021-087 Establishing a Charter Review Commission to Review the City's Charter and Recommend any Proposed Amendments Thereto

Council Bill #2021-088 Transferring the Nixa Municipal Court to the Associate Division of the Christian County Circuit Court

Resolutions: (Public Hearing and Council Vote Anticipated):

Resolution #2021-091 Authorizing the City Administrator to Apply for and Accept an Officer Safety Equipment and Technology Grant Provided by the Missouri Department of Public Safety

Resolution #2021-092 Designating Linville Construction, LLC., as the Successor Developer Pursuant to Section 115-80 of the Nixa City Code for Certain Improvements Related to the Auburn Heights Subdivision

Resolution #2021-093 Accepting the Proposal of Commerce Bank for Purchasing Card Services and Authorizing the City Administrator to Execute a Contract for Same

Resolution #2021-094 Accepting the Proposal of Southern Bank for Banking Services and Authorizing the City Administrator to Execute a Contract for Same

Resolution #2021-095 Authorizing the City Administrator to Execute a Contract
Amendment with IonWave Technologies for Contract Management Services

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, September 17, 2021, marks the Two Hundred Thirty-Fourth Anniversary of the drafting of the Constitution of the United States of America by the Constitution Convention; and

WHEREAS, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary; and to the patriotic celebrations which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through September 23 as Constitution Week; and

NOW, THEREFORE, I, Brian Steele, by virtue of the authority vested in me as the Mayor of the City of Nixa, Missouri, do hereby proclaim the week of September 17 through September 23, 2021, as

“CONSTITUTION WEEK”

And urge all citizens to study the Constitution and reflect on the privileges of being an American with all the rights and responsibilities which that honor holds.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Nixa, Missouri, to be affixed this thirteenth day of September of the year of our Lord, Two Thousand and Twenty-One.

Mayor

ATTEST:

City Clerk

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

PROCLAMATION

WHEREAS, it is critical that as citizens of Nixa, we create a clean, healthy, and stable environmental foundation for our children and future generations; and

WHEREAS, the City of Nixa is committed to increasing its recycling efforts to preserve our natural environment; and

WHEREAS, recycling decreases the amount of waste sent to landfills and incinerators and conserves valuable natural resources such as timber, water, and minerals; and

WHEREAS, aluminum and steel cans, plastic bottles, jugs, paper, and cardboard are all household items that can be recycled; and

WHEREAS, recycling mitigates pollution by reducing the need to collect new raw materials, save energy, and reduce greenhouse gas emissions; and

WHEREAS, reducing, reusing, and recycling plays a critical role in the City of Nixa to achieving a more sustainable future; and

WHEREAS, the goal is to increase public awareness of the value and importance of recycling, encourage citizens to take advantage of the recycling services available in our community.

NOW, THEREFORE, I, Brian Steele, Mayor of the City of Nixa, Missouri, do hereby proclaim September 20th through September 26th, 2021, as

"Recycle Week"

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Nixa, this 13th day of September 2021.

Mayor

ATTEST:

City Clerk



Issue: **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA REZONING THE REAL PROPERTY GENERALLY LOCATED ALONG THE 300 BLOCK OF SOUTH NICHOLAS ROAD FROM THE R-1 DISTRICT TO A THE M-1 DISTRICT.**

Date: September 13, 2021

Submitted By: Garrett Tyson, Director of Planning and Development

Background

Christi Fairchild, on behalf of MacMurray Farms LLC and 3C's Family LP, has applied to change the zoning classification of approximately 7 acres of land located along the 300 Block of South Nicholas Road from R-1 (single-family residential) to M-1 (light manufacturing).

The land subject to the application is a portion of Lot 2 of the Key Heights Phase I subdivision, which was platted in 1999. The land remains vacant and unimproved.

Analysis

Land Use

Existing land uses in the immediate vicinity of the subject property include an existing self-storage facility to the south (within the M-1 zoning district), vacant single-family residential zoning to the east and north, and vacant general commercial zoning to the west.

The general land use pattern in the area is a mixture of industrial, commercial, and higher densities of residential land uses. The City's adopted future land use plan appears to simply recommend existing zoning arrangements at the time of adoption as appropriate for future development (which is obviously not very helpful for planning purposes).

Transportation

The subject property does not enjoy immediate access to any public thoroughfare but is planned to be combined to an existing lot within the Maples West Side Industrial Phase II subdivision which will provide it with direct access to South Nicholas Road (primary arterial). The impact of any development of the subject property will be studied at the time the improvements are proposed so that appropriate traffic solutions can be provided for in proportion to the developments expected impact.

Public Utilities (Water, Wastewater, Electric)

The subject property enjoys immediate access to municipal electric facilities that are of sufficient capacity to serve light industrial or light manufacturing uses at this location. The subject property



does not enjoy direct access to municipal water or sanitary sewer services. Any services needed to support development of the subject property will need to be extended to the site by the developer at that time and at their cost.

The municipal water facilities in vicinity of the subject property can provide sufficient service to the types of land uses permitted within the light manufacturing district. The sanitary sewer services available to the subject property involve a gravity main that will collect any wastewater from the subject property and carry it to the Oakmont Lift Station. Unfortunately, the Oakmont Lift Station is nearing its capacity limit and any substantial additional wastewater flows generated from the subject property could be problematic. If the expected wastewater flow at the time of development cannot be managed by the existing lift station, the city will be forced to either improve the capacity in this drainage basin or else place a suspension on development in the basin until capacity is increased later.

Stormwater Management

Development of the subject property will be required to manage stormwater runoff according to the requirements of the Nixa City Code. There are no known or suspected sinkholes on the subject property nor is there any designated flood hazard area.

Other Public Services

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

Recommendation

Staff recommends the approval of this bill.

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA REZONING THE
REAL PROPERTY GENERALLY LOCATED ALONG THE 300 BLOCK OF SOUTH
NICHOLAS ROAD FROM AN R-1 DISTRICT TO A M-1 DISTRICT.**

WHEREAS an application has been filed for a zoning change of the property generally located along the 300 Block of South Nicholas Road and which is more specifically described on "Council Bill Exhibit A" ("Application"); and

WHEREAS the Application requests that the City Council rezone said property from the R-1 District to the M-1 District; and

WHEREAS the Planning and Zoning Commission held a public hearing on the Application at the Commission's September 7, 2021, meeting; and

WHEREAS the Commission, after considering the Application, staff's recommendation regarding the Application, and after holding a public hearing on the Application, issued a recommendation of approval of the Application; and

WHEREAS the City Council, now having considered the Application, staff's recommendation regarding the Application, and after providing an opportunity for public comment on the Application, now desires to rezone the subject property and amend the City's official zoning map to reflect City Council's action.

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

SECTION 1: The real property described on "Council Bill Exhibit A," which is attached hereto and incorporated herein by this reference, is hereby rezoned from the R-1 District, or such other zoning district that may apply to said real property, to a M-1 District and the regulations applicable to said district, as established in the Nixa City Code, shall hereafter apply to said real property.

SECTION 2: The Director of Planning and Development, pursuant to section 117-57 of the Nixa City Code, shall amend the City's official zoning map, said map being established pursuant to section 117-56 of the Nixa City Code, to reflect the zoning action contemplated by this Ordinance.

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

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

ADOPTED BY THE CITY COUNCIL THIS _____ DAY OF _____ 2021.

ATTEST:

CITY CLERK

PRESIDING OFFICER

APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

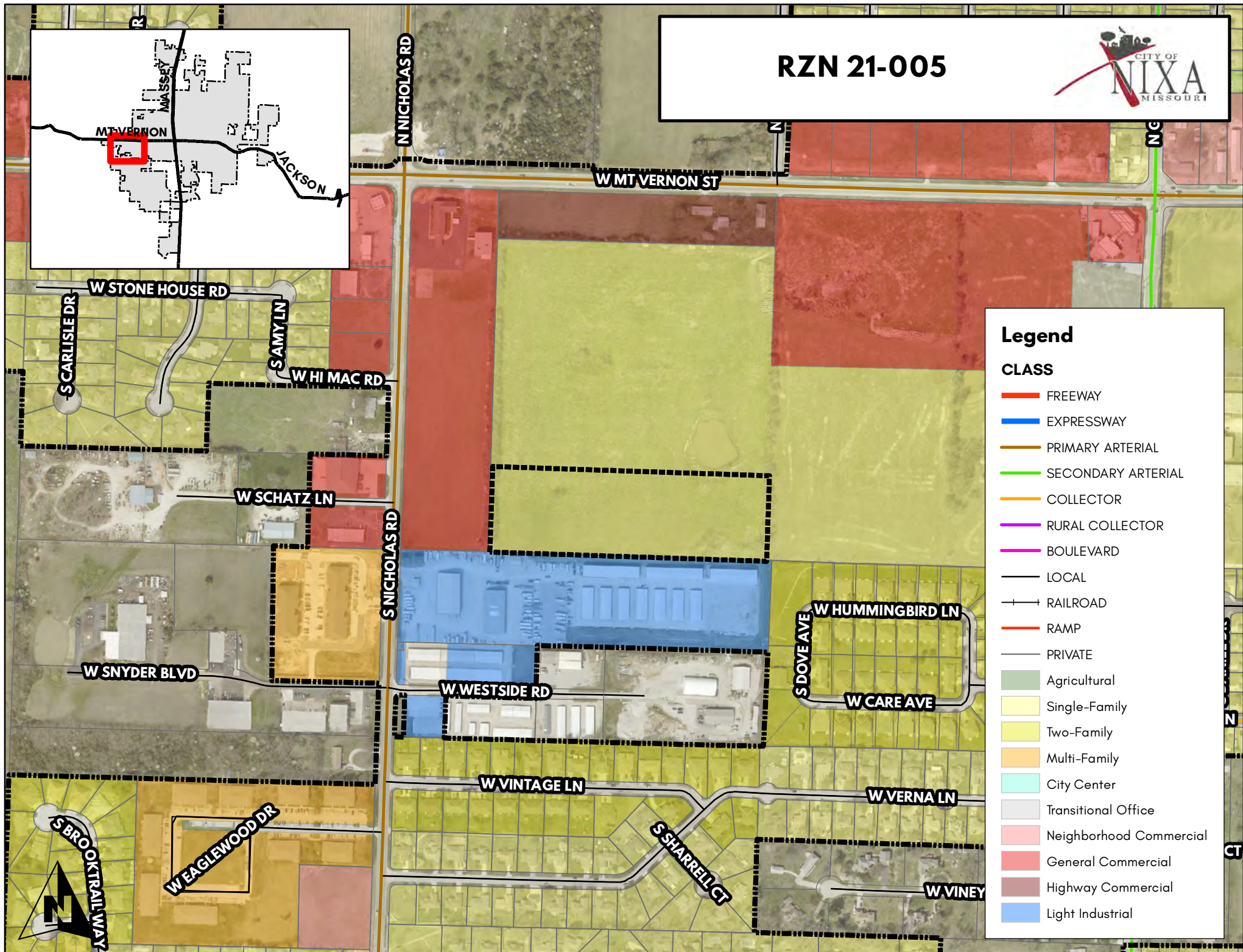
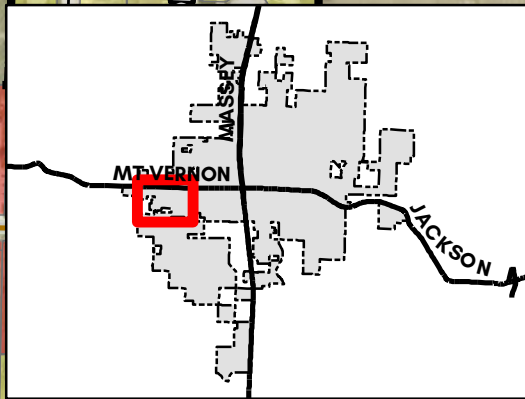
CITY ATTORNEY

COUNCIL BILL EXHIBIT A

A TRACT OF LAND LYING IN LOT 2 OF KEY HEIGHTS PHASE 1, A SUBDIVISION IN NIXA, CHRISTIAN COUNTY, MISSOURI AND BEING RECORDED IN BOOK G, PAGE 775 OF THE CHRISTIAN COUNTY RECORDER'S OFFICE, SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2, THENCE ALONG THE WEST LINE OF LOT 2 NORTH $01^{\circ}53'23''$ EAST, 308.00 FEET; THENCE LEAVING SAID WEST LINE SOUTH $88^{\circ}25'16''$ EAST, 990.71 FEET; THENCE SOUTH $02^{\circ}03'32''$ WEST, 308.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 2: THENCE ALONG SAID SOUTH LINE NORTH $88^{\circ}25'16''$ WEST, 989.80 FEET TO THE POINT OF BEGINNING. CONTAINING 7.00 ACRES MORE OR LESS. ALL IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI. BEARINGS BASED ON GRID NORTH OF THE MISSOURI COORDINATE SYSTEM OF 1983, CENTRAL ZONE.

RZN 21-005



Legend

CLASS

- FREEWAY
- EXPRESSWAY
- PRIMARY ARTERIAL
- SECONDARY ARTERIAL
- COLLECTOR
- RURAL COLLECTOR
- BOULEVARD
- LOCAL
- RAILROAD
- RAMP
- PRIVATE
- Agricultural
- Single-Family
- Two-Family
- Multi-Family
- City Center
- Transitional Office
- Neighborhood Commercial
- General Commercial
- Highway Commercial
- Light Industrial



JIMMY LILES
CITY ADMINISTRATOR
P.O. Box 395
715 W. Mt. Vernon
Nixa, Missouri 65714
Phone: 417-725-3785
Email: jliles@nixa.com

Date: 09/09/2021

To: Mayor Steele, City Council

From: Jimmy Liles, C.A.

Subject: Home Rule Charter Review Commission

During the last City Council meeting, I introduced an ordinance that would bring the Home Rule Charter Review Commission together to review possible changes to the charter.

Since the last meeting, we have received census data that will require us to change the boundaries of our current council districts. Garrett will be providing Council with an overview on how the census data will affect the districts at the next City Council meeting.

Depending on how the boundaries change, and how long the commission takes to review the charter, it could potentially create a scenario where the Home Rule Charter Review Commission has members that change districts during the review of the charter. As a reminder, the Charter states that the Charter Review Commission must be made up of nine (9) qualified voters for the City, none of whom shall be an elected official of the City. No more than three (3) of the Commission members shall reside in any one Council District. Until the new districts are set, we do not know if the current commission members that were presented at the last meeting will still be in their current district.

Council could elect to either proceed with the approval of the current ordinance or postpone the ordinance until the districts are redrawn which would allow us to re-evaluate the location of the members to ensure they are still within their districts.

Thanks,
Jimmy

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
13 at this time.
14

15 **NOW, THEREFORE, BE IT ORDAINED 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:
26

- 27 • Andrea Long – District 1
- 28 • Randall Bettis – District 1
- 29 • Matt Lander – District 1
- 30 • Sarah Bader – District 2
- 31 • David Larsen – District 2
- 32 • Kent Ward – District 2
- 33 • Athena Fitts – District 3
- 34 • Mark Hartsock – District 3
- 35 • Tony Manasseri – District 3
36

37 **SECTION 3:** The Commission shall, at its first meeting, elect a Chair and a Vice
38 Chair. The Chair of the Commission shall preside over all meetings of the Commission,
39 set the agenda of the Commission, and perform any other functions or duties that the
40 Commission may provide. The Commission shall meet upon the call of the Chair,
41 provided that notice is provided to the other members of the Commission and an
42 agenda for the meeting is provided. The Commission is authorized to establish rules of
43 order and decorum for the conduct of its meetings, which shall be enforced by the
44 Chair, and may, at the discretion of the Commission, take public testimony on any item
45 considered by the Commission. The Vice Chair is authorized and empowered to
46 perform the duties of the Chair in the absence of the Chair. The Commission is further

authorized and empowered to do all things which may be necessary or convenient to carry out the terms and intent of this Ordinance.

SECTION 4: 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 13TH DAY OF SEPTEMBER 2021.

ATTEST:

CITY CLERK

PRESIDING OFFICER

APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY



JIMMY LILES
CITY ADMINISTRATOR
P.O. Box 395
715 W. Mt. Vernon
Nixa, Missouri 65714
Phone: 417-725-3785
Email: jliles@nixa.com

Date: 09/08/2021

To: Mayor Steele and City Council

From: Jimmy Liles, C.A.

Subject: Transfer of Municipal Court

During the last City Council meeting, an ordinance to transfer the Municipal Court to the Christian County Court was introduced and will be back before Council for a second reading at the next meeting.

During the last Municipal Court review, OSCA brought up several recommendations that, if followed, would cause some areas of concern. Some of these concerns included the financial changes that would place the municipal court staff in charge of all financial matters for the division. This would mean that the Judge and the Court Administrator and/or Court Clerk would be the only ones on the bank account. This would set up a situation where the court staff would be entering tickets, accepting payments, updating records, balancing the bank statement, and generating checks with little to no oversight. The court staff would not be subject to our internal control policies that currently provide a checks and balances for all financial transactions. Municipal Court personnel supervision is also an issue. Although not mentioned in the official review, OSCA had concerns about the Assistant City Administrator supervising the Court Division. They recommended the part-time Judge be the sole supervisor of the full-time personnel. This would place a judge that works two afternoons a month supervising two full-time employees. The City would have no authority to ensure the City of Nixa employees followed the City's policies and procedures. This could present multiple issues including employee accountability and liabilities for the City of Nixa.

During the last Council meeting, we also discussed the Nixa Municipal Court revenues and expenses. In 2020, the fines and court costs totaled \$91,176.59 and the expenses totaled \$131,136.45, resulting in a loss of \$39,959.86. If the Municipal Court moves to the County, the court costs would be collected by the Christian County Circuit Clerk's office, but Nixa would continue to receive the fines. The Clerk fees, which are collected as part of the court fees will raise from \$12 to \$15. Eighty percent of these clerk fees will be distributed to the State of Missouri and the remaining twenty percent will be distributed to the County.

It is also important to mention that moving the Municipal Court would also eliminate the need for the police department to transport prisoners or provide a bailiff for court. At times, both functions have to be covered by taking an officer off of the road.

The City of Ozark recently voted to move their Municipal Court to the County Court as well. With additional case load from Ozark and Nixa, Christian County Circuit Clerk Barb Stilling has requested each City contribute \$24,186.23 to hire an additional clerk. This would require an agreement between all parties and would be on a year-to-year basis. This will allow all parties the opportunity to evaluate the need to continue the agreement each year. The funds will be included in the 2022 budget.

If the ordinance is approved, the process of transferring the court will begin and will have a target completion date of January 2022.

It is staff's recommendation that Council pass the ordinance approving the transfer of the Municipal Court to the County.

Thanks,
Jimmy

1 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA TRANSFERRING**
2 **THE NIXA MUNICIPAL COURT TO THE ASSOCIATE DIVISION OF**
3 **THE CHRISTIAN COUNTY CIRCUIT COURT.**
4

5
6 **WHEREAS** the City of Nixa presently operates a municipal court, with its own
7 municipal judge, to adjudicate violations of the City's ordinances as a division of the 38th
8 Judicial Circuit of the State of Missouri; and
9

10 **WHEREAS** Article V, section 23 of the Missouri Constitution provides that
11 associate circuit judges shall hear and determine violations of municipal ordinances in
12 any municipality upon the request of the governing body of a city; and
13

14 **WHEREAS** Article V, section 27(16) of the Missouri Constitution provides that
15 cities shall have the right to enforce its ordinances and to conduct prosecutions before
16 an associate circuit judge and shall receive and retain any fines to which it may be
17 entitled; and
18

19 **WHEREAS** section 479.040 RSMo. provides that a city may elect to have
20 violations of its municipal ordinances heard and determined by an associate circuit
21 judge of the circuit in which the city is located and that once a city has made such
22 election the associate circuit judge shall commence hearing and determining such
23 violations six months after the municipality notifies the presiding judge of its election;
24 and
25

26 **WHEREAS** the City Council finds that it is in the best interest of the City to have
27 Nixa ordinance violations adjudicated by a circuit or associate circuit judge of the 38th
28 Judicial Circuit.
29

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

33 **SECTION 1:** Pursuant to Article V Sections 23 and 27 of the Missouri
34 Constitution and Section 479.040 RSMo, the City Council hereby elects to have
35 municipal ordinance violations heard and determined by an Associate Circuit Judge of
36 the Christian County Circuit Court, effectively transferring the municipal court to the
37 Christian County Circuit Court, also known as the 38th Judicial Circuit.
38

39 **SECTION 2:** The transfer of the municipal court to the 38th Judicial Circuit shall
40 be effective January 1, 2022.
41

42 **SECTION 3:** The City Administrator is hereby authorized and directed to take
43 additional actions as may be necessary to carry out the intent and purpose of this
44 Ordinance, including providing copies of this Ordinance to the Presiding Judge of the
45 Thirty-Eighth Judicial Circuit, and to the Office of State Court Administrator, and to work

with such officials to effectuate the transfer of court operations contemplated by this Ordinance.

SECTION 4: 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 13TH DAY OF SEPTEMBER 2021.

ATTEST:

CITY CLERK

PRESIDING OFFICER

APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

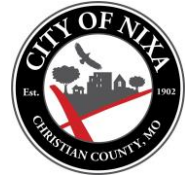
CITY ATTORNEY



Nixa Police Department

P.O. Box 395 / 715 W. Center Circle
Nixa, Missouri 65714

Emergency: 911 / Office: 417-725-2510 / Fax: 417-725-0915
www.nixapolice.com



To: Cindy Robbins
From: Chief Campbell
cc: Jimmy Liles, City Council, Mayor Steele
Date: 09/07/2021
Re: Officer Safety Equipment and Technology grant (OSET)

The Missouri Department of Public Safety has the funding opportunity for the SFY 2022 Officer Safety Equipment and Technology (OSET) Grant. This program is funded by the State of Missouri. The OSET grant opportunity provides resources to increase officer safety by providing funding for equipment and technology to law enforcement agencies. The maximum amount of grant funding available is \$7,500.00. This grant is non-matching. However, agencies must certify compliance with RSMO 590.1265 (Police Use of Force Act of 2021) to be eligible. The Nixa Police Department does meet this condition.

If approved, we will seek funds to purchase 24 protective helmets and 23 clear non-ballistic shields which would be used to protect officers who are dealing with large scale protests or riots. This equipment would be used locally as well as in incidents where we are called for mutual aid. Currently, we have no equipment of this type and have no money budgeted for this equipment. We have applied for various other grants to cover the costs of this equipment, but our agency was not selected based on priority. I am requesting permission to apply for and accept this equipment grant in the amount of \$7,498.53.

Respectfully,

Chief Campbell

1 **RESOLUTION NO. 2021-091**

2
3 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA**
4 **AUTHORIZING THE CITY ADMINISTRATOR TO APPLY FOR AND**
5 **ACCEPT AN OFFICER SAFETY EQUIPMENT AND TECHNOLOGY GRANT**
6 **PROVIDED BY THE MISSOURI DEPARTMENT OF PUBLIC SAFETY.**
7
8

9 **WHEREAS** the Officer Safety Equipment and Technology grant is provided by
10 the Missouri Department of Public Safety; and
11

12 **WHEREAS** this grant program provides resources to increase officer safety by
13 providing funding for equipment and technology to law enforcement agencies; and
14

15 **WHEREAS** City staff are requesting authorization to apply for up to \$7,498.53 in
16 said grant funding to purchase 24 protective helmets and 23 clear non-ballistic shields;
17 and
18

19 **WHEREAS** the City Council desires to authorize the City Administrator to apply
20 for and accept said grant funding.
21

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

25 **SECTION 1:** The City Administrator, or designee, is hereby authorized to apply
26 for and accept grant funding provided by the Missouri Department of Public Safety for
27 an Officer Safety Equipment and Technology grant in an amount up to \$7,498.53 to
28 purchase 24 protective helmets and 23 clear non-ballistic shields. The City
29 Administrator is authorized to do all things necessary or convenient to apply for and
30 accept said funding and to carry out the terms of this Resolution, including the execution
31 of documents required to obtain said funding.
32

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

38 **ADOPTED BY THE CITY COUNCIL THIS 13TH DAY OF SEPTEMBER 2021.**
39

40
41 **ATTEST:**
42

43 _____
44 **CITY CLERK**
45
46

PRESIDING OFFICER

47 **APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.**
48
49

50 **ATTEST:**
51

52 _____
53 CITY CLERK

MAYOR

54
55
56 **APPROVED AS TO FORM:**
57

58 _____
59 CITY ATTORNEY



Issue: **A RESOLUTION OF THE NIXA CITY COUNCIL ACCEPTING A PERFORMANCE SECURITY FROM A SUCCESSOR DEVELOPER OF THE AUBURN HEIGHTS SUBDIVISION FOR CERTAIN SIDEWALK IMPROVEMENTS**

Date: September 13, 2021

Submitted By: Garrett Tyson, Director of Planning and Development

Background

The Auburn Heights subdivision is a mixed-use major subdivision in the City of Nixa, Missouri containing 14 lots in the General Commercial (GC) and R-1 Single-Family zoning districts.

The preliminary plat of the Auburn Heights subdivision was approved in January 2020 and a financial security for the value of all planned public improvements was provided for in the form of an irrevocable letter of credit (ILOC) to allow for the filing of the final plat according to the provisions of Section 115-76 of the Nixa City Code. The final plat of the Auburn Heights subdivision was recorded in June 2020. Section 115-76 allows for the developer to complete the required public improvements within one year of the filing of the ILOC or else the City will utilize the secured funds to complete it.

An extension of the timeframe to complete the public improvements for this subdivision was authorized by the City Council in April 2021. The developer is nearly complete with the required public improvements and has until November 2021 to do so. The 12 single-family residential lots have been sold to a homebuilder who intends to commence construction on all 12 lots immediately. Six single-family residential building permits have already been issued to this homebuilder.

In an effort to avoid wasting nearly \$10,000 of materials and labor on sidewalk that will subsequently be damaged and replaced by the homebuilder, an ILOC has been submitted to the City by the homebuilder as a "successor developer" so that the original developer may be released from the obligation of constructing the sidewalks before the upcoming November deadline.

Analysis

Section 115-80 of the Nixa City Code authorizes the transfer of responsibility for public improvements from one developer to a successor developer upon the acceptance of a financial security of those public improvements.

Presently, the original developer of the Auburn Heights subdivision is required to construct sidewalks within the next several weeks before being released from their obligations to the City. However, in this case, there is good reason to believe that this sidewalk will almost immediately be destroyed by the homebuilder in the process of building the homes and then subsequently replaced



within months. Because we are aware of the high probability of this wasteful outcome, City staff is motivated to find ways to avoid it.

Allowing the original developer to transfer the responsibility for the sidewalks to the homebuilder and accepting an ILOC for the full value of those sidewalks will avoid the waste of the sidewalks. The homebuilder has already submitted an ILOC for the full value of the sidewalks and this resolution will authorize the acceptance of the security and the transfer of the responsibility for the sidewalks. The original developer will remain responsible for all remaining public improvements and the City is still holding a security for that work.

Recommendation

Staff recommends the approval of this resolution.

RESOLUTION NO. 2021-092

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA DESIGNATING
LINVILLE CONSTRUCTION, LLC, AS THE SUCCESSOR DEVELOPER
PURSUANT TO SECTION 115-80 OF THE NIXA CITY CODE FOR CERTAIN
IMPROVEMENTS RELATED TO THE AUBURN HEIGHTS SUBDIVISION.**

WHEREAS City Council, by the passage of Resolution No. 2020-011 on January 13, 2020, approved the Preliminary Plat for the Auburn Heights Subdivision; and

WHEREAS section 115-76 of the Nixa City Code allows for the approval of a final plat, before the installation of required public improvements, provided that the developer furnishes sufficient security; and

WHEREAS a final plat for the Auburn Heights Subdivision was recorded on June 5, 2020; and

WHEREAS the City Council previously granted an extension of the timeframe to complete the public improvements for the subdivision by the passage of Resolution No. 2021-043 on April 26, 2021; and

WHEREAS to avoid wasting nearly \$10,000 of materials and labor on the required sidewalk improvements due to the anticipated construction activities of the homebuilder, an irrevocable letter of credit has been provided by a homebuilder along with a request to be designated the successor developer of the sidewalk improvements; and

WHEREAS pursuant to Section 115-80, the City Council is authorized to designate "successor developers" for certain public improvements when title to the parcels in a subdivision has been transferred from the original developer; and

WHEREAS the Council desires to accept the irrevocable letter of credit provided by the homebuilder and desires to designate said homebuilder as the "successor developer" for purposes of the sidewalk improvements requires as part of the Auburn Heights Subdivision.

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

SECTION 1: The City Council, pursuant to Section 115-80 of the Nixa City Code, hereby transfers the responsibility of completing the sidewalk improvements required as part of the Auburn Heights Subdivision, said improvements being shown on the preliminary plat of said subdivision, approved by Resolution No. 2020-011, and on the final plat for said subdivision which was recorded with the Christian County Recorder of Deeds on or about June 5, 2020, to Linville Construction, LLC, who shall hereafter be considered the successor developer for said improvements.

RESOLUTION NO. 2021-092

SECTION 2: Additionally, City Council accepts the irrevocable letter of credit submitted by said successor developer for said improvements. Said irrevocable letter of credit is attached hereto as "Resolution Exhibit A," and is hereby incorporated herein by this reference. Pursuant to section 115-76 of the Nixa City Code, the Council hereby extends the extends the deadline for completion of said sidewalk improvements to September 1, 2022.

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

ADOPTED BY THE COUNCIL OF THE CITY OF NIXA THIS 13TH DAY OF SEPTEMBER 2021.

ATTEST:

CITY CLERK

PRESIDING OFFICER

APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

ORIGINAL



IRREVOCABLE LETTER OF CREDIT

Borrower: LINVILLE CONSTRUCTION LLC
PO BOX 1635
NIXA, MO 65714

Lender: OakStar Bank
NIXA LPO
1020 E Battlefield
Springfield, MO 65807

Beneficiary: CITY OF NIXA
715 W MT VERNON, PO BOX 395
NIXA, MO 65714

NO.: 9021930

EXPIRATION DATE. This letter of credit shall expire upon the close of business on 09-01-2022 and all drafts and accompanying statements or documents must be presented to Lender on or before that time (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Nine Thousand Seven Hundred Seventy-nine & 00/100 Dollars (\$9,779.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions:

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER OakStar Bank IRREVOCABLE LETTER OF CREDIT NO. 9021930 DATED 09-01-2021," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. The right to draw under this Letter of Credit shall be nontransferable, except for:

- A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and
- B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Missouri without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of Missouri.

EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

Loan No: 9021930

IRREVOCABLE LETTER OF CREDIT
(Continued)

Page 2

Dated: September 1, 2021

LENDER:

OAKSTAR BANK

By: 

Lance Pearce, Nixa Market President

ENDORSEMENT OF DRAFTS DRAWN:

Date	Negotiated By	Amount In Words	Amount In Figures
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PROPOSAL AND CONTRACT



A CRH COMPANY

APAC-CENTRAL, INC.

P.O. BOX 1187
SPRINGFIELD, MO 65801
PHONE: (417) 868-6700
FAX: (417) 868-6785

SUBMITTED TO: BT & TD INVESTMENTS
ATTEN: BILLY

DATE: 01/11/2021
JOB: AUBURN HEIGHTS
SUBDIVISION

PHONE:
FAX:

PROPOSAL #: 278649
ADDENDUM #:
ESTIMATOR: DARRIN BEESON
CELL PHONE: (417) 207-0934
EMAIL: darrin.beeson@apac.com

Item	Description	Quantity	Unit	Unit Price	Total
10	6/4/2 STREET PAVING	1.000	LS	\$52,875.00	\$52,875.00
ABOVE PRICING INCLUDES FINE GRADE, 6" BASE ROCK, 4" BITUMINOUS BASE ASPHALT, TACK COAT AND 2" SURFACE ASPHALT.					
20	30" CURB & GUTTER	1.000	LS	\$20,150.00	\$20,150.00
ABOVE PRICING INCLUDES 6" BASE ROCK AND 2'-6" NON-REINFORCED CONCRETE CURB & GUTTER.					
30	5' SIDEWALK	1.000	SF	\$8,890.00	\$8,890.00
ABOVE PRICING INCLUDES 2" BASE ROCK UNDER SIDEWALK AND 5' WIDE 4" THICK NON-REINFORCED SIDEWALK WITH (3) HANDICAP RAMPS.					
Total					\$81,915.00

Thank you for your business!

THE REQUIRED GRADE STAKING FOR THE ABOVE WORK TO BE FURNISHED BY OTHERS.

PROPOSED SCOPE OF WORK AND LIMITS PER ATTACHED PLAN SHEET.

THIS PROPOSAL INCLUDES PRICING THAT IS BASED ON 1 MOBILIZATION. ADDITIONAL MOBILIZATIONS WILL BE CHARGED AT \$3,000.00 EACH.

ITEMS NOT INCLUDED- REMOVALS, SUBGRADE COMPACTION, PERMITS, TESTING, SURVEY, STAKING, BOND, STRIPING, SIGNS, UTILITY ADJUSTMENTS, TRAFFIC CONTROL, BACKFILL, GRADING, SAWCUTTING, DUST CONTROL & SUPPRESSION, SEEDING, EROSION CONTROL, HERBICIDE, PEDESTRIAN SEGREGATION, PREVAILING WAGES AND ANYTHING NOT SPECIFICALLY STATED ABOVE.

PRICE ESCALATION CLAUSE FOR WORK PERFORMED AFTER JUNE 2021. THE PRICES IN THIS QUOTE ARE BASED ON CERTAIN UNIT COSTS FOR FUEL, LIQUID ASPHALT, AGGREGATES AND CEMENT CHARGED TO APAC. THE AMOUNT DUE TO APAC SHALL BE EQUITABLY ADJUSTED TO REFLECT ANY INCREASES IN THE UNIT COSTS THAT APAC IS CHARGED FOR THESE MATERIALS. INCREASES IN FUEL, LIQUID ASPHALT, AGGREGATES, AND CEMENT WILL BE CALCULATED ON A MONTHLY BASIS BASED ON THE AVERAGE OF THE AMOUNTS CHARGED TO APAC DURING THAT MONTH. FOR LIQUID ASPHALT, AGGREGATES AND CEMENT, THE NUMBER SHALL BE BASED ON THE ACTUAL QUANTITY OF MATERIAL USED FOR THE WORK THAT MONTH, BUT THE QUANTITY OF FUEL IN GALLONS IS ESTIMATED TO BE 2.6 TIMES THE TONS OF ASPHALT APAC LAID ON THE PROJECT THAT MONTH. ALL PRICING IS SUBJECT TO A FUEL SURCHARGE.

BOND IS NOT INCLUDED IN THE ABOVE PRICES. IF BOND IS REQUIRED PLEASE CALL FOR A PRICE. OWNER PROTECTIVE INSURANCE IS NOT INCLUDED. IF REQUIRED PLEASE ADD \$3,000.00 TO THE ABOVE PRICES.

APAC RESERVES THE UNILATERAL RIGHT TO REFUSE TO CONDUCT ASPHALT PAVING IF THE OUTSIDE TEMPERATURE IS BELOW 50°F OR IF, IN APAC'S SOLE DISCRETION, WEATHER CONDITIONS ARE NOT SUITABLE FOR ASPHALT PAVING. IF OWNER/PRIME CONTRACTOR REQUESTS APAC TO PERFORM ASPHALT PAVING AFTER RECEIVING NOTICE OF AN UNSUITABLE TEMPERATURE AND/OR UNSUITABLE WEATHER CONDITIONS, THEN OWNER/PRIME CONTRACTOR HEREBY AGREES TO RELEASE APAC FROM ANY AND ALL LIABILITY AND/OR COSTS OR DAMAGES CAUSED BY OR RESULTING FROM SUCH ASPHALT PAVING.

APAC WILL NOT BE RESPONSIBLE FOR POTENTIAL ALTERATIONS IN STORM WATER RUNOFF AS A RESULT OF THE ASPHALT PAVING OR OVERLAY UNLESS SPECIFICALLY STATED IN THIS CONTRACT. THE OWNER/ CONTRACTOR IS ADVISED TO SEEK RECOMMENDATIONS FROM A STORM WATER EXPERT PRIOR TO CONTRUCTION.

CONSTRUCTION OF THE PAVING PROJECT WILL REQUIRE THE USE OF LOADED TRUCKS AND HEAVY EQUIPMENT. APAC DOES NOT ASSUME RESPONSIBILITY FOR ANY STRUCTURAL DAMAGE DONE TO EXISTING CONDITIONS FROM THE WEIGHT OF THE TRUCKS AND EQUIPMENT USED TO CONSTRUCT THE PROJECT.

WE RESERVE THE RIGHT TO NEGOTIATE AND TO AGREE TO THE TERMS AND CONDITIONS OF YOUR SUBCONTRACT.

WE HEREBY OFFER TO FURNISH ALL LABOR, MATERIALS AND EQUIPMENT FOR THE PERFORMANCE OF THE ABOVE DESCRIBED WORK. IT IS UNDERSTOOD AND AGREED THAT THE QUANTITIES REFERRED TO ABOVE ARE ESTIMATES ONLY AND THAT PAYMENT SHALL BE MADE AT THE STATED UNIT PRICE FOR ACTUAL QUANTITIES OF WORK PERFORMED BY APAC.

NOTE: THIS PROPOSAL EXPIRES TEN (10) DAYS FROM THE EFFECTIVE DATE OF THIS PROPOSAL.

IF TAX EXEMPT PLEASE SEND CERTIFICATES.

APAC-CENTRAL, INC.

BY:  DATE: 01/11/2021
DARRIN BEESON

IF THIS MEETS YOUR ACCEPTANCE, INCLUDING THE TERMS AND CONDITIONS ON THE NEXT SHEET, SIGN AND RETURN THE ATTACHED COPY OF THIS PROPOSAL. THE PERSON SIGNING FOR YOU REPRESENTS THAT HE OR SHE IS FULLY AUTHORIZED TO ENTER INTO THIS AGREEMENT.

ACCEPTED: _____ BY: _____
(FIRM NAME)

DATE ACCEPTED: _____

TERMS AND CONDITIONS

Payment in full for all work performed during any month shall be made not later than the tenth (10th) day of the month next following. Final and complete payment for all work performed hereunder shall be made not later than fifteen (15) days after the completion of such work. Interest at the highest rate allowable under the laws of the state in which the work is done, or one and one half percent (1 1/2%) per month, whichever is less, shall be charged and paid on all unpaid balances from the due date to the date we receive payment. You agree to pay in full all cost and expenses incurred by APAC in collecting the amounts owed by you under the Agreement, including any and all court costs and attorneys' fees. Payment received will be applied against open items on unpaid invoices in an order and sequence determined by APAC in its sole discretion. Any monies paid to you for our work shall be held in trust for our benefit.

We shall not become obligated to perform the work called for under this Proposal and Contract until we check and approve your credit. This Proposal and Contract shall be null and void if your credit is not approved. If credit conditions become unsatisfactory at any time prior to our completion of the work hereunder, you will furnish adequate security upon our request. To the extent you fail to provide adequate security, we may stop work.

This document is the full agreement between us, regardless of any prior proposals or communications. Any deviations from the specifications or modification of the terms of this contract and any extra or incidental work,

or reductions in work, shall be set forth in writing and signed by both parties prior to the making of such change. We will be compensated for any increase in our costs caused by such change, on the basis of the increase plus ten percent (10%) profit. If a time is set for the performance of work, and if, in our judgment, such change or other circumstances beyond our reasonable control will increase the time necessary for our performance, we will be granted a reasonable extension of time.

We will provide and pay for Workers' Compensation covering our employees, as well as General Liability and Property Damage Insurance. You agree to carry General Liability and Property Damage Insurance sufficient to protect yourself against any and all claims and liabilities arising from the performance of the work, including but not limited to claims arising under your agreement to indemnify and hold us harmless under this contract.

We shall be provided with suitable access to the work area. If our work is dependent upon or must be undertaken in conjunction with the work of others, such work shall be so preformed and completed as to permit us to perform our work hereunder in a normal uninterrupted single operation.

Unless a time for the performance of our work is specified, we shall undertake it in the course of our normal operating schedule. We shall not be liable for any failure to undertake or complete the work for causes beyond our control and we may suspend the work for causes beyond our control, including but not limited to fire, flood or other casualty; the presence on or beneath the work site of utilities, facilities, substances, or objects, including but not limited to any substance that in our opinion is hazardous or toxic or the reporting, remediation, or clean-up of which is required by any law or regulation (together "subsurface conditions"); labor disputes or other disagreements; and accidents or other mishaps, whether affecting this work or other operations in which we are involved, directly or indirectly.

If for causes beyond our reasonable control our work is not completed within twelve (12) months after the date of your acceptance of the proposal, we may cancel this agreement at any time thereafter on ten (10) days notice. In such event (i) we shall be relieved of any further obligation with respect to the balance of the work; and (ii) we shall be entitled to receive final and complete payment for all work performed by us to date of cancellation within fifteen (15) days thereafter.

We shall not be responsible for, and you agree to indemnify and hold us harmless from, any suit, claim, liability, cost or expense arising from or in any way related to: sidewalks, driveways or other improvements located within our work area or designated areas of access, and to adjacent property and improvements; subsurface conditions; and any and all other alleged damages to persons or property, including but not limited to personal injury and death, arising from the performance of the work, unless such alleged damages arise from our sole negligence. You further agree to indemnify and protect us and save us harmless from any and all loss, damage, cost, expenses and attorney's fees suffered or incurred on account of your breach of any obligations and covenants of this contract. It is further understood that we shall not be responsible for any damage to or deterioration of any of our work, whether completed or in process, resulting from any cause or causes beyond our reasonable control, including but not limited to design, failure of subgrade or other subsurface conditions, or failure or inadequacy of any labor or materials not furnished and installed by us, whether or not such failure or inadequacy was or could have been known at the time our work was undertaken. You agree that the proper jurisdiction and venue for adjudication concerning this contract is Greene County, Missouri, and you waive any right to jurisdiction and venue in any other place.

NOTICE TO OWNER... FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429 RSMo. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED ON THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

GENERAL NOTES:

1) IT IS THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE EXACT HORIZONTAL AND VERTICAL LOCATION OF EXISTING UNDERGROUND FACILITIES PRIOR TO BEGINNING INSTALLATION OF NEW FACILITIES. CONTACT THE ENGINEER FOR INSTRUCTIONS WHEREVER ANY CONFLICTS ARE DISCOVERED.

2) IT IS THE CONTRACTOR'S RESPONSIBILITY TO CORRECT ANY DAMAGE TO UNDERGROUND UTILITIES OR OTHER OBSTRUCTIONS WHICH IS DUE TO HIS OPERATIONS.

3) THE CONTRACTOR SHALL STRICTLY COMPLY WITH ALL OSHA SAFETY RULES AND REGULATIONS AND USE ONLY APPROVED EQUIPMENT REQUIRED FOR THE PERFORMANCE OF THE WORK. THE CONTRACTOR SHALL ALSO STRICTLY COMPLY WITH ALL OSHA SAFETY RULES AND REGULATIONS AND USE ONLY APPROVED METHODS OF EXCAVATION TRENCHING AND SHORING METHODS AS DESCRIBED IN OSHA 29 CFR 1926.650. THE CONTRACTOR SHALL MAINTAIN AND CLOSELY SUPERVISE ALL SAFETY PRACTICES AND CODES.

4) FOR SITES WHERE 1 OR MORE ACRES WILL BE DISTURBED, A GENERAL PERMIT FOR LAND DISTURBANCE ACTIVITY MUST BE OBTAINED FROM THE MISSOURI DEPARTMENT OF NATURAL RESOURCES BEFORE CONSTRUCTION CAN BEGIN. IT IS THE DEVELOPER'S RESPONSIBILITY TO OBTAIN THIS PERMIT.

5) OTHER PERMITS MAY BE REQUIRED FOR THIS CONSTRUCTION. IT IS THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE WHICH PERMITS ARE APPLICABLE AND TO OBTAIN ANY APPLICABLE PERMITS NOT PROVIDED BY THE DEVELOPER.

6) THE CONTRACTOR AND/OR BUILDER WILL KEEP THE PROJECT AREA NEAT AND ORDERLY AT ALL TIMES WHILE BUILDING IS TAKING PLACE. ACCESS STREETS TO THE PROJECT SHALL BE KEPT CLEAN OF MUD, DEBRIS, PAPER AND WASTE MATERIAL AT ALL TIMES. CONTRACTOR SHALL PROVIDE GRAVEL CONSTRUCTION ENTRANCES AT EACH ACCESS POINT.

7) IF THE CONTRACTOR'S OPERATIONS REQUIRE WORK ON OR ACCESS ACROSS PRIVATE PROPERTY, IT IS THE CONTRACTOR'S RESPONSIBILITY TO OBTAIN WRITTEN PERMISSION FROM THE PROPERTY OWNER TO ENTER THE PROPERTY AND TO REPAIR ANY DAMAGE TO PRIVATE PROPERTY CAUSED BY HIS OPERATIONS.

8) AT THE START OF CONSTRUCTION, OR WHENEVER WORK HAS BEEN SUSPENDED, THE CONTRACTOR SHALL CONTACT THE CITY OF NIXA PUBLIC WORKS DEPARTMENT AT LEAST 24 HOURS PRIOR TO WORKING AT THE SITE. FAILURE TO DO SO MAY RESULT IN REJECTION OF ANY WORK COMPLETED PRIOR TO CONTACT.

9) CONSTRUCTION ACCESS TO THE SITE SHALL BE LIMITED TO THE APPROVED TEMPORARY CONSTRUCTION ENTRANCE(S) SHOWN ON THE SEDIMENT & EROSION CONTROL PLAN (SECP).

10) ALL DISTURBED AREAS SHALL BE STABILIZED IN ACCORDANCE WITH THE APPROVED SEDIMENT & EROSION CONTROL PLAN (SECP).

11) THE CONTRACTOR SHALL MINIMIZE DISTURBED AREA AND PHASE CONSTRUCTION SUCH THAT NO DISCHARGE OF SEDIMENT OR SEDIMENT-LADEN WATER OCCURS ON OFF-SITE PROPERTY. ANY ACCUMULATED SEDIMENT IN STORM DRAINS OR OFF-SITE PROPERTY SHALL BE REMOVED PRIOR TO FINAL ACCEPTANCE.

12) THE CONTRACTOR SHALL CLEAN STREETS, BOTH INTERIOR AND ADJACENT TO THE SITE, AS NEEDED, AFTER EACH RAINFALL, AND AT THE END OF CONSTRUCTION.

13) THE CONTRACTOR IS REQUIRED TO RETAIN FLOATABLE WINDBLOWN MATERIALS ON SITE BY STORING ALL TRASH AND BUILDING MATERIAL WASTE IN ENCLOSURES UNTIL PROPER DISPOSAL AT OFF-SITE FACILITIES. CONTRACTOR IS REQUIRED TO CHECK ADJACENT AREAS DAILY AND PICK UP CONSTRUCTION WASTE MATERIALS AND DEBRIS THAT HAVE BLOWN OR WASHED OFF-SITE.

14) THE CONTRACTOR SHALL VISIT THE SITE AND BECOME FULLY FAMILIAR WITH ALL OF THE CONDITIONS THAT PERTAIN TO THE WORK DESCRIBED HEREIN. THE FAILURE TO UNDERSTAND OR TO HAVE KNOWLEDGE OF ISSUES THAT COULD HAVE BEEN DETERMINED PRIOR TO BIDDING WILL NOT CONSTITUTE GROUNDS FOR ASKING FOR WORK CHANGE ORDERS OR EXTRA WORK.

15) MANHOLE COVERS, VALVE BOXES, AND OTHER UTILITY APPURTENANCES SHALL NOT ENROACH ON SIDEWALKS, CURBS OR PAVEMENT. WHERE CONFLICTS ARE DISCOVERED, THE CONTRACTOR SHALL CONTACT THE ENGINEER FOR INSTRUCTIONS PRIOR TO PROCEEDING.

16) CONTRACTOR IS REQUIRED TO TAKE CARE NOT TO DAMAGE ANY EXISTING STREET, CURB & GUTTER, SIDEWALK AND DRIVEWAY DURING CONSTRUCTION.

17) THE CONTRACTOR IS RESPONSIBLE FOR REPAIRING ANY DAMAGE TO CURB AND PAVEMENT BACK TO CITY SPECIFICATIONS.

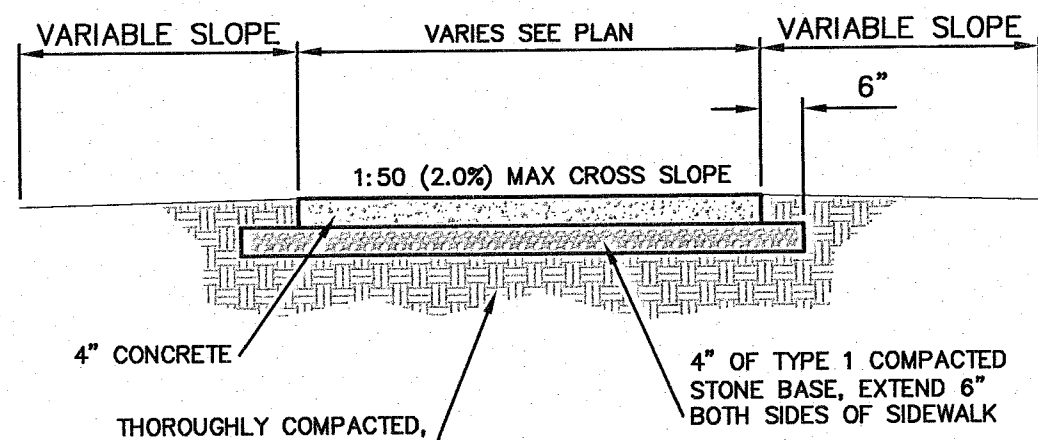
18) CONTRACTOR IS REQUIRED TO KEEP THE ROCK, MUD AND DIRT OFF OF ALL ROADWAYS DURING CONSTRUCTION.

19) CLOSURE OF ALL OLD DRIVEWAY ENTRANCES IS TO BE REPLACED WITH CURB & GUTTER, SIDEWALK AND GRASS IF REQUIRED.

20) ALL WORK SHALL BE IN CONFORMANCE WITH THE CITY OF NIXA GENERAL CONDITIONS AND TECHNICAL SPECIFICATIONS, CITY OF NIXA STANDARD DRAWING DETAILS, AND CITY OF NIXA DESIGN STANDARDS.

Road Centerline Line Table			
Line #	Length	Direction	
L1	39.14	N87° 25' 58"E	
L2	153.04	S88° 12' 20"E	
L3	145.19	N1° 47' 40"E	

Road Centerline Curve Table			
Curve #	Length	Radius	Delta
C1	60.48	38.50	90°00'00"



SIDEWALK SECTION
NTS

- JOINTS SHALL BE FORMED AT RIGHT ANGLES TO THE ALIGNMENT OF THE SIDEWALK.
- THE SIDEWALK SHALL BE MARKED OFF INTO SQUARE SOLES BY CONTRACTION JOINTS. CONTRACTION JOINTS SHALL BE ONE-EIGHT (1/8) INCH WIDE (MIN.) BY ONE (1) INCH DEEP AND SHALL BE FORMED BY TOOLING.
- EXPANSION JOINTS SHALL BE FORMED BY A ONE-HALF (1/2) INCH THICK PREFORMED JOINT FILLER, EXTENDING THE FULL DEPTH OF THE SLAB, AND SECURED SO THAT THE JOINT FILLER IS NOT MOVED BY DEPOSITING AND COMPACTING THE CONCRETE AT THESE JOINTS.
- EXPANSION JOINTS SHALL BE PLACED WHERE SIDEWALK ABUTS TO OTHER STRUCTURES AND SHALL NOT BE SPACED MORE THAN FIFTY (50) FEET APART ON STRAIGHT RUNS FOR LAID SIDEWALK AND NOT MORE THAN ONE HUNDRED (100) FEET APART ON STRAIGHT RUNS FOR MACHINE LAID SIDEWALKS.

OWNERS:

FAYE H. SOUTER TRUST DATED MAY 24, 1989
FAYE H. SOUTER, TRUSTEE
ROBERT L. SOUTER TRUST DATED MAY 24, 1989
ROBERT L. SOUTER, TRUSTEE
5832 S MIDDLETON AVE
SPRINGFIELD, MISSOURI 65804

ZONING:

CURRENT: G-C
PROPOSED: LOTS 1-11: R-1
LOT 12: G-C

BENCHMARK:

NAIL IN POWER POLE IN PROPOSED LOT 4,
~200' SOUTHEAST OF THE EXISTING HOUSE
@ 1432 W MT VERNON ST.

ELEVATION: 1314.63 (NAVD 1988)

FLOOD NOTE:

This property lies in Flood Zone "A" (areas determined to be within the Flood Hazard Area) with no Base Flood Elevation determined, according to FIRM Community Panel 29043C 0065 C, effective December 17, 2010.



UTILITY CONTACTS:

- LOCAL PUBLIC WORKS
NIXA PUBLIC WORKS
DIRECTOR: DOUG GALVIN
1010 N. EAGLECREST
NIXA, MO, 65714
PHONE 417-725-2353
- LOCAL WATER COMPANY
NIXA PUBLIC WORKS
JASON STUTESMUN
1010 N. EAGLECREST
NIXA, MO, 65714
PHONE 417-725-2353
- LOCAL SEWER COMPANY
NIXA PUBLIC WORKS
BRIAN DENNEY
1010 N. EAGLECREST
NIXA, MO, 65714
PHONE 417-725-2353
- LOCAL ELECTRIC COMPANY
NIXA ELECTRIC DEPARTMENT
BRIAN DENNEY
1111 W. KATHRYN
NIXA, MO, 65714
PHONE 417-725-2353
- LOCAL ELECTRIC COMPANY
OZARK ELECTRIC CO-OP
LOKAN HAYDEN
2007 JAMES RIVER CT
NIXA, MO, 65714
PHONE 417-725-5160
- LOCAL GAS COMPANY
SPIRE
PHONE 800-582-1234
- LOCAL COMMUNICATIONS
AT&T
CINDY JEFFERS
PHONE 417-836-7383
- LOCAL COMMUNICATIONS
SUDDENLINK COMMUNICATIONS

STORM MINIMUM FINISHED FLOOR CHART		
LOT #	MIN. FF	
12	1297.00	

DEVELOPER:

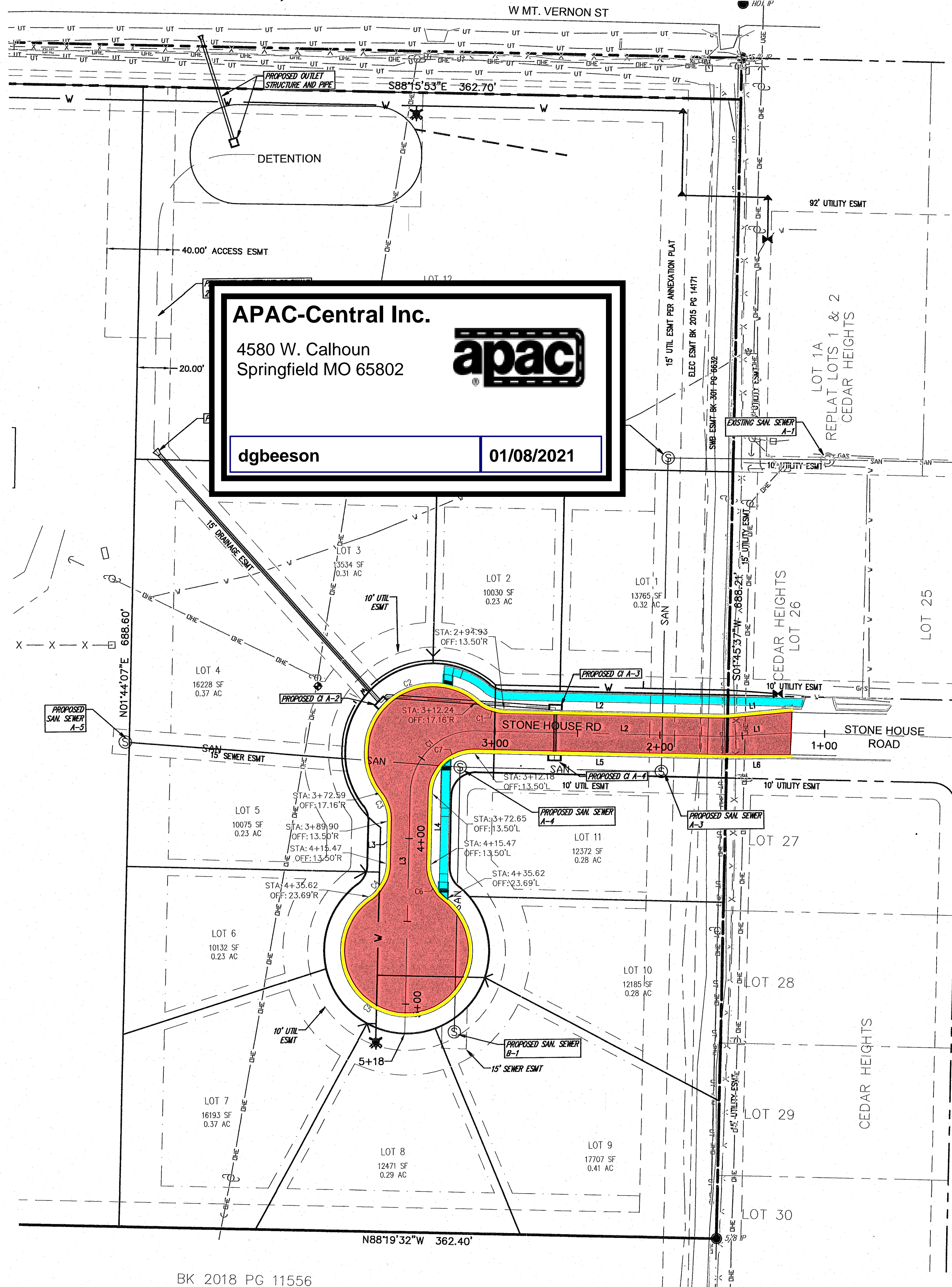
LT DEVELOPMENTS LLC
1200 E. WOODHURST, UNIT D200
SPRINGFIELD, MISSOURI 65804

COVER SHEET

PAVING, DRAINAGE, & SEWER PLANS FOR

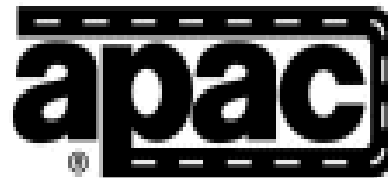
AUBURN HEIGHTS SUBDIVISION

NIXA, CHRISTIAN COUNTY, MISSOURI



APAC-Central Inc.

4580 W. Calhoun
Springfield MO 65802

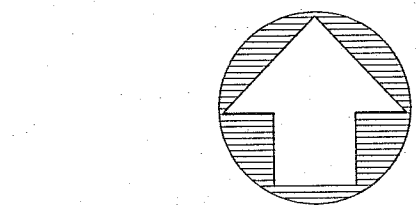


dgbeeson

01/08/2021

SHEET INDEX

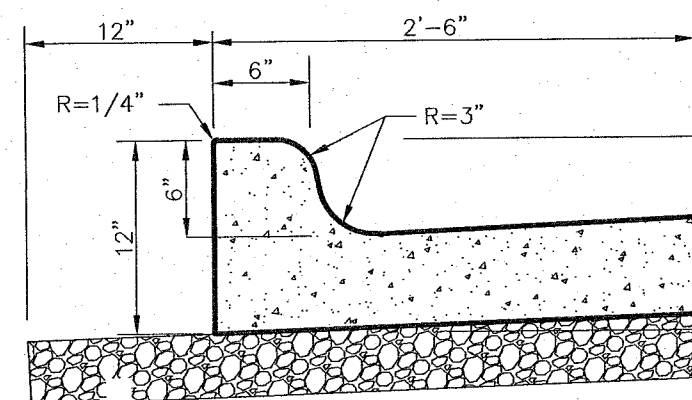
- COVER SHEET
- DEMOLITION PLAN
- STONE HOUSE ROAD PLAN AND PROFILE
- CUL-DE-SAC AND BULB DETAILS
- GRADING PLAN
- CONSTRUCTION DETAILS
- SEDMENT AND EROSION CONTROL PLAN
- WATER PLANS
- WATER PLAN DETAILS
- STORM LINE A PLAN AND PROFILE
- DETENTION PLAN
- SANITARY SEWER COVER
- SANITARY SEWER LINES A & B PLAN & PROFILE
- SANITARY SEWER DETAILS



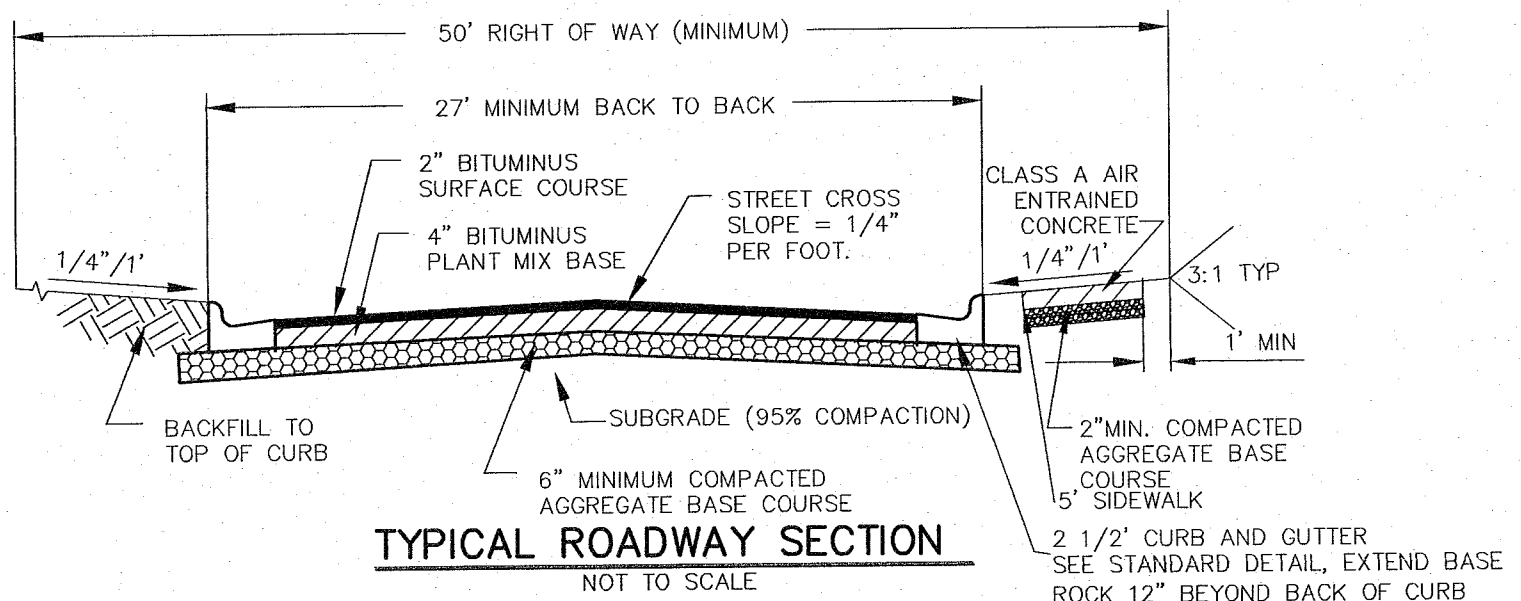
(IN FEET)
1 inch = 40 ft.

Curb Line Table			
Line #	Length	Direction	
L1	39.92	S85° 00' 05"W	
L2	135.27	N88° 12' 20"W	
L3	25.57	S1° 47' 40"W	
L4	42.82	N1° 47' 40"E	
L5	153.55	S88° 12' 20"E	
L6	35.06	S89° 41' 27"E	

Curb Curve Table			
Curve #	Length	Radius	Delta
C1	17.06	25.00	39°05'36"
C2	123.29	42.00	168°11'12"
C3	17.06	25.00	39°05'36"
C4	23.42	25.00	53°40'45"
C5	198.11	39.50	287°21'29"
C6	23.42	25.00	53°40'45"
C7	39.27	25.00	90°00'00"



CATCH CURB AND GUTTER SECTION
NOT TO SCALE



TYPICAL ROADWAY SECTION
NOT TO SCALE

NOTE: CURBS SHALL HAVE EXPANSION JOINT EVERY 200' AND BE SAWCUT EVERY 20' AND FILLED WITH SONNORBONE SONOLASTIC SL1 OR NP.

CITY OF NIXA
OFFICIAL
PLAN APPROVAL

Planning
Water/Sewer
Electric
Streets
Stormwater

COVER SHEET

DATE: 2020-01-31

SCALE: 1" = 40'

FIELD BY: TS, JS

DRAWN BY: ACW

CHECKED BY: LEE

AUBURN HEIGHTS SUBDIVISION

W STONE HOUSE RD, NIXA, CHRISTIAN COUNTY, MISSOURI 65714

LEE Engineering & Associates, L.L.C.
1200 E. Woodhurst Dr., Suite D200
Springfield, Missouri 65807
417-886-9100 (phone)
417-886-9336 (fax)
lee@leeengineering.biz

MISSOURI STATE CERTIFICATE OF AUTHORITY
Engineering #2005015604
Land Surveying #2009028050

DEREK A. LEE
REGISTERED PROFESSIONAL ENGINEER
E-30416

01/31/2020

DATE: 2020-01-31

SHEET: 1 OF 14

PROJECT: 1918

FILE: 1918 - Street - Turner Nixa.dwg



Issue: A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A CONTRACT WITH COMMERCE BANK FOR PURCHASING CARD SERVICES.

Date: SEPTEMBER 7, 2021

Submitted By: Jennifer Evans, Director of Finance

Background

The City submitted an RFP (Request for Proposal) for Banking and Purchasing Card services on July 15, 2021. This request was structured in such a way as to allow the City to contract with two separate banks – one for banking services and one for purchasing card services if it was most advantageous to the City.

Analysis

After reviewing all proposals, Commerce Bank was selected for their Purchasing Card Program based on an evaluation of qualifications. This contract will go into effect October 1, 2021 for an initial three year term with two optional one year extensions.

Recommendation

Staff recommends the passage of this resolution.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA ACCEPTING
THE PROPOSAL OF COMMERCE BANK FOR PURCHASING CARD
SERVICES AND AUTHORIZING THE CITY ADMINISTRATOR
TO EXECUTE A CONTRACT FOR SAME.**

WHEREAS City staff, pursuant to the City's adopted purchasing procedures (Resolution 2019-113), as amended, have solicited proposals from qualified firms for the provisions of Purchasing Card services on behalf of the City; and

WHEREAS after reviewing all submitted proposals, City staff has determined that Commerce Bank ("Contractor") provided the best proposal for the service; and

WHEREAS City Council desires to award the Contract for the Project to the Contractor and to authorize the City Administrator to execute the Contract attached hereto as "Resolution Exhibit A."

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

SECTION 1: The City Administrator, or designee, is hereby authorized to enter into the Contract attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," on behalf of the City. Said Contract shall be in substantially similar form to the document attached hereto as "Resolution Exhibit A." The City Administrator is further authorized to do all things necessary or convenient to carry out the terms and intent of this Ordinance.

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

ADOPTED BY THE CITY COUNCIL THIS 13TH DAY OF SEPTEMBER 2021.

ATTEST:

CITY CLERK

PRESIDING OFFICER

RESOLUTION NO. 2021-093

47 **APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.**
48
49

50 **ATTEST:**
51

52 _____
53 **CITY CLERK**
54

MAYOR

55
56 **APPROVED AS TO FORM:**
57

58 _____
59 **CITY ATTORNEY**

RESOLUTION EXHIBIT A

**PROFESSIONAL SERVICES CONTRACT
Purchasing Card Services**

THIS PROFESSIONAL SERVICES CONTRACT ("Agreement") by and between Commerce Bank, located at 1345 E. Battlefield Rd., Springfield, MO, a banking institution ("Contractor") and the City of Nixa, a Constitutional Charter City of the State of Missouri ("City"), is made and entered into upon the date of execution of the Agreement by all parties.

WHEREAS City issued a Request for Proposals (RFP-042-2021/Finance) for professional services related to providing certain services to the City; and

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

WHEREAS after due consideration, the City has accepted the proposal of the Contractor; and

WHEREAS City and Contractor desire to enter into this Agreement whereby the Contractor shall undertake the performance of the services contemplated herein for Purchasing Card Services.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth, the City and the Contractor hereby agree as follows:

1) Contract Documents. This Agreement shall consist of the following documents, attachments, and exhibits:

- a. This Executed Agreement
- b. RFP-042-2021/Finance, and any addenda (Exhibit A)
- c. Appendix B - Purchasing Card Program

The Agreement shall also include any Exhibits incorporated by reference in the above-described documents. When any provisions of the Contract Documents conflict, the provision contained in RFP-042-2021/Finance shall control, followed by the Executed Agreement, then the Contractor's Schedule of Fees.

2) Term. The term of this Agreement shall be five years, beginning on the date of execution by both parties.

3) Scope of Services. The City agrees to engage the services of the Contractor and the Contractor agrees to perform the services hereinafter set forth in Exhibit B with the standard of care, skill, and expertise ordinarily used by other members of Contractor's profession in performing similar services.

Contractor represents and warrants that it is equipped, competent, and able to perform, and that it will perform all purchasing card services hereinafter set forth in a diligent and competent manner in accordance with the professional standard of care customarily recognized by members of the Contractor's profession.

Contractor shall provide all supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for

the proper completion of the services which are particularly described as set forth in RFP-042-2021/Finance (the "Services").

All Purchasing Card Services shall be performed and provided in conformance with all applicable policies of the City, and all applicable federal and state laws and regulations.

The City, upon agreement of the Contractor may add Services to the Scope of Services. Such added Services shall be evidenced by a written instrument signed by both parties. The City may delete items from the Scope of Services at any time and at the sole discretion of the City.

4) Compensation. The City hereby agrees to pay the Contractor, as full compensation for the complete and satisfactory performance of this Agreement such amounts as are set forth in the Contractor's Schedule of Fees, said Schedule being attached hereto and incorporated by this reference as "**Appendix B.**"

5) Attorney Fees' and Costs. The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity, or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

6) Other Representations, Warranties, and Other Covenants by the Contractor. The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Purchasing Card Services and has provided Services such as the ones to be performed under this Agreement to other municipalities or private enterprises and that the Contractor has sufficient expertise, knowledge, information, and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer.

7) Amendment; Waiver. No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

8) Contractor's Liability Insurance. The Contractor shall obtain and maintain during the term of this Agreement the insurance coverage's not less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo, as said section may be amended. Insurance policies providing the required coverages shall be with companies licensed to do business in the State of Missouri. All costs of obtaining and maintaining insurance coverages shall be borne by the Contractor.

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for the term of this Agreement.

Policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished to the City prior to Contractor commencing the Services. The certificates must list the City as an additional insured on a primary and non-contributory basis. Certificate Holder shall be listed as "City of Nixa, 715 W. Mt. Vernon, PO Box 395, Nixa MO 65714". The certificate shall bear an endorsement precluding cancellation of or change in coverage without at least thirty days written notice to the City.

9) Termination.

- a. Termination for breach.** Failure of the Contractor to fulfill any of Contractor's obligations under this Agreement in a timely and satisfactory manner shall constitute breach of this Agreement. The City shall thereupon have the right to immediately terminate this Agreement with sufficient notice. The City shall give written notice of the termination to the Contractor.
- b. Termination for Convenience.** The City shall have the right at any time to give sufficient written notice to Contractor to terminate and cancel this Agreement, without cause, for the convenience of the City, and Contractor shall immediately stop upon issuance of such notice. In such event, City shall not be liable to Contractor except for the payment for actual work performed prior to such notice.

10) Notices. Any notice required to be provided under this Agreement shall be sent via U.S. Mail or via e-mail. Notices shall be effective when received at the address as specified below. All such notices shall be sent to each party at the address below, or to such other address as designated by such party, in writing:

IF TO THE CITY: City of Nixa
 ATTN: Stephanie Ewing, Purchasing Manager
 PO Box 395
 Nixa, MO 65714
 E-mail: sewing@nixa.com

IF TO CONTRACTOR: Name & Title: _____
 Company Legal Name: _____
 Address: _____
 Email: _____

11) Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

Independent Contractor. Contractor shall be and operate as an independent contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of the Contractor and shall not be deemed employees of the City in any respect.

12) Compliance with Laws. Contractor shall comply with all applicable City Ordinances and all other applicable laws and regulations, whether State or Federal, including without limitation, unemployment and workers' compensation, occupational safety, equal employment, and wage and price laws, insofar as applicable to the performance of this Agreement.

13) Subcontracts and Assignment. The Contractor shall not subcontract or assign any of the Services to be performed by it hereunder without the express written consent of the City. In the event Contractor utilizes a subcontractor, the Contractor shall ensure that any agreement between Contractor and such subcontractor complies with all requirements imposed for such agreement by federal, state, and local law.

14) Indemnification.

In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this Contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this Contract. Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this Agreement, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this Agreement to Contractor.

Firm shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its Contract price. Contractor's obligation under this agreement to defend, indemnify and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance.

Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

15) Nondisclosure and Confidentiality. The Contractor agrees that it will preserve the confidentiality of all City data and account information and will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

16) Multi-year contracts and Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Non-appropriation"), this Agreement shall terminate at the end of the then current fiscal year as if terminated expressly and mutually by both parties. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party.

17) Accounting. During the term of this Agreement, the Contractor shall maintain books and

accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

18) Other Contractors. Nothing in this Agreement shall be construed as prohibiting the City from contracting with other Contractors to provide any of the Services provided for herein.

19) Work Records and Work Product. The Contractor shall provide the City with copies of all documents pertinent to the Purchasing Card Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Agreement. The Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. Upon termination of this Agreement, the Contractor shall promptly deliver to City any documents, and work product, whether printed or electronic.

20) Compliance with Immigration Statutes. Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.

21) Governing Law and Jurisdiction. This Agreement and every question arising hereunder shall be construed and determined according to the laws of the State of Missouri. Should any part of this Agreement be litigated, venue shall be proper only in Christian County, Missouri.

22) Discrimination. Contractor agrees that, in the performance of this Agreement, not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

23) Entire Agreement. This Agreement, including Exhibit B, shall constitute the

Agreement between the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing and specifically referring hereto.

24) City's Representative. The City Administrator is hereby designated as the City's authorized representative for purposes of this Agreement. The City Administrator is charged with providing any approvals and exercising any rights of the City under this Agreement, including the approval of any renewal terms contemplated herein.

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

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRACTOR:

CITY OF NIXA, MISSOURI

Signature.

Jimmy Liles, City Administrator

Printed Name.

Approved as to form:

Title

Nick Woodman, City Attorney

Date.

CERTIFICATE OF FINANCIAL OFFICER

ATTEST:

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

Signature.

Name.

Jennifer Evans, Director of Finance

Title.

Date

**REQUEST FOR PROPOSALS (RFP) TO PROVIDE BANK DEPOSITORY
SERVICES**

RFP #: RFP-042-2021/Finance

OWNER: City of Nixa

CONTACT: Stephanie Ewing, Purchasing Manager

PHONE: 417-449-0555

SERVICE: Bank Depository Services

ISSUE DATE: July 15, 2021

DELIVERY ADDRESS: Nixa Public Works
Stephanie Ewing 1111 W. Kathryn
Nixa, MO 65714

BID OPENING DATE: August 16, 2021 @ 10:00 AM CDT

SUBMITTING A PROPOSAL: A vendor submitting a Proposal as part of this Request for Proposal ("RFP") shall follow the instructions below. Failure to adhere to these instructions may lead to rejection of Proposal.

Proposals must be submitted in a sealed container box, envelope, etc., addressed in the following manner:

Middle of Envelope: City of Nixa Purchasing
Attn: Stephanie Ewing
1111 W. Kathryn
P.O. Box 395
Nixa, MO 65714

Bottom Right Envelope: RFP- 042-2021/Finance
August 16, 2021 @10:00AM

Vendor must submit one (1) original, bound copy and one (1) electronic copy signed in ink by a person authorized to bind company in agreements.

All proposals, whether mailed or hand delivered, must be received at the above address no later than August 16, 2021 @ 10:00 AM (local time). Method of delivery is at the sole discretion and risk of the vendor. Vendors mailing their proposals should allow sufficient time to ensure receipt of their proposal by the date and time specified

(RFP REQUIREMENTS CONTINUE ON NEXT PAGE.)

RFP REQUIREMENTS.

1. **SUMMARY.** The City of Nixa invites full-service banks that are Federal or State of Missouri chartered, and have full service locations within the city limits of Nixa to provide comprehensive day-to-day depository and banking services. This Request for Proposal (RFP) is intended to cover all operating accounts, banking services, safekeeping requirements, and overnight investment of surplus cash in bank balances. The investment of funds in long-term vehicles (six months or greater) will be placed by competitive bids at time of maturities or in the event of surplus and is separate from this RFP. The City is also seeking proposals for the optional service of a Purchasing Card Program. The City reserves the right to enter into separate agreements for this optional banking service.

- 1.1. **CURRENT BANKING SERVICES.** The City currently maintains four (4) separate bank accounts to process receipts and payments. Please see **Appendix C** for a description of each account and the volume of activity.

The City's operating accounts include a variety of activities consisting of various revenue receipts, such as utility receipts, tax receipts, and payments consisting of checks, wires and EFT transfers.

The City currently has online access to all accounts with the ability to initiate ACH payments.

2. SCOPE OF WORK.

- 2.1. **Required Banking Services:** The Depository must provide the following banking services without charge. Please review the following required services and complete the Depository Proposal, **Appendix A**, making notation whether you can comply. Describe any proposed changes, deviations, or any additional features that would be included at no additional cost.

- 2.1.1. **Account Maintenance.** All deposits of the City shall be placed in an interest-bearing account. Currently, the City maintains one general checking account, two money market accounts and one small business checking account. The City requires the option to create additional accounts as required.

- 2.1.2. **Monthly Statements.** Monthly bank statements for the full calendar month must be made available to the City no later than five (5) business days after the end of the month. Detailed bank statements with front and back check copies or document images must be provided. The City also requires online access to account information.

- 2.1.3. **Deposits.** Deposits are made at the end of each business day. Cash deposits total approximately 900 deposits per year representing approximately \$17,000,000

- 2.1.3.1. The Bank shall provide imprinted deposit slips for each account.
 - 2.1.3.2. The Bank shall provide 20 locking bank bags.
 - 2.1.3.3. The City shall have the availability to view item details of deposits.
 - 2.1.3.4. All checks must be presented two times before a check is returned.
 - 2.1.3.5. If remote deposit is available, please so state.

2.1.4. Availability of Funds Deposited. The City desires to know the collected funds availability schedule for its deposits. These deposits include checks, money orders, cash, ACH credits, and wires from local, regional, and out of state banks. The City requires updates as the schedule changes.

2.1.5. Check Clearing. An average of 242 checks are cleared each month through the four City Accounts.

2.1.5.1. The Bank shall provide imprinted checks (stock at option of the City).

2.1.5.2. The City is not to be charged for stop payments.

2.1.5.3. The Bank will pay all checks issued against the account even if payment creates an overdraft to the account. The Finance Director or designee will be notified about any overdrafts within 24 hours of the occurrence, at which time the City agrees to cover the overdraft. The Bank will not charge a fee for overdrafts.

2.1.6. ACH Received/Processed. The Bank must be both a sending and receiving bank on the Automated Clearing House system to accommodate payroll direct deposit, other payments, and incoming revenue to the City. The City processes payroll on a by-weekly basis and originates approximately 4,500 payroll-related ACH transactions per year. The City service 10,000 utility customers; approximately 20% of those customers use ACH debits to make monthly payments.

2.1.7. Credit Cards. The City receives credit card payments for various services; most transactions are processed by a third-party vendor. Elavon is used to process utility payments and park activity transactions. The volume of these transactions average \$841,000 monthly. Our current Bank provides a terminal and transaction processing for all Point-of-Sale transactions taken at City Hall. The average monthly volume of these transaction is \$12,300. Please detail charges and processes to accept these payments in Appendix A.

2.1.8. Wire Transfers. The City prefers the ability to execute wire transfers either by phone or by Internet at the option of the City.

2.1.9. Online Banking Services. The City requires online banking services. Please provide a description of the banks online products and services. This online access should include security measures to insure protection of the City's information. At a minimum, the City requires the following online banking services.

2.1.9.1. Current day's balance (activity and credits)

2.1.9.2. Daily balance reporting available by 8:00 am the following business day.

2.1.9.3. Detailed debit and credit postings.

2.1.9.4. Initiation of regular recurring wire transfers.

2.1.9.5. Initiation of ACH debit and credit transactions.

2.1.9.6. Placement of Stop Payment orders.

2.1.9.7. Ability to create reports for above transactions.

2.1.9.8. Multi-level security for various City staff.

2.1.9.9. No fee should be associated with online banking services.

2.1.10. Stop Payment Process. The City will require the bank to issue
stop Page 3 of 18

payments including stale date check stop payments upon telephone or online communications from authorized City personnel.

2.1.11. Designated Account Liaison. The City will require the selected bank to designate a senior officer as a liaison. This officer must be capable of coordination of all City activities with the bank, and be able to resolve any problems or issues that may arise.

2.1.12. Record Retention. The bank shall maintain all transaction records with the City for the term of ten (10) years following transaction date.

2.1.13. Employee Payroll. The City of Nixa requires all employees to enroll for direct deposit. The bank must be able to provide employee payroll using ACH payments. The City currently has 150 full time employees and 125 parttime and seasonal employees.

2.1.14. Banking Supplies. The bank will provide lockable or disposable money bags, preprinted security checks and printed deposit slips for all accounts at no charge to the City.

2.1.15. Returned Items. The City requires prompt notification of returned items whether checks or ACH. This notification should include an image of the item if it is a check or a detailed description (including customer's name, date and amount) if it is an ACH. In either case, the reason for the return should be included. There should be no fee associated with returned items.

2.1.16. Collateralization. For the protection for the City's deposits, the City requires pledged collateral.

2.1.16.1. The Depository shall at all times maintain securities as pledged collateral in an amount equal to 105% of the amount on deposit with the depository, less the amount which is an insured deposit pursuant to the Federal Deposit Insurance Act, as amended.

2.1.16.2. The depository shall maintain such collateral with a disinterested banking institution chartered under existing Federal and State of Missouri laws. The depository and the disinterested banking institution must agree to execute a Collateral Pledge Agreement which provides that the disinterested banking institution would immediately surrender the pledged collateral to the City and the City shall have the right to convert such collateral into cash and disburse it in the event the depository shall fail to pay any City deposit or part thereof.

2.1.16.3. If at any time pledged securities are not satisfactory to the City for deposits made as provided by laws, the City may require additional or substitute securities be pledged as are satisfactory to it.

2.1.16.4. Pledged securities may from time to time be withdrawn and other securities of like kind and character may be substituted with the consent of the City prior to the action. The custodian bank shall confirm in writing the receipt, substitution, and release of securities to and from the custodial account.

2.1.16.5. Securities pledged as collateral shall be evidenced with safekeeping receipts to be received by the City. The City will release safekeeping receipts by signing same and forwarding to the banking institution upon request and receipt of confirmation that the substitute securities have

been received by the disinterested banking institution.

2.2. Optional Banking Services. The City requests the proposing banks to offer any optional services or make any recommendations it believes would enhance the cash management capabilities of the City. All proposing banks are encouraged to make suggestions or add additional information not requested in this proposal. Banks are encouraged to describe factors that distinguish their institutions from potential competitors. However, all respondents must submit a proposal on all required services in the proposal format provided. Failure to submit proposals on required services will result in elimination from consideration.

2.2.1. Investments. The City may request bids from local banking and investment institutions for certificates of deposits. This is a competitive bid process and the contracted banking institution is encouraged to provide bids on these investments, but such investments will not be held exclusively by the contracted institution. Please provide current rate quotes in **Appendix A**.

2.2.2. Purchasing Card. The City currently utilizes approximately 27 purchasing cards. The average monthly amount spent on purchasing cards is \$12,200.

The City reserves the right to enter into separate contracts for optional banking services.

3. INTERPRETATION TO RESPONDENT.

A prospective respondent, who is in doubt as to the meaning of any part of this RFP or any addenda thereto, may submit a written request for interpretation. Such requests shall be addressed to:

City of Nixa
Attn: Stephanie Ewing (Purchasing Coordinator)
715 W. Mt. Vernon St.
P.O. Box 395
Nixa, MO 65714
Email: sewing@nixa.com

Any such interpretation will be made by written addendum. The City shall not be responsible for any explanation or interpretation of proposed document other than by such an addendum. Any addenda must be acknowledged in the proposal and will become a part of the Contract Documents. Failure to acknowledge all addenda issued in the proposal will constitute grounds for rejection of that proposal.

All requests for interpretation must be received by the Purchasing Coordinator no later than five (5) calendar days prior to the proposal opening date. Requests received after that date will not be answered. Persons submitting a request will be responsible for its prompt delivery.

Any and all addendums will be posted on the City's web site (nixa.com) under Current Bid Opportunities on the Purchasing page. Though the City will try to notify all prospective bidders if an addendum is posted, it shall be the responsibility of the bidder to check for and obtain addendums prior to the bid submission date. Receipt of an addendum to this RFP must be acknowledged by respondents. Respondents shall endorse their acknowledgement of said addendum by signing and returning the addendum with bid response.

4. VENDOR RESPONSE REQUIREMENTS. In order for your response to this RFP to be

considered complete, information submitted in response to this RFP shall include:

4.1. Company Overview

4.1.1. Bank name and contact info

4.1.1.1. Contact person for this RFP

4.1.1.2. Mailing address

4.1.1.3. Phone numbers

4.1.1.4. Email address

4.1.2. Year established and former Bank name(s) if applicable.

4.1.3. Brief company overview and number of years providing banking and cash management services, especially to public sector clients.

4.1.4. Differentiators that set your solutions/services apart from your competitors.

4.1.5. One-source vendors are preferred. If utilizing subcontractors for any portion of the RFP requirements, provide subcontractor company information and key personnel involved.

4.1.6. Bank agrees to notify City of any new or modified services offered by the bank that would be beneficial for the City.

4.1.7. Bank agrees to notify the City in advance of a change in senior relationship managers.

4.1.8. Bank agrees to provide the City with annual financial statement upon request.

4.1.9. Bank is an institution eligible to be a depository of public funds under Missouri Statutes.

4.2. Pricing Information

4.2.1. Return a copy of **Appendix A – Pricing Page for Banking Services** with an 'X' in the appropriate blanks.

4.2.2. Return a copy of **Appendix B – Purchasing Card Program** filled out completely.

4.3. Contact Information

4.3.1. How should we contact you if we decide we want to learn more about your proposed services?

4.4. Signature on Proposal

Proposal must be signed in ink and include the full business address of the respondent.

Proposal by partnerships must be signed in the partnership name by one or more of the general partners. Proposal by a corporation must be signed by an officer of the corporation or other person authorized to bind the corporation to the proposal. The names and titles of all persons signing shall be typed or printed below their signatures.

5. TERMS & CONDITIONS.

5.1. Contract Term

The City of Nixa's award of any "Banking Services" agreement(s) shall be for a period of Three (3) years. The agreements may be extended for two (2) additional one year extensions.

5.2. Errors in Proposal

Each Consultant must carefully examine his proposal prior to submission. Failure to do so is at the Consultant's risk. Consultant is responsible for any errors contained therein.

Claim of oversight is not a basis for permitting withdrawal of a proposal after opening.

5.3. Proposal Withdrawal

Proposal may be revised, modified, or withdrawn by the bank at any time prior to opening. Any such revision, modification, or withdrawal shall be in writing. After the Bids are opened, they shall be irrevocable for a period sixty (60) days. Bids shall not be withdrawn or revised after opening.

5.4. Conditions Affecting the Work

Each respondent should take such steps as thought necessary to ascertain the nature and location of the work and any peculiar local conditions, which can affect the work or its cost. Failure to do so will not relieve the respondent of their responsibility for proper estimation of the difficulty or cost of the work.

The City of Nixa assumes no responsibility for any understanding or representation made by any person at any time, unless it is included in the Proposal Documents, including addenda.

5.5. Conflict of Interest.

The submission of a proposal pursuant to this request shall be deemed a certification that, to the best of the respondent's knowledge, no employee of the City of Nixa or City Council member has any direct or indirect financial interest in any agreement, contract or proposal for work or supplies to be furnished to the City of Nixa. Respondent further certifies that such respondent has not and will not, directly or indirectly, enter into any agreement, or understanding; participate in any collusion; or otherwise take any action in restraint of free competitive pricing in connection with such agreement, contract or Proposal; nor will respondent knowingly provide gratuities to City of Nixa employees or Council members, or to their family members. Respondent shall require all subcontractors (at all tiers) to be bound by this conflict-of-interest provision.

5.6. Insurance.

The vendor contracted by the City shall secure and maintain insurance at its own cost and expense, throughout the duration of the contract agreement. This insurance shall remain in

force for the full duration of any contract or contract renewal with City of Nixa. The insurance shall be of such types and in such amounts as may be necessary to protect the respondent and the interest of the City of Nixa against all hazards or risks of loss as specified by the City or which may arise out of the contracted services.

5.7. Clarification of RFP

Respondents may be required to clarify their proposal or further explain the functions of the services proposed. Any clarification will be in writing by the respondent and will be considered part of the proposal. Refusal by a respondent to comply with this requirement will be cause for rejection of the proposal.

5.8. Sub-contractors

The selected vendor will be required to assume responsibility for all services obtained under contracts resulting from this RFP. The City will consider the selected vendor to be the sole point of contact regarding payment of any and all charges resulting from contract obligations. It will be the responsibility of the vendor to verify completeness of each order, and its suitability to meet the needs of the City.

The awarded vendor will be the prime contractor in all matters. All sub-contracting must be approved by the City in writing. Prime contractor assumes all responsibility for subcontractor and will be the sole interface with said subcontractor.

5.9. Contract

This RFP does not commit the City of Nixa to award a contract, to pay costs incurred in the preparation of a proposal in response to this request, or to procure or contract for additional services or supplies. The City reserves the right to accept or reject, in part or in its entirety, any or all proposals received as a result of the RFP, if it is in the best interest of the City to do so.

The vendor must provide requested services in compliance with federal, state and local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of this contract which in any manner affect the completion of the work. The vendor shall indemnify and hold harmless the City and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the vendor.

Each vendor, by signing and returning this proposal, stipulates that he/she has read, understands, and will comply with all provisions of this RFP.

If respondent has a standard contract, such standard contract should be forwarded as part of this RFP. The contract will be subject to review by legal counsel of the City as to legality of form and compliance with state, local, and federal laws.

The City has attached a sample contract document to this RFP as "Attachment A." The City intends to utilize the document referenced as "Attachment 1" when contracting with the selected respondent. Respondents shall include with their proposal any objections or requested

modifications to this document. The City will consider such objections and requests when considering whether to award a contract as part of this RFP.

6. EVALUATION OF PROPOSAL

The City Administrator and other city staff as selected by the City Administrator will evaluate all proposals submitted and compare them to the evaluation factors to determine professional qualification(s) to fulfill the needs of the City of Nixa. Proposals will be scored according to the scoring legend below.

Proposal evaluation factors to be considered are:

Scoring Legend	Possible Points	Points Awarded
Compensation/Interest rate on the accounts	30	
Scope of services offered.	20	
Cost of services	20	
Relevant experience managing similar accounts and services with public sector and/or large commercial clients	10	
Experience, resources, and qualifications of the financial institution and individuals assigned to this account	5	
Financial strength of proposing institution	5	
Adequacy of financial controls and protection against loss	5	
Completeness of Proposal	5	
Total:	100	

The City of Nixa reserves the right to reject any or all proposals or any part thereof and to accept in whole, or in part, such proposals as may be deemed in the best interest of the City. City staff will recommend City Council award a contract to the bank which best fits the needs of the City.

7. SIGNATURE.

When submitting proposals, firms shall include the following signature block as part of their submittal:

The undersigned declares that all interested principals are named herein. The undersigned further declares that no other person or firm has any interest in the proposal or agreement to be entered into and that this proposal is made without collusion with any other person, company, or party, submitting a proposal.

The respondent recognizes that the City of Nixa reserves the right to accept or reject any or all proposals and to waive any technicality or informality therein.

In making this proposal the undersigned has taken into account each provision of all of said Proposal Document:

Signature of Respondent:

By: _____

Title: _____

Date: _____

City of Nixa
Statement of No Proposal RFP-042-2021/Finance

IF YOU DO NOT INTEND TO SUBMIT A PROPOSAL, PLEASE COMPLETE AND RETURN THIS FORM PRIOR TO: August 16, 2021.

TO: City of Nixa Stephanie Ewing
P.O. Box 395
Nixa, MO 65714
Fax it to 417-725-2480 or email: sewing@nixa.com

We the undersigned, have declined to submit a proposal for: Website, App & Related Software Integrations, for the following reasons.

- ☐ Insufficient time to respond to invitation.
- ☐ We do not offer this product/s or equivalent.
- ☐ Unable to meet specifications.
- ☐ Unable to meet insurance requirements.
- ☐ Our schedule would not allow us to perform.
- ☐ Specifications unclear (please explain below).
- ☐ Other (Please specify below).

Additional remarks:

Vendor Information:

Company Name: _____

Address: _____

Signature and Title: _____

Telephone Number: _____ Date: _____

ATTACHMENT A

PROFESSIONAL SERVICES CONTRACT

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

WHEREAS City issued a Request for Proposals (RFP-042-2021/Finance) for professional services related to providing certain services to the City; and

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

WHEREAS after due consideration, the City has accepted the proposal of the Contractor; and

WHEREAS City and Contractor desire to enter into this Agreement whereby the Contractor shall undertake the performance of the services contemplated herein.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth, the City and the Contractor hereby agree as follows:

1) Contract Documents. This Agreement shall consist of the following documents, attachments, and exhibits:

- a. This Executed Agreement
- b. RFP-042-2021/Finance, and any addenda (Exhibit A)
- c. Appendix A- Pricing Page for Banking Services
- d. Appendix B- Pricing Page for Purchasing Card Services

The Agreement shall also include any Exhibits incorporated by reference in the above-described documents. When any provisions of the Contract Documents conflict, the provision contained in RFP-042-2021/Finance shall control, followed by the Executed Agreement, then the Contractor's Schedule of Fees.

2) Term. The term of this Agreement shall be five years, beginning on the date of execution by both parties.

3) Scope of Services. The City agrees to engage the services of the Contractor and the Contractor agrees to perform the services hereinafter set forth in Exhibit A with the standard of care, skill, and expertise ordinarily used by other members of Contractor's profession in performing similar services.

Contractor represents and warrants that it is equipped, competent, and able to perform, and that it will perform all services hereinafter set forth in a diligent and competent manner in accordance with the professional standard of care customarily recognized by members of the Contractor's profession.

Contractor shall provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the services which are particularly described as set forth in RFP-

042-2021/Finance (the "Services").

All Services shall be performed and provided in conformance with all applicable policies of the City, and all applicable federal and state laws and regulations.

The City, upon agreement of the Contractor may add Services to the Scope of Services. Such added Services shall be evidence by a written instrument signed by both parties. The City may delete items from the Scope of Services at any time and at the sole discretion of the City.

4) Compensation. The City hereby agrees to pay the Contractor, as full compensation for the complete and satisfactory performance of this Agreement such amounts as are set forth in the Contractor's Schedule of Fees, said Schedule being attached hereto and incorporated by this reference as "**Appendix A.**"

5) Attorney Fees' and Costs. The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity, or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

6) Other Representations, Warranties, and Other Covenants by the Contractor. The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided Services such as the ones to be performed under this Agreement to other municipalities or private enterprises and that the Contractor has sufficient expertise, knowledge, information, and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer.

7) Amendment; Waiver. No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

8) Contractor's Liability Insurance. The Contractor shall obtain and maintain during the term of this Agreement the insurance coverage's not less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo., as said section may be amended. Insurance policies providing the required coverages shall be with companies licensed to do business in the State of Missouri. All costs of obtaining and maintaining insurance coverages shall be borne by the Contractor.

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for the term of this Agreement.

Policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished to the City prior to Contractor commencing the Services. The certificates must list the City as an additional insured on a primary and non-contributory basis. Certificate Holder shall be listed as "City of Nixa, 715 W. Mt. Vernon, PO Box 395, Nixa MO 65714". The certificate shall bear an endorsement precluding cancellation of or change in coverage without at least thirty days written notice to the City.

9) Termination.

- a. Termination for breach.** Failure of the Contractor to fulfill any of Contractor's obligations under this Agreement in a timely and satisfactory manner shall constitute breach of this Agreement. The City shall thereupon have the right to immediately terminate this Agreement with sufficient notice. The City shall give written notice of the termination to the Contractor.
- b. Termination for Convenience.** The City shall have the right at any time to give sufficient written notice to Contractor to terminate and cancel this Agreement, without cause, for the convenience of the City, and Contractor shall immediately stop upon issuance of such notice. In such event, City shall not be liable to Contractor except for the payment for actual work performed prior to such notice.

10) Notices. Any notice required to be provided under this Agreement shall be sent via U.S. Mail or via e-mail. Notices shall be effective when received at the address as specified below. All such notices shall be sent to each party at the address below, or to such other address as designated by such party, in writing:

IF TO THE CITY: City of Nixa
 ATTN: Stephanie Ewing, Purchasing Manager
 PO Box 395
 Nixa, MO 65714
 E-mail: _____

IF TO CONTRACTOR: Name & Title: _____
 Company Legal Name: _____
 Address: _____
 Email: _____

11) Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

Independent Contractor. Contractor shall be and operate as an independent contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel

engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of the Contractor and shall not be deemed employees of the City in any respect.

12) Compliance with Laws. Contractor shall comply with all applicable City Ordinances and all other applicable laws and regulations, whether State or Federal, including without limitation, unemployment and workers' compensation, occupational safety, equal employment, and wage and price laws, insofar as applicable to the performance of this Agreement.

13) Subcontracts and Assignment. The Contractor shall not subcontract or assign any of the Services to be performed by it hereunder without the express written consent of the City. In the event Contractor utilizes a subcontractor, the Contractor shall ensure that any agreement between Contractor and such subcontractor complies with all requirements imposed for such agreement by federal, state, and local law.

14) Indemnification.

In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this Contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this Contract.

Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this Agreement, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this Agreement to Contractor.

Firm shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its Contract price. Contractor's obligation under this agreement to defend, indemnify and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance.

Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency

including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

15) Nondisclosure and Confidentiality. The Contractor agrees that it will preserve the confidentiality of all City data and account information and will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

16) Multi-year contracts and Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Non-appropriation"), this Agreement shall terminate at the end of the then current fiscal year as if terminated expressly and mutually by both parties. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party.

17) Accounting. During the term of this Agreement, the Contractor shall maintain books and accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

18) Other Contractors. Nothing in this Agreement shall be construed as prohibiting the City from contracting with other Contractors to provide any of the Services provided for herein.

19) Work Records and Work Product. The Contractor shall provide the City with copies of all documents pertinent to the Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Agreement. The Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. Upon termination of this Agreement, the Contractor shall promptly deliver to City any documents, and work product, whether printed or electronic.

20) Compliance with Immigration Statutes. Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.

21) Governing Law and Jurisdiction. This Agreement and every question arising hereunder shall be construed and determined according to the laws of the State of Missouri. Should any part of this Agreement be litigated, venue shall be proper only in Christian County, Missouri.

22) Discrimination. Contractor agrees that, in the performance of this Agreement, not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

23) Entire Agreement. This Agreement, including the Exhibit A, and Exhibit B, shall constitute the entire Agreement between the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing and specifically referring hereto.

24) City's Representative. The City Administrator is hereby designated as the City's authorized representative for purposes of this Agreement. The City Administrator is charged with providing any approvals and exercising any rights of the City under this Agreement, including the approval of any renewal terms contemplated herein.

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

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRACTOR:

CITY OF NIXA, MISSOURI

Signature.

Jimmy Liles, City Administrator

Printed Name.

Approved as to form:

Title

Nick Woodman, City Attorney

Date.

CERTIFICATE OF FINANCIAL OFFICER

ATTEST:

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

Signature.

Name.

Jennifer Evans, Director of Finance

Title.

Date

APPENDIX B

Appendix B – Purchasing Card Program

1. Introduction

The City currently utilizes approximately 27 purchasing cards as a means of payment for on-line purchases, travel and other items.

Commerce Bank acknowledges the above statement.

2. General Information

Please provide the following information regarding your purchasing card program:

- a. How long has your company been providing these services?

Commerce Bank has been issuing credit cards since 1968, corporate cards since 1989, purchasing cards since 1995, and automated accounts payable (AP) solutions since 2004.

- b. Will one primary contact be assigned to the City's account for this program?

Yes, Crystal Sharp will act as your dedicated relationship manager.

- c. Is program capable of providing an import file that is compatible with Tyler Technologies – Incode?

Yes, the City can receive a daily transaction feed through a Visa VCF4.4 file to import into your Tyler Technologies-Incode..

3. Program Features

- a. On what platform do you issue commercial payment solutions? (i.e. American Express, Visa, MasterCard)? What are the prime benefits of this platform?

Commerce Bank utilizes both the Visa and MasterCard platforms. We have a long-standing partnership as an issuing bank with Visa, which has allowed us to fully benefit from Visa's robust support system and to share timely industry, regulatory and best practices with clients. Experience has also taught us that Visa's interchange system possesses nuances that clients find advantageous.

Furthermore, our long-standing relationship with Visa positions us to influence Visa policies and take advantage of Visa's knowledge regarding emerging global card technology.

- b. Is a third-party processor used for authorizations and transaction posting?

Commerce Bank outsources its Commercial Card processing to Total Systems Services, Inc. (TSYS). TSYS is a dedicated processor of Visa and MasterCard transactions and provides support services to banks worldwide. TSYS is the largest commercial credit card processor in the United States, accounting for 85% of the U.S. commercial credit card transactions. All of Commerce Bank's authorizations, transaction postings, and billings are done by TSYS.

- c. Discuss settlement terms – what billing cycles are available, how will statements be received, what are payment terms from “statement date.” What options are available for the City to make payment, i.e. ACH, check? What options are available to customize billing statements and cycles?

For the Business Plus program the standard payment terms are a 30-day cycle with minimum 20-day grace period for repayment. The City may choose any day from the 1st through the 25th of the month as your cycle date. Payment can be made by ACH, check, or wire.

- d. Describe any unique features provided by your program that need to be considered.

The Business Plus program provides a 1% rebate on purchasing, automatically credited to the City's account balance each month.

The Business Plus program is essentially free of fees. There are no up-front costs for setup or implementation, and Commerce Bank provides access to ControlPay, a user-friendly online management site, free of charge. Ongoing fees are avoidable by behavior, such as late payment fees, over limit fees, and cash advance fees. Below is a brief overview of other unique features:

Real-Time Card Maintenance

Using ControlPay®, the City's program administrators perform real-time account maintenance on its card program. administrators assign cards to new employees, close cards for terminated or former employees and disable card numbers on lost cards. Program administrators also raise and lower employee credit limits and view authorizations and declines using ControlPay®.

Expense Reporting Tool

Commerce Bank offers up-to-date mobile technology that includes limit alerts, receipt scanning and receipt retention, while our web-based software allows program administrators and cardholders to use the same expense reporting tool. This provides the option to combine out-of-pocket expenses, card transactions and mileage reporting in one application. Information can be uploaded daily, reducing keystrokes for accounting staff.

4. Controls

- a. Describe the card controls and usage restrictions supported by the issuer's program.

i. City level restrictions

- **Dollar limit per group**
- **Dollar limit per total for organization**

ii. Cardholder level restrictions

- **Transactions per day**
- **Transactions per billing cycle**
- **Transaction dollar amount in a period**
- **Dollars per transaction**
- **Dollars per day**
- **Dollars per billing cycle**

iii. Merchant Category Code/Standard Industry Classifications (MCC/SIC) restrictions

The City can also choose to allow or block specific MCCs to help control cardholder purchases. These controls can be customized for each cardholder and are maintained through ControlPay. An account can be assigned up to nine MCC groups that contain 99 MCCs each. Temporary MCC group assignments can also be created.

iv. Cash advance restrictions

The City's Program Administrator can restrict or allow all cash advances in real-time through ControlPay.

v. Dollar limits

- **Dollars per transaction**
- **Dollars per day**
- **Dollars per billing cycle**

vi. Multiple purchase limits

- **Transactions per day**
- **Transactions per billing cycle**
- **Transaction dollar amount in a period**

b. What are the liabilities of the City of Nixa and employees in the event of fraud, abuse, or loss of a card?

Commerce Bank's purchasing card program provides a waiver of liability at no extra charge.

The waiver of liability protects the the City by providing \$100,000 in coverage in the event an employee misuses a commercial card. This waiver is in effect 75 days prior to the employee's termination date and 14 days thereafter. Employee termination is required to effectuate the waiver of liability for charges the employee has incurred.

The City is not liable for the payment of charges incurred in the use of a purchasing card program if charges relate to the following:

- **Charges waived as set forth in "Visa and MasterCard Waiver of Liability" documentation and per the amendments the associations periodically revised**
- **Commercial card transactions after the original closure request date for a commercial card where the request was made in accordance within the terms of the cardholder agreement during normal business hours**
- **The use of a lost or stolen commercial card if the card is reported lost or stolen within 24 hours**

The program covers all transactions, including: online, mail order, telephone order and face-to-face transactions, regardless if the eligible employee transactions are on an individual's card, a ghost account or a departmental card. The cardholder or program administrator can initiate a fraudulent, disputed and/or questioned charge, which can be done online through ControlPay® or through our customer service team. Commerce Bank has a fraud monitoring team who would then reach out to City's program administrator if suspicious activity occurs.

- c. Does your program screen transactions for fraud patterns?

Commerce Bank uses CardGuard to monitor potential fraud. CardGuard allows Commerce to monitor specific kinds of activity, including international transactions, jewelry purchases, cash advances, internet gaming, and card-not-present transactions. In addition, Commerce Bank currently tracks over 25 unique scenarios at any given time depending on current industry trends and fraud patterns. Commerce holds conference calls on a regular basis with Visa and MasterCard to discuss current trends and deliver our findings on key industry tracking points.

- d. What (if any) credit limits would be imposed?

Commerce Bank will set a credit limit appropriate for the City's purchasing needs. The Business Plus Card is a standard 30-day statement cycle with minimum of 20-day grace period for purchase repayment; so it is generally suggested that clients establish exposure equal to twice their anticipated monthly purchase volume.

- e. How are cards replaced in an emergency situation? Is there a fee?

The City's program administrator can status a card as lost or stolen real-time online through ControlPay® or contact customer service. Our system will automatically complete the fraud transfer to a new card number the following business day without any further action on the part of the City. The replacement card will arrive via FedEx within three business days to U.S. locations. Expedited (overnight) shipping is available for a \$25 per card fee by contacting our Customer Support team via phone or e-mail.

- f. Describe incentives, price breaks, rebates offered based on business volume, timeliness of payments, etc.

The Commerce Bank Business Plus card provides a 1% monthly rebate, fulfilled as a statement credit that lowers the balance due for each statement cycle. There is no minimum spend requirement or minimum average ticket requirement to earn the College's monthly rebate.

- g. Provide information about on-line access and report generation.

Commerce Bank offers a user-friendly interface called ControlPay for the City to manage its card program. Functionality includes real-time card maintenance such as ordering new card and closing existing cards, as well as changes to credit limits and other card controls. A reports module also provides access for program administrators to run standard and custom reports using hundreds of available data fields.

5. Technical Capabilities

- a. What are the hardware and software requirements for using your card transaction reporting software packages?

Commerce Bank utilizes ControlPay®, a scalable, web-based platform that works smoothly with your existing accounting system. This platform allows your current processes to stay intact and, as your accounts payables needs require more automation, allows you to build on your current program with additional payment types and invoice-capturing modules.

Because it is a web-based product, City is not required to have specialized hardware or software. ControlPay® is compatible with Internet Explorer version 7.0 (or higher), Google Chrome and Firefox. In addition, browsers must be capable of Secure Socket Layer (128-bit encryption) and have JavaScript enabled.

- b. What technical support is available for your reporting packages and what hours are they available? Where, are they located?

Commerce Bank offers a dedicated implementation professional to help onboard City, including setup, file transfer, testing, troubleshooting and issue resolution.

After initial implementation, Commerce provides technical support through our commercial customer support team. The team provides support each banking day from 7 a.m. to 6 p.m. CT.

- c. How do you ensure that no unauthorized individual accesses the system both internally (at The City) and externally (at your location)?

Commerce Bank has implemented stringent security measures to prevent the unauthorized use or interruption of system and network equipment. These features include but are not limited to:

- **Logical access control (firewalls, routers, password control, etc.)**
- **Regular audits both internally and by external sources**
- **Change control**
- **Physical protection including building entrance and exits as well as data center security**
- **Network monitoring to protect against information disclosure, information modified or destroyed by monitoring devices, implement storage controls over devices that monitor, or record information transmitted on a network (for example, protocol analyzers and other diagnostic equipment).**
- **Protection of Internet databases**
- **Human factors (hiring practices, background checks, etc.)**

- d. What physical and software security measures does the issuer take to protect the confidentiality of the company's transaction information?

Commerce Bank, as a regulated financial institution, complies with risk mitigation, data protection and safeguarding, as well as system and financial control regulations and laws. They include, but are not limited to, the Gramm-Leach- Bliley Act (GLBA) section 501(b) and section 216 of the Fair and Accurate Credit Transaction Act of 2003 (FACT Act), as well as the Sarbanes-Oxley Act of 2002. A small sampling of the type of activities involved with our compliance efforts include:

- **Separation of duties and tiered validation ensure that only individuals with the appropriate access rights have the ability to board and/or maintain accounts on the systems and that accounts boarded are verified by another individual.**
- **System access credentials are required and validated for all users, and any subsequent system modifications are logged for audit purposes.**
- **All activities on accounts are monitored for potential fraudulent activity. Should potential or actual fraudulent activity be identified or reported by the client, Commerce Bank will investigate the transaction(s) and pursue transaction dispute rights where available through the Visa network, and perform any remediation efforts that may be required.**

In addition, all data between the client and the server is encrypted under 128-bit SSL. User-access to data is controlled through the application's proprietary access control. A key element of this feature is that each user has a unique user ID and password. The City's designated program administrator will be responsible for managing user IDs for employees. In addition, all data is protected behind two firewall layers. Firewalls separate the client side from Tier II, which contains only web servers and business object servers; there is no data. Tier II is separated from

Tier III (databases and banking system interfaces) by yet another set of firewalls. Load balancing technology is employed to provide scale out capability by distributing the load across the web servers and business object servers. Only the business objects can request data across the second firewall. All data is stored on a storage area network (SAN) for built-in fault tolerance and speed of backup. Data is backed up daily and the backup media are stored off-site following our backup policy.

6. Information Reporting

- a. Provide a general description of the reporting packages you offer including sample screenshots (e.g. welcome page, menus, transaction screen, reconciliation module, etc).

Through ControlPay®, the City is able to view all transaction information online at any time for all cardholders. Real-time authorizations and declines are also available online. Features include: Commercial Card program:

- **Program administrator tool (cardholder changes made real-time)**
- **Daily review of transactions online**
- **Create expense envelopes and route for electronic approval**
- **Add out-of-pocket and personal mileage**
- **Access repository of data for anytime reporting**

- b. How quickly after a transaction has been conducted is information available?

Commerce Bank makes information available in real-time through ControlPay®, which updates transactions every evening. All data up until the current day's transactions are available for reporting. Reports can be viewed online and downloaded as comma-separated files that can be exported into standard reporting packages or commonly used applications, such as Microsoft Excel.

7. Implementation

- a. Provide a complete description of your implementation process, including a sample plan and description of various implementation tasks for both you as the issuer and the City. How long will implementation take?

During implementation, we ensure that the program is activated as quickly or as deliberately as the City prefers. As cards are issued and, on their way, we build your online program profile to be ready for initial training. A Commercial Card Account Specialist will be prepared to set up your initial training and answer questions from Day One. The Account Specialist will provide program administrator(s) with a train-the-training approach to program management, along with a user guide. This includes screenshots and step-by-step instructions for each function. Guides are updated when new functionality is introduced. Release bulletins are available prior to enhancements, so program administrators have the opportunity to ask questions and gain a thorough understanding of the new features.

Training can be on-site or via WebEx depending on the City's preferences.

Once implemented your relationship manager, Crystal Sharp and the Commercial Customer Support team will be available to provide assistance.

- b. Describe the support provided during implementation, including user manuals, instructional and/or educational materials, on-site visits, or other assistance.

Commerce Bank will implement your Business Plus program as quickly or deliberately as you would like. We will build your program to your specifications, including online access, functionality, training and customized card design; and we will set the appropriate milestones throughout the onboarding process with your dedicated point of contact.

- c. Do you offer live, in-person training based on our timeframe and at our convenience?

Commerce Bank offers two primary levels of training. The first is for cardholders; the second is specialized training session for program administrators. Training tools, method of delivery and associated materials are customized to reflect the use of reporting and maintenance tools selected.

There is no additional cost to the City for web based product training, customized training materials, manuals, collateral or the services of our dedicated training/implementation personnel.

Commercial Card programs: Commerce Bank offers two training sessions with your assigned technical resource during the implementation phase of the program. Using a "train the trainer" approach, Commerce Bank facilitates additional sessions for program administrators, cardholders and users. Sessions are web-based, typically last 60 minutes and demonstrate how to manage card transactions, execute reconciliation reports and order new cards.

Epayables programs: Commerce Bank offers two training sessions with your assigned project manager during the implementation phase of your program. These training sessions are conducted via a web-based online system and typically last 60 minutes. Sessions demonstrate how to manage merchant logs, execute reconciliation reports and update supplier information.

Training materials are provided to the program administrator as requested.

- d. What are some of the common implementation obstacles you have observed?

The following steps are the requisite "success" factors for implementing and maintaining an effective program.

- **Commerce Bank recommends early program administrator involvement in the implementation process. This establishes a solid and thorough understanding of program expectations. A back-up program administrator is also recommended.**
- **Commerce Bank recommends the City's technology teams become engaged with the account as quickly as possible and be present during implementation calls. Even though our solution does not require IT development hours on the part of the City, it is beneficial to have their input.**

The proposal submitted would be the primary document upon which each proposing bank will be evaluated. Bidders may be asked to demonstrate electronic finance software concentrating on, but not limited to, ease of use, features, reporting options available and compatibility with our hardware.

Please refer to our disclaimer at the beginning of this document.

Purchasing Card Service Item Pricing

In order to fully evaluate each bank's ability to meet the Purchase Card service needs of the City, a standard reply format is required. Each proposal must include a response to each item of the RFP in the order given. Only proposals submitted in the exhibit format provided will be evaluated for contract award.

Transactional charge fee schedule:

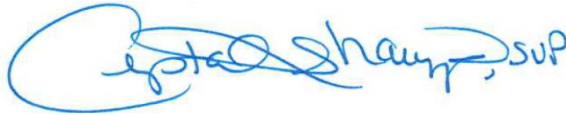
Description	Qty	Comment
Annual Percentage Rate	%	19.90% Cash Advance; 21.99% Late Payment
Monthly Periodic Rate	%	non revolving card product
Grace Period for Repayment of Purchases	20 days	
Annual Membership Fees	\$00.00	No annual fee
Over Limit Fees	\$29.00	
Late Fees	\$29.00	
Minimum Finance Charge	\$00.50	
Annual per Card	\$00.00	
Per Transaction	\$	No transaction fees; *international transaction fee 2% of the transaction amount on purchases and 1% on cash withdrawals and cash advances.
Program Implementation/set-up	\$0.00	
Reporting – standard and customized	\$0.00	
Fraud Protection	\$0.00	No fee for fraud protection
Other:		

PURCHASE CARD SERVICES We have read the Request for Proposal and fully understand its intent, contents and scope. We certify that we have adequate personnel, equipment, technology and facilities to fulfill the specified requirements. We understand that our ability to meet the criteria and provide the required services shall be judged solely by the City. The undersigned is aware the City reserves the right to reject any, and all proposals and is submitting this proposal without collusion with any other person, individuals or corporations. I certify that I am a duly authorized representative for the Bank listed below and that information and material enclosed with this proposal accurately represents the capabilities of the Bank for providing these services.

Submitted by:

Banking institution: **Commerce Bank**

Signature:



Printed name: **Crystal Sharp**

Title: **Senior Vice President**

Date **August 16, 2021**

CONTACT PERSON FOR BID

Printed name: **Crystal Sharp**

Address: **1345 E. Battlefield, Springfield, MO 65804**

Email Crystal.Sharp@CommerceBank.com

Phone: **417-837-5232**



Issue: A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A CONTRACT WITH SOUTHERN BANK FOR BANKING SERVICES.

Date: SEPTEMBER 7, 2021

Submitted By: Jennifer Evans, Director of Finance

Background

The City submitted an RFP (Request for Proposal) for Banking and Purchasing Card services on July 15, 2021. This request was structured in such a way as to allow the City to contract with two separate banks – one for banking services and one for purchasing card services if it was most advantageous to the City.

Analysis

After reviewing all proposals, Southern Bank was selected for their Banking Services based on an evaluation of qualifications. This contract will go into effect October 1, 2021 for an initial three year term with two optional one year extensions.

Recommendation

Staff recommends the passage of this resolution.

RESOLUTION NO. 2021-094

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA ACCEPTING
THE PROPOSAL OF SOUTHERN BANK FOR BANKING SERVICES
AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE
A CONTRACT FOR SAME.**

WHEREAS City staff, pursuant to the City's adopted purchasing procedures (Resolution 2019-113), as amended, have solicited proposals from qualified firms for the provisions of Depository Banking services on behalf of the City; and

WHEREAS after reviewing all submitted proposals, City staff has determined that Southern Bank ("Contractor") provided the best proposal for the service; and

WHEREAS City Council desires to award the Contract for the services to the Contractor and to authorize the City Administrator to execute the Contract attached hereto as "Resolution Exhibit A."

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

SECTION 1: The City Administrator, or designee, is hereby authorized to enter into the Contract attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," on behalf of the City. Said Contract shall be in substantially similar form to the document attached hereto as "Resolution Exhibit A." The City Administrator is further authorized to do all things necessary or convenient to carry out the terms and intent of this Ordinance.

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

ADOPTED BY THE CITY COUNCIL THIS 13TH DAY OF SEPTEMBER 2021.

ATTEST:

CITY CLERK

PRESIDING OFFICER

RESOLUTION NO. 2021-094

47 **APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.**
48
49

50 **ATTEST:**
51

52 _____
53 **CITY CLERK**

MAYOR

54
55
56 **APPROVED AS TO FORM:**
57

58 _____
59 **CITY ATTORNEY**

EXHIBIT A

REQUEST FOR PROPOSALS (RFP) TO PROVIDE BANK DEPOSITORY SERVICES

RFP #: RFP-042-2021/Finance

OWNER: City of Nixa

CONTACT: Stephanie Ewing, Purchasing Manager

PHONE: 417-449-0555

SERVICE: Bank Depository Services

ISSUE DATE: July 15, 2021

DELIVERY ADDRESS: Nixa Public Works
Stephanie Ewing 1111 W. Kathryn
Nixa, MO 65714

BID OPENING DATE: August 16, 2021 @ 10:00 AM CDT

SUBMITTING A PROPOSAL: A vendor submitting a Proposal as part of this Request for Proposal ("RFP") shall follow the instructions below. Failure to adhere to these instructions may lead to rejection of Proposal.

Proposals must be submitted in a sealed container box, envelope, etc., addressed in the following manner:

Middle of Envelope: City of Nixa Purchasing
Attn: Stephanie Ewing
1111 W. Kathryn
P.O. Box 395
Nixa, MO 65714

Bottom Right Envelope: RFP- 042-2021/Finance
August 16, 2021 @10:00AM

Vendor must submit one (1) original, bound copy and one (1) electronic copy signed in ink by a person authorized to bind company in agreements.

All proposals, whether mailed or hand delivered, must be received at the above address no later than August 16, 2021 @ 10:00 AM (local time). Method of delivery is at the sole discretion and risk of the vendor. Vendors mailing their proposals should allow sufficient time to ensure receipt of their proposal by the date and time specified

(RFP REQUIREMENTS CONTINUE ON NEXT PAGE.)

RFP REQUIREMENTS.

1. **SUMMARY.** The City of Nixa invites full-service banks that are Federal or State of Missouri chartered, and have full service locations within the city limits of Nixa to provide comprehensive day-to-day depository and banking services. This Request for Proposal (RFP) is intended to cover all operating accounts, banking services, safekeeping requirements, and overnight investment of surplus cash in bank balances. The investment of funds in long-term vehicles (six months or greater) will be placed by competitive bids at time of maturities or in the event of surplus and is separate from this RFP. The City is also seeking proposals for the optional service of a Purchasing Card Program. The City reserves the right to enter into separate agreements for this optional banking service.

- 1.1. **CURRENT BANKING SERVICES.** The City currently maintains four (4) separate bank accounts to process receipts and payments. Please see **Appendix C** for a description of each account and the volume of activity.

The City's operating accounts include a variety of activities consisting of various revenue receipts, such as utility receipts, tax receipts, and payments consisting of checks, wires and EFT transfers.

The City currently has online access to all accounts with the ability to initiate ACH payments.

2. SCOPE OF WORK.

- 2.1. **Required Banking Services:** The Depository must provide the following banking services without charge. Please review the following required services and complete the Depository Proposal, **Appendix A**, making notation whether you can comply. Describe any proposed changes, deviations, or any additional features that would be included at no additional cost.

- 2.1.1. **Account Maintenance.** All deposits of the City shall be placed in an interest-bearing account. Currently, the City maintains one general checking account, two money market accounts and one small business checking account. The City requires the option to create additional accounts as required.

- 2.1.2. **Monthly Statements.** Monthly bank statements for the full calendar month must be made available to the City no later than five (5) business days after the end of the month. Detailed bank statements with front and back check copies or document images must be provided. The City also requires online access to account information.

- 2.1.3. **Deposits.** Deposits are made at the end of each business day. Cash deposits total approximately 900 deposits per year representing approximately \$17,000,000

- 2.1.3.1. The Bank shall provide imprinted deposit slips for each account.
 - 2.1.3.2. The Bank shall provide 20 locking bank bags.
 - 2.1.3.3. The City shall have the availability to view item details of deposits.
 - 2.1.3.4. All checks must be presented two times before a check is returned.
 - 2.1.3.5. If remote deposit is available, please so state.

2.1.4. Availability of Funds Deposited. The City desires to know the collected funds availability schedule for its deposits. These deposits include checks, money orders, cash, ACH credits, and wires from local, regional, and out of state banks. The City requires updates as the schedule changes.

2.1.5. Check Clearing. An average of 242 checks are cleared each month through the four City Accounts.

2.1.5.1. The Bank shall provide imprinted checks (stock at option of the City).

2.1.5.2. The City is not to be charged for stop payments.

2.1.5.3. The Bank will pay all checks issued against the account even if payment creates an overdraft to the account. The Finance Director or designee will be notified about any overdrafts within 24 hours of the occurrence, at which time the City agrees to cover the overdraft. The Bank will not charge a fee for overdrafts.

2.1.6. ACH Received/Processed. The Bank must be both a sending and receiving bank on the Automated Clearing House system to accommodate payroll direct deposit, other payments, and incoming revenue to the City. The City processes payroll on a by-weekly basis and originates approximately 4,500 payroll-related ACH transactions per year. The City service 10,000 utility customers; approximately 20% of those customers use ACH debits to make monthly payments.

2.1.7. Credit Cards. The City receives credit card payments for various services; most transactions are processed by a third-party vendor. Elavon is used to process utility payments and park activity transactions. The volume of these transactions average \$841,000 monthly. Our current Bank provides a terminal and transaction processing for all Point-of-Sale transactions taken at City Hall. The average monthly volume of these transaction is \$12,300. Please detail charges and processes to accept these payments in Appendix A.

2.1.8. Wire Transfers. The City prefers the ability to execute wire transfers either by phone or by Internet at the option of the City.

2.1.9. Online Banking Services. The City requires online banking services. Please provide a description of the banks online products and services. This online access should include security measures to insure protection of the City's information. At a minimum, the City requires the following online banking services.

2.1.9.1. Current day's balance (activity and credits)

2.1.9.2. Daily balance reporting available by 8:00 am the following business day.

2.1.9.3. Detailed debit and credit postings.

2.1.9.4. Initiation of regular recurring wire transfers.

2.1.9.5. Initiation of ACH debit and credit transactions.

2.1.9.6. Placement of Stop Payment orders.

2.1.9.7. Ability to create reports for above transactions.

2.1.9.8. Multi-level security for various City staff.

2.1.9.9. No fee should be associated with online banking services.

2.1.10. Stop Payment Process. The City will require the bank to issue
stop Page 3 of 18

payments including stale date check stop payments upon telephone or online communications from authorized City personnel.

2.1.11. Designated Account Liaison. The City will require the selected bank to designate a senior officer as a liaison. This officer must be capable of coordination of all City activities with the bank, and be able to resolve any problems or issues that may arise.

2.1.12. Record Retention. The bank shall maintain all transaction records with the City for the term of ten (10) years following transaction date.

2.1.13. Employee Payroll. The City of Nixa requires all employees to enroll for direct deposit. The bank must be able to provide employee payroll using ACH payments. The City currently has 150 full time employees and 125 parttime and seasonal employees.

2.1.14. Banking Supplies. The bank will provide lockable or disposable money bags, preprinted security checks and printed deposit slips for all accounts at no charge to the City.

2.1.15. Returned Items. The City requires prompt notification of returned items whether checks or ACH. This notification should include an image of the item if it is a check or a detailed description (including customer's name, date and amount) if it is an ACH. In either case, the reason for the return should be included. There should be no fee associated with returned items.

2.1.16. Collateralization. For the protection for the City's deposits, the City requires pledged collateral.

2.1.16.1. The Depository shall at all times maintain securities as pledged collateral in an amount equal to 105% of the amount on deposit with the depository, less the amount which is an insured deposit pursuant to the Federal Deposit insurance Act, as amended.

2.1.16.2. The depository shall maintain such collateral with a disinterested banking institution chartered under existing Federal and State of Missouri laws. The depository and the disinterested banking institution must agree to execute a Collateral Pledge Agreement which provides that the disinterested banking institution would immediately surrender the pledged collateral to the City and the City shall have the right to convert such collateral into cash and dispense it in the event the depository shall fail to pay any City deposit or part thereof.

2.1.16.3. If at any time pledged securities are not satisfactory to the City for deposits made as provided by laws, the City may require additional or substitute securities be pledged as are satisfactory to it.

2.1.16.4. Pledged securities may from time to time be withdrawn and other securities of like kind and character may be substituted with the consent of the City prior to the action. The custodian bank shall confirm in writing the receipt, substitution, and release of securities to and from the custodial account.

2.1.16.5. Securities pledged as collateral shall be evidenced with safekeeping receipts to be received by the City. The City will release safekeeping receipts by signing same and forwarding to the banking institution upon request and receipt of confirmation that the substitute securities have

been received by the disinterested banking institution.

2.2. Optional Banking Services. The City requests the proposing banks to offer any optional services or make any recommendations it believes would enhance the cash management capabilities of the City. All proposing banks are encouraged to make suggestions or add additional information not requested in this proposal. Banks are encouraged to describe factors that distinguish their institutions from potential competitors. However, all respondents must submit a proposal on all required services in the proposal format provided. Failure to submit proposals on required services will result in elimination from consideration.

2.2.1. Investments. The City may request bids from local banking and investment institutions for certificates of deposits. This is a competitive bid process and the contracted banking institution is encouraged to provide bids on these investments, but such investments will not be held exclusively by the contracted institution. Please provide current rate quotes in **Appendix A**.

2.2.2. Purchasing Card. The City currently utilizes approximately 27 purchasing cards. The average monthly amount spent on purchasing cards is \$12,200.

The City reserves the right to enter into separate contracts for optional banking services.

3. INTERPRETATION TO RESPONDENT.

A prospective respondent, who is in doubt as to the meaning of any part of this RFP or any addenda thereto, may submit a written request for interpretation. Such requests shall be addressed to:

City of Nixa
Attn: Stephanie Ewing (Purchasing Coordinator)
715 W. Mt. Vernon St.
P.O. Box 395
Nixa, MO 65714
Email: sewing@nixa.com

Any such interpretation will be made by written addendum. The City shall not be responsible for any explanation or interpretation of proposed document other than by such an addendum. Any addenda must be acknowledged in the proposal and will become a part of the Contract Documents. Failure to acknowledge all addenda issued in the proposal will constitute grounds for rejection of that proposal.

All requests for interpretation must be received by the Purchasing Coordinator no later than five (5) calendar days prior to the proposal opening date. Requests received after that date will not be answered. Persons submitting a request will be responsible for its prompt delivery.

Any and all addendums will be posted on the City's web site (nixa.com) under Current Bid Opportunities on the Purchasing page. Though the City will try to notify all prospective bidders if an addendum is posted, it shall be the responsibility of the bidder to check for and obtain addendums prior to the bid submission date. Receipt of an addendum to this RFP must be acknowledged by respondents. Respondents shall endorse their acknowledgement of said addendum by signing and returning the addendum with bid response.

4. VENDOR RESPONSE REQUIREMENTS. In order for your response to this RFP to be

considered complete, information submitted in response to this RFP shall include:

4.1. Company Overview

4.1.1. Bank name and contact info

4.1.1.1. Contact person for this RFP

4.1.1.2. Mailing address

4.1.1.3. Phone numbers

4.1.1.4. Email address

4.1.2. Year established and former Bank name(s) if applicable.

4.1.3. Brief company overview and number of years providing banking and cash management services, especially to public sector clients.

4.1.4. Differentiators that set your solutions/services apart from your competitors.

4.1.5. One-source vendors are preferred. If utilizing subcontractors for any portion of the RFP requirements, provide subcontractor company information and key personnel involved.

4.1.6. Bank agrees to notify City of any new or modified services offered by the bank that would be beneficial for the City.

4.1.7. Bank agrees to notify the City in advance of a change in senior relationship managers.

4.1.8. Bank agrees to provide the City with annual financial statement upon request.

4.1.9. Bank is an institution eligible to be a depository of public funds under Missouri Statutes.

4.2. Pricing Information

4.2.1. Return a copy of **Appendix A – Pricing Page for Banking Services** with an 'X' in the appropriate blanks.

4.2.2. Return a copy of **Appendix B – Purchasing Card Program** filled out completely.

4.3. Contact Information

4.3.1. How should we contact you if we decide we want to learn more about your proposed services?

4.4. Signature on Proposal

Proposal must be signed in ink and include the full business address of the respondent.

Proposal by partnerships must be signed in the partnership name by one or more of the general partners. Proposal by a corporation must be signed by an officer of the corporation or other person authorized to bind the corporation to the proposal. The names and titles of all persons signing shall be typed or printed below their signatures.

5. TERMS & CONDITIONS.

5.1. Contract Term

The City of Nixa's award of any "Banking Services" agreement(s) shall be for a period of Three (3) years. The agreements may be extended for two (2) additional one year extensions.

5.2. Errors in Proposal

Each Consultant must carefully examine his proposal prior to submission. Failure to do so is at the Consultant's risk. Consultant is responsible for any errors contained therein.

Claim of oversight is not a basis for permitting withdrawal of a proposal after opening.

5.3. Proposal Withdrawal

Proposal may be revised, modified, or withdrawn by the bank at any time prior to opening. Any such revision, modification, or withdrawal shall be in writing. After the Bids are opened, they shall be irrevocable for a period sixty (60) days. Bids shall not be withdrawn or revised after opening.

5.4. Conditions Affecting the Work

Each respondent should take such steps as thought necessary to ascertain the nature and location of the work and any peculiar local conditions, which can affect the work or its cost. Failure to do so will not relieve the respondent of their responsibility for proper estimation of the difficulty or cost of the work.

The City of Nixa assumes no responsibility for any understanding or representation made by any person at any time, unless it is included in the Proposal Documents, including addenda.

5.5. Conflict of Interest.

The submission of a proposal pursuant to this request shall be deemed a certification that, to the best of the respondent's knowledge, no employee of the City of Nixa or City Council member has any direct or indirect financial interest in any agreement, contract or proposal for work or supplies to be furnished to the City of Nixa. Respondent further certifies that such respondent has not and will not, directly or indirectly, enter into any agreement, or understanding; participate in any collusion; or otherwise take any action in restraint of free competitive pricing in connection with such agreement, contract or Proposal; nor will respondent knowingly provide gratuities to City of Nixa employees or Council members, or to their family members. Respondent shall require all subcontractors (at all tiers) to be bound by this conflict-of-interest provision.

5.6. Insurance.

The vendor contracted by the City shall secure and maintain insurance at its own cost and expense, throughout the duration of the contract agreement. This insurance shall remain in

force for the full duration of any contract or contract renewal with City of Nixa. The insurance shall be of such types and in such amounts as may be necessary to protect the respondent and the interest of the City of Nixa against all hazards or risks of loss as specified by the City or which may arise out of the contracted services.

5.7. Clarification of RFP

Respondents may be required to clarify their proposal or further explain the functions of the services proposed. Any clarification will be in writing by the respondent and will be considered part of the proposal. Refusal by a respondent to comply with this requirement will be cause for rejection of the proposal.

5.8. Sub-contractors

The selected vendor will be required to assume responsibility for all services obtained under contracts resulting from this RFP. The City will consider the selected vendor to be the sole point of contact regarding payment of any and all charges resulting from contract obligations. It will be the responsibility of the vendor to verify completeness of each order, and its suitability to meet the needs of the City.

The awarded vendor will be the prime contractor in all matters. All sub-contracting must be approved by the City in writing. Prime contractor assumes all responsibility for subcontractor and will be the sole interface with said subcontractor.

5.9. Contract

This RFP does not commit the City of Nixa to award a contract, to pay costs incurred in the preparation of a proposal in response to this request, or to procure or contract for additional services or supplies. The City reserves the right to accept or reject, in part or in its entirety, any or all proposals received as a result of the RFP, if it is in the best interest of the City to do so.

The vendor must provide requested services in compliance with federal, state and local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of this contract which in any manner affect the completion of the work. The vendor shall indemnify and hold harmless the City and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the vendor.

Each vendor, by signing and returning this proposal, stipulates that he/she has read, understands, and will comply with all provisions of this RFP.

If respondent has a standard contract, such standard contract should be forwarded as part of this RFP. The contract will be subject to review by legal counsel of the City as to legality of form and compliance with state, local, and federal laws.

The City has attached a sample contract document to this RFP as "Attachment A." The City intends to utilize the document referenced as "Attachment 1" when contracting with the selected respondent. Respondents shall include with their proposal any objections or requested

modifications to this document. The City will consider such objections and requests when considering whether to award a contract as part of this RFP.

6. EVALUATION OF PROPOSAL

The City Administrator and other city staff as selected by the City Administrator will evaluate all proposals submitted and compare them to the evaluation factors to determine professional qualification(s) to fulfill the needs of the City of Nixa. Proposals will be scored according to the scoring legend below.

Proposal evaluation factors to be considered are:

Scoring Legend	Possible Points	Points Awarded
Compensation/Interest rate on the accounts	30	
Scope of services offered.	20	
Cost of services	20	
Relevant experience managing similar accounts and services with public sector and/or large commercial clients	10	
Experience, resources, and qualifications of the financial institution and individuals assigned to this account	5	
Financial strength of proposing institution	5	
Adequacy of financial controls and protection against loss	5	
Completeness of Proposal	5	
Total:	100	

The City of Nixa reserves the right to reject any or all proposals or any part thereof and to accept in whole, or in part, such proposals as may be deemed in the best interest of the City. City staff will recommend City Council award a contract to the bank which best fits the needs of the City.

7. SIGNATURE.

When submitting proposals, firms shall include the following signature block as part of their submittal:

The undersigned declares that all interested principals are named herein. The undersigned further declares that no other person or firm has any interest in the proposal or agreement to be entered into and that this proposal is made without collusion with any other person, company, or party, submitting a proposal.

The respondent recognizes that the City of Nixa reserves the right to accept or reject any or all proposals and to waive any technicality or informality therein.

In making this proposal the undersigned has taken into account each provision of all of said Proposal Document:

Signature of Respondent:

By: _____

Title: _____

Date: _____

City of Nixa
Statement of No Proposal RFP-042-2021/Finance

IF YOU DO NOT INTEND TO SUBMIT A PROPOSAL, PLEASE COMPLETE AND RETURN THIS FORM PRIOR TO: August 16, 2021.

TO: City of Nixa Stephanie Ewing
P.O. Box 395
Nixa, MO 65714
Fax it to 417-725-2480 or email: sewing@nixa.com

We the undersigned, have declined to submit a proposal for: Website, App & Related Software Integrations, for the following reasons.

- ☐ Insufficient time to respond to invitation.
- ☐ We do not offer this product/s or equivalent.
- ☐ Unable to meet specifications.
- ☐ Unable to meet insurance requirements.
- ☐ Our schedule would not allow us to perform.
- ☐ Specifications unclear (please explain below).
- ☐ Other (Please specify below).

Additional remarks:

Vendor Information:

Company Name: _____

Address: _____

Signature and Title: _____

Telephone Number: _____ Date: _____

ATTACHMENT A

PROFESSIONAL SERVICES CONTRACT

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

WHEREAS City issued a Request for Proposals (RFP-042-2021/Finance) for professional services related to providing certain services to the City; and

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

WHEREAS after due consideration, the City has accepted the proposal of the Contractor; and

WHEREAS City and Contractor desire to enter into this Agreement whereby the Contractor shall undertake the performance of the services contemplated herein.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth, the City and the Contractor hereby agree as follows:

1) Contract Documents. This Agreement shall consist of the following documents, attachments, and exhibits:

- a. This Executed Agreement
- b. RFP-042-2021/Finance, and any addenda (Exhibit A)
- c. Appendix A- Pricing Page for Banking Services
- d. Appendix B- Pricing Page for Purchasing Card Services

The Agreement shall also include any Exhibits incorporated by reference in the above-described documents. When any provisions of the Contract Documents conflict, the provision contained in RFP-042-2021/Finance shall control, followed by the Executed Agreement, then the Contractor's Schedule of Fees.

2) Term. The term of this Agreement shall be five years, beginning on the date of execution by both parties.

3) Scope of Services. The City agrees to engage the services of the Contractor and the Contractor agrees to perform the services hereinafter set forth in Exhibit A with the standard of care, skill, and expertise ordinarily used by other members of Contractor's profession in performing similar services.

Contractor represents and warrants that it is equipped, competent, and able to perform, and that it will perform all services hereinafter set forth in a diligent and competent manner in accordance with the professional standard of care customarily recognized by members of the Contractor's profession.

Contractor shall provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the services which are particularly described as set forth in RFP-

042-2021/Finance (the "Services").

All Services shall be performed and provided in conformance with all applicable policies of the City, and all applicable federal and state laws and regulations.

The City, upon agreement of the Contractor may add Services to the Scope of Services. Such added Services shall be evidence by a written instrument signed by both parties. The City may delete items from the Scope of Services at any time and at the sole discretion of the City.

4) Compensation. The City hereby agrees to pay the Contractor, as full compensation for the complete and satisfactory performance of this Agreement such amounts as are set forth in the Contractor's Schedule of Fees, said Schedule being attached hereto and incorporated by this reference as "**Appendix A.**"

5) Attorney Fees' and Costs. The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity, or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

6) Other Representations, Warranties, and Other Covenants by the Contractor. The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided Services such as the ones to be performed under this Agreement to other municipalities or private enterprises and that the Contractor has sufficient expertise, knowledge, information, and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer.

7) Amendment; Waiver. No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

8) Contractor's Liability Insurance. The Contractor shall obtain and maintain during the term of this Agreement the insurance coverage's not less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo., as said section may be amended. Insurance policies providing the required coverages shall be with companies licensed to do business in the State of Missouri. All costs of obtaining and maintaining insurance coverages shall be borne by the Contractor.

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for the term of this Agreement.

Policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished to the City prior to Contractor commencing the Services. The certificates must list the City as an additional insured on a primary and non-contributory basis. Certificate Holder shall be listed as "City of Nixa, 715 W. Mt. Vernon, PO Box 395, Nixa MO 65714". The certificate shall bear an endorsement precluding cancellation of or change in coverage without at least thirty days written notice to the City.

9) Termination.

- a. Termination for breach.** Failure of the Contractor to fulfill any of Contractor's obligations under this Agreement in a timely and satisfactory manner shall constitute breach of this Agreement. The City shall thereupon have the right to immediately terminate this Agreement with sufficient notice. The City shall give written notice of the termination to the Contractor.
- b. Termination for Convenience.** The City shall have the right at any time to give sufficient written notice to Contractor to terminate and cancel this Agreement, without cause, for the convenience of the City, and Contractor shall immediately stop upon issuance of such notice. In such event, City shall not be liable to Contractor except for the payment for actual work performed prior to such notice.

10) Notices. Any notice required to be provided under this Agreement shall be sent via U.S. Mail or via e-mail. Notices shall be effective when received at the address as specified below. All such notices shall be sent to each party at the address below, or to such other address as designated by such party, in writing:

IF TO THE CITY: City of Nixa
 ATTN: Stephanie Ewing, Purchasing Manager
 PO Box 395
 Nixa, MO 65714
 E-mail: _____

IF TO CONTRACTOR: Name & Title: _____
 Company Legal Name: _____
 Address: _____
 Email: _____

11) Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

Independent Contractor. Contractor shall be and operate as an independent contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel

engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of the Contractor and shall not be deemed employees of the City in any respect.

12) Compliance with Laws. Contractor shall comply with all applicable City Ordinances and all other applicable laws and regulations, whether State or Federal, including without limitation, unemployment and workers' compensation, occupational safety, equal employment, and wage and price laws, insofar as applicable to the performance of this Agreement.

13) Subcontracts and Assignment. The Contractor shall not subcontract or assign any of the Services to be performed by it hereunder without the express written consent of the City. In the event Contractor utilizes a subcontractor, the Contractor shall ensure that any agreement between Contractor and such subcontractor complies with all requirements imposed for such agreement by federal, state, and local law.

14) Indemnification.

In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this Contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this Contract.

Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this Agreement, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this Agreement to Contractor.

Firm shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its Contract price. Contractor's obligation under this agreement to defend, indemnify and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance.

Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency

including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

15) Nondisclosure and Confidentiality. The Contractor agrees that it will preserve the confidentiality of all City data and account information and will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

16) Multi-year contracts and Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Non-appropriation"), this Agreement shall terminate at the end of the then current fiscal year as if terminated expressly and mutually by both parties. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party.

17) Accounting. During the term of this Agreement, the Contractor shall maintain books and accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

18) Other Contractors. Nothing in this Agreement shall be construed as prohibiting the City from contracting with other Contractors to provide any of the Services provided for herein.

19) Work Records and Work Product. The Contractor shall provide the City with copies of all documents pertinent to the Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Agreement. The Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. Upon termination of this Agreement, the Contractor shall promptly deliver to City any documents, and work product, whether printed or electronic.

20) Compliance with Immigration Statutes. Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.

21) Governing Law and Jurisdiction. This Agreement and every question arising hereunder shall be construed and determined according to the laws of the State of Missouri. Should any part of this Agreement be litigated, venue shall be proper only in Christian County, Missouri.

22) Discrimination. Contractor agrees that, in the performance of this Agreement, not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

23) Entire Agreement. This Agreement, including the Exhibit A, and Exhibit B, shall constitute the entire Agreement between the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing and specifically referring hereto.

24) City's Representative. The City Administrator is hereby designated as the City's authorized representative for purposes of this Agreement. The City Administrator is charged with providing any approvals and exercising any rights of the City under this Agreement, including the approval of any renewal terms contemplated herein.

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

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRACTOR:

CITY OF NIXA, MISSOURI

Signature.

Jimmy Liles, City Administrator

Printed Name.

Approved as to form:

Title

Nick Woodman, City Attorney

Date.

CERTIFICATE OF FINANCIAL OFFICER

ATTEST:

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

Signature.

Name.

Jennifer Evans, Director of Finance

Title.

Date

RESOLUTION EXHIBIT A

**PROFESSIONAL SERVICES CONTRACT
Banking Services**

THIS PROFESSIONAL SERVICES CONTRACT ("Agreement") by and between Southern Bank, located at 305 W. Mt. Vernon St., Nixa, MO 65714, a banking institution ("Contractor") and the City of Nixa, a Constitutional Charter City of the State of Missouri ("City"), is made and entered into upon the date of execution of the Agreement by all parties.

WHEREAS City issued a Request for Proposals (RFP-042-2021/Finance) for professional services related to providing certain services to the City; and

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

WHEREAS after due consideration, the City has accepted the proposal of the Contractor; and

WHEREAS City and Contractor desire to enter into this Agreement whereby the Contractor shall undertake the performance of the services contemplated herein for Banking Services.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth, the City and the Contractor hereby agree as follows:

1) Contract Documents. This Agreement shall consist of the following documents, attachments, and exhibits:

- a. This Executed Agreement
- b. RFP-042-2021/Finance, and any addenda (Exhibit A)
- c. Appendix A- Pricing Page for Banking Services

The Agreement shall also include any Exhibits incorporated by reference in the above-described documents. When any provisions of the Contract Documents conflict, the provision contained in RFP-042-2021/Finance shall control, followed by the Executed Agreement, then the Contractor's Schedule of Fees.

2) Term. The term of this Agreement shall be five years, beginning on the date of execution by both parties.

3) Scope of Services. The City agrees to engage the services of the Contractor and the Contractor agrees to perform the services hereinafter set forth in Exhibit B with the standard of care, skill, and expertise ordinarily used by other members of Contractor's profession in performing similar services.

Contractor represents and warrants that it is equipped, competent, and able to perform, and that it will perform all banking services hereinafter set forth in a diligent and competent manner in accordance with the professional standard of care customarily recognized by members of the Contractor's profession.

Contractor shall provide all supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for

the proper completion of the services which are particularly described as set forth in RFP-042-2021/Finance (the "Services").

All Banking Services shall be performed and provided in conformance with all applicable policies of the City, and all applicable federal and state laws and regulations.

The City, upon agreement of the Contractor may add Services to the Scope of Services. Such added Services shall be evidenced by a written instrument signed by both parties. The City may delete items from the Scope of Services at any time and at the sole discretion of the City.

4) Compensation. The City hereby agrees to pay the Contractor, as full compensation for the complete and satisfactory performance of this Agreement such amounts as are set forth in the Contractor's Schedule of Fees, said Schedule being attached hereto and incorporated by this reference as "**Appendix A.**"

5) Attorney Fees' and Costs. The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity, or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

6) Other Representations, Warranties, and Other Covenants by the Contractor. The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Banking Services and has provided Services such as the ones to be performed under this Agreement to other municipalities or private enterprises and that the Contractor has sufficient expertise, knowledge, information, and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer.

7) Amendment; Waiver. No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

8) Contractor's Liability Insurance. The Contractor shall obtain and maintain during the term of this Agreement the insurance coverage's not less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo, as said section may be amended. Insurance policies providing the required coverages shall be with companies licensed to do business in the State of Missouri. All costs of obtaining and maintaining insurance coverages shall be borne by the Contractor.

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for the term of this Agreement.

Policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished to the City prior to Contractor commencing the Services. The certificates must list the City as an additional insured on a primary and non-contributory basis. Certificate Holder shall be listed as "City of Nixa, 715 W. Mt. Vernon, PO Box 395, Nixa MO 65714". The certificate shall bear an endorsement precluding cancellation of or change in coverage without at least thirty days written notice to the City.

9) Termination.

- a. Termination for breach.** Failure of the Contractor to fulfill any of Contractor's obligations under this Agreement in a timely and satisfactory manner shall constitute breach of this Agreement. The City shall thereupon have the right to immediately terminate this Agreement with sufficient notice. The City shall give written notice of the termination to the Contractor.
- b. Termination for Convenience.** The City shall have the right at any time to give sufficient written notice to Contractor to terminate and cancel this Agreement, without cause, for the convenience of the City, and Contractor shall immediately stop upon issuance of such notice. In such event, City shall not be liable to Contractor except for the payment for actual work performed prior to such notice.

10) Notices. Any notice required to be provided under this Agreement shall be sent via U.S. Mail or via e-mail. Notices shall be effective when received at the address as specified below. All such notices shall be sent to each party at the address below, or to such other address as designated by such party, in writing:

IF TO THE CITY: City of Nixa
 ATTN: Stephanie Ewing, Purchasing Manager
 PO Box 395
 Nixa, MO 65714
 E-mail: sewing@nixa.com

IF TO CONTRACTOR: Name & Title: _____
 Company Legal Name: _____
 Address: _____
 Email: _____

11) Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

Independent Contractor. Contractor shall be and operate as an independent contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of the Contractor and shall not be deemed employees of the City in any respect.

12) Compliance with Laws. Contractor shall comply with all applicable City Ordinances and all other applicable laws and regulations, whether State or Federal, including without limitation, unemployment and workers' compensation, occupational safety, equal employment, and wage and price laws, insofar as applicable to the performance of this Agreement.

13) Subcontracts and Assignment. The Contractor shall not subcontract or assign any of the Services to be performed by it hereunder without the express written consent of the City. In the event Contractor utilizes a subcontractor, the Contractor shall ensure that any agreement between Contractor and such subcontractor complies with all requirements imposed for such agreement by federal, state, and local law.

14) Indemnification.

In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this Contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this Contract. Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this Agreement, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this Agreement to Contractor.

Firm shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its Contract price. Contractor's obligation under this agreement to defend, indemnify and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance.

Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

15) Nondisclosure and Confidentiality. The Contractor agrees that it will preserve the confidentiality of all City data and account information and will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

16) Multi-year contracts and Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Non-appropriation"), this Agreement shall terminate at the end of the then current fiscal year as if terminated expressly and mutually by both parties. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party.

17) Accounting. During the term of this Agreement, the Contractor shall maintain books and

accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

18) Other Contractors. Nothing in this Agreement shall be construed as prohibiting the City from contracting with other Contractors to provide any of the Services provided for herein.

19) Work Records and Work Product. The Contractor shall provide the City with copies of all documents pertinent to the Banking Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Agreement. The Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. Upon termination of this Agreement, the Contractor shall promptly deliver to City any documents, and work product, whether printed or electronic.

20) Compliance with Immigration Statutes. Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.

21) Governing Law and Jurisdiction. This Agreement and every question arising hereunder shall be construed and determined according to the laws of the State of Missouri. Should any part of this Agreement be litigated, venue shall be proper only in Christian County, Missouri.

22) Discrimination. Contractor agrees that, in the performance of this Agreement, not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

23) Entire Agreement. This Agreement, including Exhibit A, shall constitute the

Agreement between the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing and specifically referring hereto.

24) City's Representative. The City Administrator is hereby designated as the City's authorized representative for purposes of this Agreement. The City Administrator is charged with providing any approvals and exercising any rights of the City under this Agreement, including the approval of any renewal terms contemplated herein.

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

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRACTOR:

CITY OF NIXA, MISSOURI

Signature.

Jimmy Liles, City Administrator

Printed Name.

Approved as to form:

Title

Nick Woodman, City Attorney

Date.

CERTIFICATE OF FINANCIAL OFFICER

ATTEST:

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

Signature.

Name.

Jennifer Evans, Director of Finance

Title.

Date



August 16, 2021

City of Nixa
Attn: Stephanie Ewing
1111 W. Kathryn
Nixa, MO 65714

Southern Bank appreciates the opportunity to provide this proposal to serve as the depository for the City of Nixa. Below, you will find a bid indicating that Southern Bank can provide a competitive earnings rate and meet all expectations for security. The terms outlined below are valid for thirty (30) days from the date of the proposal. The initial term of this agreement shall be for 3-years. The agreements may be extended for 2 additional one-year extensions.

Southern Bank is a state-chartered commercial bank, headquartered at 2991 Oak Grove Road in Poplar Bluff, Missouri. Southern Bank was founded in 1887, and at December 31, 2020, reported total assets of \$2.6 billion. We operate 49 locations in Missouri, Arkansas and Illinois. Our location in Nixa will be very convenient for the City.

Southern Bank is a well-capitalized financial institution experienced in providing banking services to city, county, and other governmental units. We continue to invest in technology to serve our customers with the best available solutions for their banking needs. We are confident that our services will meet and exceed your expectations, while our local personnel are always available to answer any questions, and to resolve any problems.

Earnings Rate Options for all City Checking Accounts:

Floating Rate Option

- **Earnings Rate:** A floating earnings rate equal to 80% of the 91-day (13 week) Treasury bill. The rate would be set on the first business day of each month using the yield on the 91-day Treasury bill (13 week) as published in the Wall Street Journal. As of August 10, 2021, the 91-day T-bill rate was 0.05% which would have yielded an earnings rate of 0.04% per annum.
- **Floor Rate:** While your earnings rate as outlined above may increase as rates begin to rise, Southern Bank will also include a **floor-rate of 0.20%** per annum, so your interest-bearing accounts will not fall below this rate during the duration of this agreement.

Security of Funds

Funds held on deposit at Southern Bank are insured by the FDIC up to \$250,000 per depositor, and we will pledge investment securities as required under RSMo. 110.010 for balances in excess of that amount. Securities pledged will be held by our third-party safekeeping agent, the Federal Home Loan Bank of Des Moines, who will act only on instruction by you.

Southern Bank, at its discretion, may also secure your deposits with the IntraFi Network Deposits Program:

The IntraFi Network Deposits is provided by our partner, IntraFi Network. Through 3,000 partner financial institutions nationwide (including 74 headquartered in Missouri), IntraFi Network provides the ability to maximize FDIC insurance coverage through the use of reciprocal deposit relationships. This arrangement is specifically authorized under Missouri law at RSMo. 67.085, and fully complies with Missouri and Federal law regarding security and collateralization of deposits.

While Southern Bank believes this reciprocal deposit arrangement is convenient for you, it's even better for the communities where we operate. When we are required to hold collateral for deposits, we purchase investment securities issued by government-sponsored enterprises such as Fannie Mae and Freddie Mac, which operate nationally. In effect, your deposits at any bank in the Nixa market, when collateralized by these types of securities, mostly leave our community. Because we operate as a community bank, we'd prefer to invest your deposits through loans in our community: securing your deposits using FDIC insurance maximized under the IntraFi Network Deposits program allows us to do that. The deposits you place through Southern Bank will be transferred to other financial institutions in Missouri and elsewhere, but they'll be exchanged on a reciprocal basis, meaning we receive back the same amount of deposits, which we can invest locally in home, business, construction, and development lending.

Southern Bank proposes to serve as the City of Nixa's depository with **no charges** for all of the following: account activity, statements, or maintenance; overdraft; charge back checks; access to our internet banking and commercial cash management program (see below for description of services); remote deposit capture; cashier's checks; wire transfers; stop payment orders; deposit bags; checks; deposit slips and a safe deposit box.

Our internet banking and cash management program includes the following services:

- **ACH Credit Origination:** allows the City to make deposits directly to other accounts, which is useful if you want to offer direct paycheck deposit to your employees (Direct Deposit).
- **ACH Debit Origination:** allows the City to process withdrawals directly from other accounts, which is useful if you want to offer users the convenience of paying bills automatically (Auto Debit or Direct Payment).
- **Balance Reporting:** allows the City to create balance reports on individual accounts or any combination of accounts, which can be created for the current day, for a prior day, or for the current and a prior day.
- **Account Transfers:** allows the City to make account-to-account transfers within Southern

Bank to manage your cash flow.

- **EFTPS:** allowing the City to pay federal taxes by direct deposit.
- **Check Reconciliation (Positive Pay):** allowing the City to monitor checks clearing your account(s) to prevent check fraud.
- **NACHA Import:** allows the City to import NACHA-formatted files that include both credit and debit items.
- **Secure File Transfer:** allows the City to send an encrypted file of sensitive information to Southern Bank via encrypted email.
- **Wire Transfers Requests:** allows the City to send wire transfer requests directly to Southern Bank, selecting an Online Banking account that will be debited for the transaction.

In addition to the services above, Southern Bank is pleased to offer all City of Nixa employees a Health Savings Account (HSA) earning a 0.50% Annual Percentage Yield with no monthly service charges.

Your primary contact will be Greg Henderson, Branch Retail Manager. Greg has over 9 years of experience within the industry and has been a Nixa resident for most of his life.

Southern Bank is proud to present this proposal to the City of Nixa. We look forward to hearing from you. Please contact Greg Henderson with any questions.

Sincerely,



James Lightner
Market President

APPENDIX A - Pricing Page for Banking Services

The bidder must provide pricing information as specified below to provide Banking Services in accordance with the terms and conditions of this Request for Proposal.

1. Bank will provide the following services free of charge to the City of Nixa.

- | | |
|--|---|
| a. Checks (stock at option of City) | Yes <u>X</u> No _____ If No, cost _____ |
| b. Deposit Slips (stock at option of City) | Yes <u>X</u> No _____ If No, cost _____ |
| c. Stop Payment Orders | Yes <u>X</u> No _____ If No, cost _____ |
| d. Outgoing domestic wire transfers | Yes <u>X</u> No _____ If No, cost _____ |
| e. Incoming domestic wire transfers | Yes <u>X</u> No _____ If No, cost _____ |
| f. Money Bags (20) | Yes <u>X</u> No _____ If No, cost _____ |
| f. Weekly Direct Deposit for City Employee Payroll | Yes <u>X</u> No _____ If No, cost _____ |
| h. No Service Charge to City Accounts | Yes <u>X</u> No _____ If No, cost _____ |
| i. Charge Back Checks | Yes <u>X</u> No _____ If No, cost _____ |
| j. All funds will be pledged as required by law | Yes <u>X</u> No _____ If No, cost _____ |
| k. Detailed bank statements with front and back check copies in numerical order by hard or document images | Yes <u>X</u> No _____ If No, cost _____ |
| l. Bank statements can be prepared once a month within five (5) days after month end | Yes <u>X</u> No _____ If No, cost _____ |
| m. Monthly report of collateral pledged and its market value | Yes <u>X</u> No _____ If No, cost _____ |
| n. Overdraft | Yes <u>X</u> No _____ If No, cost _____ |
| o. Transfers between accounts | Yes <u>X</u> No _____ If No, cost _____ |
| 2. Bank can provide ACH origination for the City of Nixa | Yes <u>X</u> No _____ If No, cost _____ |
| 3. Bank can provide Internet access to all City Accounts | Yes <u>X</u> No _____ If No, cost _____ |
| 4. Provide available on-line banking services. | Yes <u>X</u> No _____ If No, cost _____ |

Describe what banking services are available on-line. Include, but not limited to, availability of bank statements, deposit details, cleared items, stop payment orders, ACH processing, historical data, and charge back items.

5. Process credit card transaction from third party vendors Yes ☒ No ☐ If No, cost _____

Acceptance process _____

6. Process Point of Sale credit card transactions Yes ☐ No ☐ If No, cost _____

Acceptance process _____ This service is available through Southern Bank's credit card processing partner Worldpay.

7. Checking Account (no minimum balance). Quote interest rate.

See cover letter

8. Money Market Checking Account (no minimum balance) (limited number of checks) will earn interest based upon:

See cover letter

9. Time deposits (no minimum balance) of City Funds may be purchased in maturates of 6 months or 1 year. The interest rate will be based on The Wall Street Journal and the average of top rates paid by major New York banks on new issue CD's for the prior week.

The City reserves the right to independently bid CD's outside this contract at its option.

The Bank will quote rates based on: Available upon request

180 days _____

365 days _____

10. Please attach as additional proposal for any other services offered by your bank that may be attractive to the City of Nixa to enhance its cash management program.

The above pricing information is hereby provided in accordance with the terms and conditions of this Request for Proposal.

SIGNATURE AND IDENTITY OF BIDDER

The undersigned states that the **LEGAL NAME** and **ADDRESS** of (1) the individual bidder, (2) each partner or joint venture (whether individuals or corporations, and whether doing business under a fictitious name), or (3) the corporation (with the state in which it is incorporated) are shown below; that if not signing the intention of binding herself or himself to become the responsible and sole contractor, she or he is the agent of and duly authorized in writing to sign for the bidder or bidders; and the he or she is signing and executing this as the proposal of a (check one):

() Sole individual () Partnership () Joint Venture () Limited Liability Corporation

(✓) Corporation () Other _____

Submitted by:

Banking institution Southern Bank

Signature 

Printed name Greg Henderson

Title Branch Retail Manager

Date 08/16/2021

CONTACT PERSON FOR BID

Printed name Greg Henderson

Address 305 W. Mt. Vernon St., Nixa, MO 65714

Email ghenderson@bankwithsouthern.com Phone (417) 724-5142



Issue: A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A CONTRACT AMENDMENT WITH IONWAVE TECHNOLOGIES FOR CONTRACT MANAGEMENT SERVICES.

Date: SEPTEMBER 3, 2021

Submitted By: Jennifer Evans, Director of Finance

Background

The City currently has a contract with IonWave Technologies for our contract management system. The 2021 budget includes additional funding to add an electronic bidding and supplier management registration module to this existing contract.

Analysis

The addition of this module will allow vendors to register with the City so they can in turn be notified through the system of specific bid lettings. This will also facilitate electronic submissions and tracking of bids as well as provide linkage between successful bidders and their subsequent contracts.

This amendment will add the electronic bidding and supplier management registration module and extend our current contract for 5 years.

Recommendation

Staff recommends the passage of this resolution.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE
CITY ADMINISTRATOR TO EXECUTE A CONTRACT AMENDMENT WITH
IONWAVE TECHNOLOGIES FOR CONTRACT MANAGEMENT SERVICES.**

WHEREAS the City currently has a contract with IonWave Technologies for the provision of a contract management system; and

WHEREAS the City desires to obtain an electronic bidding and supplier management module from IonWave; and

WHEREAS the contract amendment, attached hereto as "Resolution Exhibit A," would allow for the provision by IonWave of these additional modules; and

WHEREAS the City Council desires to authorize the City Administrator to execute, on behalf of the City, the contract amendment attached hereto as "Resolution Exhibit A."

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

SECTION 1: The City Administrator, or designee, on behalf of the City, is hereby authorized to enter into the Contract attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A." Said Contract shall be in substantially similar form to the document attached hereto as "Resolution Exhibit A." The City Administrator is further authorized to do all things necessary or convenient to carry out the terms and intent of this Ordinance.

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

ADOPTED BY THE CITY COUNCIL THIS 13TH DAY OF SEPTEMBER 2021.

ATTEST:

CITY CLERK

PRESIDING OFFICER

RESOLUTION NO. 2021-095

47 **APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.**
48
49

50 **ATTEST:**
51

52 _____
53 **CITY CLERK**

MAYOR

54
55
56 **APPROVED AS TO FORM:**
57

58 _____
59 **CITY ATTORNEY**

RESOLUTION EXHIBIT A



**AMENDMENT NUMBER 1
TO THE AGREEMENT
BETWEEN
CITY OF NIXA, MISSOURI
AND
ION WAVE TECHNOLOGIES, INC.**

This Amendment Number 1 entered into and effective on December 1, 2021, modifies the Master License and Services Agreement ("Agreement") between the City of Nixa, Missouri, ("Client") and Ion Wave Technologies, Inc. ("IWT") entered into on December 1, 2016 as follows:

1. Definitions: All definitions set forth in the Agreement shall have the same meaning unless stated otherwise in this Amendment.
2. This Amendment Number 1 is issued to extend the term of the previous Agreement and add the Electronic Bidding and Supplier Management / Registration modules subscription as detailed in the attached Exhibit A-1 and Exhibit C-1.
3. All other terms and conditions of the Agreement remain unchanged.

**Exhibit A-1
Licensed Products**

1. **License Grant.** IWT Grants to Client, in accordance with and subject to the terms and conditions set forth in this Agreement, a license to the IWT products as specified below:
 - (i) IWT Sourcing subject to the following terms and restrictions:
 - The previous license grant shall be extended for an additional five (5) year period, with usage limited to Client employee users.
 - The IWT Sourcing license shall include the Electronic Bidding (eRFx) and the Supplier Management / Registration Modules.
 - The Bid Evaluation Scoring module, the Reverse Auction module, the Collaboration/Workflow module, the Contract Execution/Signatures module, IWT's Single-Sign On module, and any future modules released by IWT are specifically excluded. Client may purchase additional modules and incorporate an additional Exhibit into this agreement.
 - The cost of the license shall be paid as outlined in the payment section below.
 - (ii) IWT Contract Management subject to the following terms and restrictions:
 - The license grant shall be for a five (5) year period starting upon execution of this Agreement, with usage limited to Client employee users.
 - The Contract Management license shall include the Contract and Insurance Certificate Tracking modules. Any future modules are specifically excluded. Client may purchase additional modules and incorporate an additional Exhibit into this agreement.
 - The cost of the license shall be paid annually as outlined in the payment section below when bundled with IWT Sourcing.
2. **Support Services.** IWT will provide Support Services to the Client, in accordance with and subject to the terms and conditions set forth in this Agreement, as specified below:

- (i) Support and Maintenance:
 - IWT will provide Support Services as detailed in Exhibit B for the products listed above during the license period at no additional cost to Client.

3. Payment. Payment for the license fees shall be due as follows:

- (i) \$10,000 Annual License Fees due December 1, 2021 for the service period 12/01/2021 to 11/30/2022.
- (ii) \$10,250 Annual License Fees due December 1, 2022 for the service period 12/01/2022 to 11/30/2023.
- (iii) \$10,500 Annual License Fees due December 1, 2023 for the service period 12/01/2023 to 11/30/2024.
- (iv) \$10,750 Annual License Fees due December 1, 2024 for the service period 12/01/2024 to 11/30/2025.
- (v) \$11,000 Annual License Fees due December 1, 2025 for the service period 12/01/2025 to 11/30/2026.

4. Non-Appropriation. Client intends to remit to IWT all payments for the full term if funds are legally available. In the event Client is not granted an appropriation of funds at any time during the term for the funds and are not, otherwise available to Client to pay IWT payments due and to become due under this Agreement, and there is no other available funds by which payment can be made to IWT, and the non-appropriation did not result from an act or omission by Client, Client shall have the right to terminate this Agreement on the last day of the fiscal period for which appropriations were received without penalty or expense to Client, except as to the portion of the payments for which fund shall have been appropriated and budgeted. At least ninety (90) days prior to the end of Client's fiscal period, Client's Business Services Executive Director shall certify in writing that (1) funds have not been appropriated for the next fiscal period, (b) such non-appropriation did not result from any act or failure to act by Client, and (c) Client has exhausted all funds legally available to pay IWT. If Client terminates this Agreement because of non-appropriation of funds, Client may not purchase or lease during the subsequent fiscal period, software and/or service performing the same function as, or functions taking the place of those performed by the software and/or service provided by IWT; however, that these restrictions shall not be applicable if or to the extent that the application of these restrictions would affect the validity of this Agreement.

IN WITNESS WHEREOF, each party hereto has caused this Exhibit to be executed and amended to the Agreement by its duly authorized representative.

IWT: Ion Wave Technologies, Inc.	Client: City of Nixa, Missouri
Signed:	Signed:
Printed Name:	Printed Name:
Printed Title:	Printed Title:
Date:	Date:

Exhibit C-1 Statement of Work ("SOW")

1. Introduction

Client seeks to implement the Electronic Bidding application (the "Solution"). The primary objective of the project is to configure and implement the Solution for the Client. This will be done in a way that utilizes the standard features of the Solution and is based on the Solution standard configurations.

This SOW describes the scope of services and the services investment necessary to complete the Solution implementation project. IWT Professional Services will use commercially reasonable efforts in a manner consistent with software industry standard guidelines and as outlined in this SOW to provide the guidance and expertise necessary to help Client successfully implement the Solution.

2. Summary of IWT Responsibilities

The following major activities are included in the scope of this project and will be performed by IWT:

- (i) Coordinate and lead all meetings, workshops, and training sessions.
- (ii) Provide training to Client end users in Client's desired format:
 - a. Web-based. Provide up to two (2) web-based training sessions to Client users. **-OR-**
 - b. On-site Training. If included, provide up to four (4), two-hour, on-site training sessions to Client users over a two consecutive-day period for the additional fees detailed below.
- (iii) Conduct lecture style training including a solution overview.
- (iv) Provide training program documentation to the Client.

- (v) Provide “hands-on” training activities to Client attendees.
- (vi) Review Client attendee “hands-on” training activities.
- (vii) Consult Client on various Solution use options.
- (viii) Provide project management, including coordination and management activities, issue tracking, and weekly status reporting to Client.
- (ix) Coordinate Client acceptance testing.
- (x) Provide issue resolution according to the severity levels and response times as outlined in the Agreement.

3. Summary of Client Responsibilities

Client agrees to undertake at its sole expense, the following responsibilities:

- (i) Assignment of an internal dedicated project manager to manage the Solution and its implementation.
- (ii) Coordinate internal participation in project related meetings.
- (iii) Provide materials and facilities for project related activities, including Internet-capable machines for training sessions.
- (iv) Purchase, install, and validate any third-party software required.
- (v) Develop and implement test scripts for acceptance of the Solution.
- (vi) Plan, coordinate, and participate in training sessions and complete all training assignments.
- (vii) Plan and direct the production deployment (Go-live).

4. Technical Requirements

Client will be responsible for procurement, installation, and operational verification of all software, software licenses, equipment, and hardware required to support the Solution in the production deployment. This includes:

- (i) Web Browsers. Client will be responsible for procurement, installation, and operational verification of all web browser licenses.
- (ii) Network Performance. Client is responsible for maintaining the satisfactory network performance needed to conduct the deployment of the production system.
- (iii) IWT may modify any of the above hardware and software requirements from time to time, upon ninety (90) days written notice to Client. Current requirements can be viewed at <https://prod.ionwave.net/BrowserCompatibility.html>

5. Project Organization and Operating Procedures

- (i) Project Organization. Client and IWT agree to assign dedicated staff to perform their respective project activities.
- (ii) Change Control Process. IWT projects follow a standard change control process. If during the course of a project, a scope change is identified, then the IWT project manager will document the change and associated cost or schedule impacts on a change authorization form. Once documented, the IWT project manager reviews the change with the Client project manager. Scope changes are defined as any modification to the agreed scope of a project, including but not limited to requirements, software modules, configuration changes, project delays and enhancements or modifications to the product. Scope changes can require modification to cost, schedule, quality or other project deliverables and therefore require sign-off from the Client project manager. No work on scope changes will be conducted until sign off is obtained. Changes that impact scope require approval from the IWT project manager and the Client project manager.
- (iii) Acceptance Process. Client will review any Work Product requiring explicit acceptance within five (5) business days of delivery and will document required adjustments. If IWT does not receive notice within the defined five-day period, each Work Product will be considered accepted. Within five (5) days, IWT will provide a revised Work Product that incorporates the agreed adjustments. In the event that Client does not accept the revised Work Product, the parties may agree to repeat this review and acceptance process one additional time. If disputes remain after repeating the acceptance process, the project team will refer these to IWT's and the Client's executive teams for resolution.
- (iv) Work Location. Unless otherwise specified, Client and IWT will perform all work at their respective locations. If included, On-Site Training will be held at the Client's training facilities.

6. Project Investment

Project Payment Schedule

Payment Item	Amount	Payment Schedule
Implementation Services Mobilization Fee	WAIVED	Remitted to IWT upon the start of the project.

Payment Item	Amount	Payment Schedule
Implementation Services Go-Live Fee	\$0	Remitted to IWT upon the preparation of the system for Go-Live following training and configuration.
Web-Based Training Services	\$0	Remitted to IWT upon completion of training.
Contract Data Import Services	Not Included	Remitted to IWT upon completion of the data import service.
On-Site Training Services	Not Included	Remitted to IWT upon completion of on-site training.
Total Services	\$0	
Travel and Administrative Expenses Estimate	-0-	No travel is expected for this engagement.

IN WITNESS WHEREOF, each party hereto has caused this Exhibit to be executed and amended to the Agreement by its duly authorized representative.

IWT: Ion Wave Technologies, Inc.	Client: City of Nixa, Missouri
Signed:	Signed:
Printed Name:	Printed Name:
Printed Title:	Printed Title:
Date:	Date: