



Nixa Public Works
Jeff Roussell, Street Superintendent
1111 W. Kathryn
Nixa, Missouri 65714
417-725-2353

To: Mayor Steele and City Council

From: Jeff Roussell / Travis Cossey

Date: 7/30/2021

RE: Requesting passage of Resolution #2021-082, Cherry St. Storm Water project.

Approval of this Resolution will authorize the City Administrator to execute a contract with D & E Plumbing and Heating Inc. for Storm Water improvements from Rice St to 309 Market St. Identified in the 2021 CIP, this improvement is the first phase of an overall project that will encompass an area from Rice St to North St, just South of the Junior High School, to alleviating flooding. This initial phase will include improvements from Rice St. north through the JTSD campus, under Market St. ending at a junction box in the rear yard of 307 N. Market. Future phases will be completed as funding becomes available.

Bids were received from D & E Plumbing and Heating, K & B Equipment and Excel Excavating with D & E Plumbing and Heating being low bid at \$257,910. If approved, funding for the low bid of D & E Plumbing and Heating is available and within allocated amounts.

It is staff's recommendation that Council move to approve the requested Resolution allowing for completion of phase #1 of the budgeted project.

RESOLUTION NO. 2021-082

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA ACCEPTING THE BID OF D&E PLUMBING AND HEATING, INC., FOR CERTAIN STORMWATER AND DRAINAGE IMPROVEMENTS LOCATED ALONG CHERRY STREET AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT FOR SAME.

WHEREAS City Council, by passage of Resolution 2020-121, adopted the 2021-2025 Capital Improvement Program (“CIP”); and

WHEREAS included in the CIP is a project known as the “Stormwater Drainage Improvements from Rice St. to North St. Phase 1 (SW2020-01)” (“Project”); and

WHEREAS City staff, pursuant to the City’s adopted purchasing procedures (Resolution 2019-113), as amended, have solicited bids for the Project; and

WHEREAS after reviewing all submitted bids, City staff has determined that D&E Plumbing and Heating, Inc., (“Contractor”) provided the best bid for the Project; and

WHEREAS City Council desires to award the Contract for the Project to the Contractor.

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

SECTION 1: City Council hereby accepts the bid of the Contractor for the Project at the price and sum of \$257,910.00. The City Administrator, or designee, is hereby authorized to enter into a contract with the Contractor. Said contract to be in substantially similar form as the document attached hereto, and incorporated herein by this reference, as “Resolution Exhibit A.” The contract shall include any referenced exhibits or attachments included or referenced in the contract, said documents being on file with the Finance Department. 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: If applicable, all workers performing work under the contract authorized by this Ordinance shall be paid a wage of no less than the prevailing hourly rate of wages for work of a similar character in this locality or the public works contracting minimum wage, whichever is applicable. The Contractor shall fully comply with the provisions and requirements of the Missouri State Prevailing Wage Law, if applicable. If applicable, contractors and any subcontractor performing work under this contract must provide a 10-hour OSHA construction safety training program, or similar program approved by the Department of Labor, for on-site employees, unless employees demonstrate they previously completed the program.

RESOLUTION NO. 2021-082

45 **SECTION 3:** This Ordinance shall be in full force and effect from and after its
46 final passage by the City Council and after its approval by the Mayor, subject to the
47 provisions of section 3.11(g) of the City Charter.
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50 **ADOPTED BY THE CITY COUNCIL THIS 9TH DAY OF AUGUST 2021.**

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53 ATTEST:

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56 _____
57 CITY CLERK

_____ PRESIDING OFFICER

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59 **APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.**

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62 ATTEST:

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66 CITY CLERK

_____ MAYOR

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68 APPROVED AS TO FORM:

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71 _____
CITY ATTORNEY

CONTRACT AGREEMENT

THIS AGREEMENT is dated as of the ____ day of _____ in the year 2021,

by and between THE CITY OF NIXA hereinafter called (Owner)

and D & E Plumbing & Heating, Inc. hereinafter called (Contractor)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereafter set forth agree as follows:

Article 1: WORK

CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows:

**Stormwater Drainage Improvements from Rice St. to North St. Phase 1
For The City of Nixa, Missouri**

Article 2: ENGINEER

The project has been designed by

SHAFFER & HINES, INC.

P.O. Box 493, Nixa, Missouri, 65714

who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

Article 3: CONTRACT TIME

3.1 Unless otherwise agreed to the undersigned bidder agrees to enter into a contract within ten (10) days after acceptance of this bid, and further agrees to complete all work covered by the bid within 120 calendar days after the issuance of the Notice to Proceed.

3.2 Liquidated Damages: OWNER AND CONTRACTOR recognize that time is of the essence of this Agreement, and that OWNER will suffer financial loss if the work is not substantially complete within the time specified in paragraph 3.1, above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding that actual loss suffered by OWNER if the work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but

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not as a penalty) CONTRACTOR shall pay OWNER Two Hundred Fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for substantial completion until the work is substantially complete.

Article 4: CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for performance of the work in accordance with the Contract Documents in current funds as follows:

Two Hundred Fifty-Seven Thousand, Nine Hundred-Ten dollars and zero cents (\$257,910.00)

Article 5: PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Application for Payment as recommended by ENGINEER, on or about the 1st day of each month during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values provided for in Article 14, Paragraph 1 of the General Conditions.

5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

90 % of the work completed.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price in accordance with Paragraph 8 of the General Conditions, less such amounts as ENGINEER shall determine in accordance with Article 14 Paragraph 7 of the General Conditions.

5.2 Final Payment: Upon final completion and acceptance of the work in accordance with Article 14, Paragraph 13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Article 14 Paragraph 13.

Article 6: INTEREST

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the project in accordance with Article 14, Paragraph 4 of the General Conditions.

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Article 7: CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized himself with the nature and extent of Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.

7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.

7.3 CONTRACTOR made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as deemed necessary for the performance of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examination, investigations, tests reports or similar data are or will be required by CONTRACTOR for such purposes.

7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.

7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, error or discrepancies that he had discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 8: CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to the AGREEMENT, made a part hereof and consists of the following:

8.1 This Agreement (page CA-1 - CA-5, inclusive).

8.2 Exhibits to this Agreement

Exhibit 1 – Affidavit of Compliance with Section 292.675 R.S.Mo., Et Seq.

Exhibit 2 – Affidavit of Compliance with Section 285.500 R.S.Mo., Et Seq.

Exhibit 3 – E-Verify Memorandum of Understanding

Exhibit 4 – Certificate of Liability

Exhibit 5 – Specification Booklet

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8.3 Performance & Payment Bonds in the amount of 100 percent of the project cost (pages PEB-1 to PEB-3 and PAB-1 to PAB-3)

8.4 Supplementary Conditions (pages 1A-1 to 1A-12, inclusive).

8.5 Construction drawings bearing the title:

**Stormwater Drainage Improvements from Rice St. to North St. Phase 1
For The City of Nixa, Missouri**

8.6 Addenda numbers _____, inclusive.

8.7 Contractor's bid (pages BF-1 through BF-4 inclusive).

8.8 Any modifications, including Change Orders, duly delivered after execution of Agreement. There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Article 3 of the General Conditions.

8.9 General Conditions

Article 9: MISCELLANEOUS

9.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.2 CONTRACTOR shall retain all required records for three years after the latter of OWNER (grantee) making final payment or all other pending matters are closed.

9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

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

THE CITY OF NIXA, MISSOURI

By: _____
Jimmy Liles, City Administrator

CONTRACTOR

By: _____

Approved as to form:

Nicholas Woodman, City Attorney

CERTIFICATE OF FINANCIAL OFFICER

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

Jennifer Evans, Financial Officer