



Issue: TRUMAN RD. COST SHARE AGREEMENT

Date: November 22, 2021

Submitted By: Travis Cossey

Background

For your consideration is a Resolution authorizing the City Administrator to execute a Cost Share Agreement with Meadowbrook Nixa LLC, and a Cooperative Agreement along with a Material Purchase Agreement with Amijen Properties LLC, and Bigfoot Farms LLC. The purpose of the agreements is to establish a partnership between the City of Nixa and the property owners that will benefit from the construction of Truman Blvd. To construct the roadway, the City needs to obtain R.O.W. from multiple property owners. Two of the property owners, Mr. Stu Stenger with Meadowbrook Nixa LLC, and Mr. Darrell Henley, owner of Amijen Properties and Bigfoot Farms. Both property owners have agreed to partner with the city and participate financially in the road's construction.

Execution of the attached documents will authorize the City to accept funds in the amount of \$104,031.53 from Mr. Stenger and \$150,000.00 from Mr. Henely. These funds will be utilized to offset the cities 20% financial commitment for the construction of the Truman Blvd. extension from Heather Glenn to Norton Rd. as established in the STP Program Agreement with MoDOT.

Recommendation

Staff recommends approval of the Resolution authorizing the City Administrator to execute the agreements.

RESOLUTION NO. 2021-117

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE
CITY ADMINISTRATOR TO EXECUTE SEVERAL AGREEMENTS RELATED
TO SHARING THE COST OF THE TRUMAN BOULEVARD
PUBLIC IMPROVEMENT PROJECT.**

WHEREAS the City Council has adopted a Capital Improvement Program ("CIP") by the passage and approval of Resolution No. 2020-121; and

WHEREAS the CIP includes a public improvement project to extend Truman Boulevard south from Heather Glenn to Pembroke Avenue; and

WHEREAS the City Council, by the passage and approval of Ordinance No. 2177, authorized the execution of an STP-Urban Program Agreement with the Missouri Highways and Transportation Commissions; and

WHEREAS said Agreement was executed by the City and the Commission and became effective on April 9, 2021; and

WHEREAS said Agreement authorizes the City to utilize federal STP funds for the Truman Boulevard project and requires that the City provide 20% of the cost of the project in local funding; and

WHEREAS City staff has reached tentative agreements with certain property owners along the Truman Boulevard project area, whereby said property owners have agreed to provide funds to assist the City in meeting its 20% local funding requirement; and

WHEREAS City Council desires to authorize the City Administrator to execute the agreements attached to this Resolution as "Resolution Exhibit A", "Resolution Exhibit B", and "Resolution Exhibit C" to formalize the agreements with the respective property owners.

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

SECTION 1: City Council hereby authorizes the City Administrator, or designee, to execute on behalf of the City the Agreement attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A." Said Agreement shall be in substantially similar form as 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 Resolution.

SECTION 2: City Council hereby authorizes the City Administrator, or designee, to execute on behalf of the City the Agreements attached hereto, and incorporated herein by this reference, as "Resolution Exhibit B" and "Resolution Exhibit C." Said Agreements

RESOLUTION NO. 2021-117

shall be in substantially similar form as 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 Resolution.

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 CITY COUNCIL THIS 22ND DAY OF NOVEMBER 2021.

ATTEST:

CITY CLERK

PRESIDING OFFICER

APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

COST SHARE AGREEMENT FOR TRUMAN BOULEVARD EXTENSION

THIS COST SHARE AGREEMENT (hereinafter "Agreement") is entered into upon its execution by all parties and is made by and between the City of Nixa, Missouri, a constitutional charter city of the State of Missouri (hereinafter "City"), and Meadowbrook Nixa, LLC (hereinafter referred to as "Property Owner").

WHEREAS The City of Nixa desires to extend Truman Boulevard from Heather Glenn to the intersection of Pembroke Ave. to improve traffic flow and decrease congestion; and

WHEREAS the estimated cost of said project is \$1,913,188; and

WHEREAS the City is utilizing Federal Surface Transportation Program (STP) to fund 80% of said project at \$1,530,550; and

WHEREAS the City is seeking a partnership with Property Owner to Cost Share in the 20% Local Fund responsibility of the project totaling \$382,638.

NOW, THEREFORE, the Parties identified above, do hereby mutually covenant and agree as follows:

1. **Project.** For purposes of this Agreement, the term "Project" shall refer to the Truman Boulevard Extension Project, said project being more specifically identified as Project #ST2021-05. The detailed Plans for the Project are on file with the Director of Public Works of the City, and are hereby incorporated by this reference as though fully set forth herein.
2. **Project Responsibilities and Cost Share.** City shall have the responsibility of constructing the Project. Property Owner agrees to provide funding in the amount of \$104,031.53 for a portion of the cost of the Project. Property Owner shall, within 30 days of City's completion of the Project, pay to the City the amount referenced herein.
3. **Conflict of Interest.** In accepting this Agreement, Property Owner certifies that no member or officer of its business organization is an officer or employee of the City and further that no officer or employee of the City has a direct or indirect substantial financial interest in this Agreement.
4. **Notices.** All notices required or permitted in this Agreement which are required to be in writing may be given by electronic mail or by first class mail addressed to the City and Property Owner at the following addresses:

City:

Property Owner: Meadowbrook Nixa, LLC
5051 S. National Ave., Bldg 5-100
Springfield, MO 65810
stephanie@stengerhomes.com

5. **Entire Agreement.** This Agreement contains the entire Agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by both parties.

6. **Jurisdiction and Venue.** This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Agreement be adjudicated, venue shall only be proper in the Circuit Court of Christian County, Missouri.

7. **Independent Parties.** The Parties are independent, and nothing contained herein shall constitute or designate Property Owner, or any of Property Owner's, agents, or employees, as agents or employees of the City.

8. **Indemnification.** To the extent authorized by law, the Property Owner shall defend, indemnify, and hold harmless the City, including its Councilmembers, officers, and employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Property Owner's wrongful or negligent performance of its obligations under this Agreement.

9. **City Representative.** The City Administrator is designated as the City's representative for the purpose of administering the provisions of this Agreement.

[Remainder of page left intentionally blank. Signature page to follow.]

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

CITY OF NIXA, MISSOURI

PROPERTY OWNER
MEADOWBROOK NIXA, LLC

Jimmy Liles, City Administrator

Date: _____

BY: [Signature]
Stephanie Montgomery, Manager
Print name: of Stenger Management, LLC,
its Manager

Date: September 14, 2021

Approved as to form:

City Attorney

Property Owner Acknowledgement

State of Missouri
GREENE
County of Christian

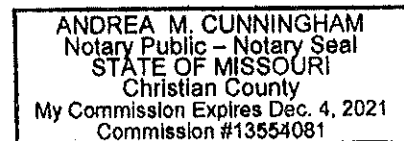
On this 14th day of September, 2021, before me, a Notary Public in and for said state, personally appeared Stephanie Montgomery, a person known to me, in their capacity as Manager of Meadowbrook Nixa, LLC, a limited liability company, who executed this document, on behalf of said Meadowbrook Nixa, LLC and acknowledged to me that they executed the same for the purposes therein stated.

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

Notary Public: [Signature: Andrea M. Cunningham]

Print Name: Andrea M. Cunningham

"Notary Seal"



Truman Extension 2022 Without Developers Agreement				
	City of Nixa	Federal		Total
Engineering	\$10,000	\$40,000		\$50,000
Construction	\$230,425	\$921,699		\$1,152,124
Project Totals From TIP	\$240,425	\$961,699		\$1,202,124
Less Escrow Funds Jacks Place	\$16,636.80			
Less Escrow Funds Jacks Place II	\$15,725.14			
Total Local Cost From Reserves	\$208,063.06			

Truman Extension 2022 With Developers Cost Share Agreement				
	City of Nixa	Federal		Total
Engineering	\$10,000	\$40,000		\$50,000
Construction	\$230,425	\$921,699		\$1,152,124
Project Totals From TIP	\$240,425	\$961,699		\$1,202,124
Less Escrow Funds Jacks Place	\$16,636.80			
Less Escrow Funds Jacks Place Ph.II	\$15,725.14			
Total Local Cost	\$208,063.06			
Less Meadowbrook 50% Cost Share	\$104,031.53			
Less Massengale 50% Cost Share (60 acres north)	\$104,031.53			
Total Local Cost From Reserves	\$0.00			

COOPERATIVE AGREEMENT FOR TRUMAN BOULEVARD EXTENSION

THIS COOPERATIVE AGREEMENT (hereinafter "Agreement") is entered into upon its execution by all parties and is made by and between the City of Nixa, Missouri, a constitutional charter city of the State of Missouri (hereinafter "City"), and AmiJen Properties, LLC (hereinafter referred to as "Property Owner").

WHEREAS The City of Nixa desires to extend Truman Boulevard from Heather Glenn to the intersection of Pembroke Ave. to improve traffic flow and decrease congestion; and

WHEREAS the estimated cost of said project is \$1,913,188; and

WHEREAS the City is utilizing Federal Surface Transportation Program (STP) to fund 80% of said project at \$1,530,550; and

WHEREAS the City is seeking a partnership with the Property Owner for completion of the Project .

NOW, THEREFORE, the Parties identified above, do hereby mutually covenant and agree as follows:

1. **Project.** For purposes of this Agreement, the term "Project" shall refer to the Truman Boulevard Extension Project, said project being more specifically identified as Project #ST2021-05 in effect on the date of this Agreement. The detailed Plans for the Project are on file with the Director of Public Works of the City and are hereby incorporated by this reference as though fully set forth herein.
2. **Project Responsibilities.** City shall have the responsibility of constructing the Project. The Property Owner shall convey right-of-way pursuant to a Right of Way Deed which is attached hereto as "Exhibit 1" and includes an Exhibit "A" and an Exhibit "B". The parties contemplate that the Project shall produce a large amount of dirt within the road to be constructed and the adjoining right-of-way. Property Owner grants City the right to place excavated dirt, which is not necessary for road fill, upon adjoining property owned by the Property Owner and sell said dirt for the City's benefit.
3. **Conflict of Interest.** In accepting this Agreement, Property Owner certifies that no member or officer of its business organization is an officer or employee of the City and further that no officer or employee of the City has a direct or indirect substantial financial interest in this Agreement.
4. **Notices.** All notices required or permitted in this Agreement which are required to be in writing may be given by electronic mail or by first class mail addressed to the City and Property Owner at the following addresses:

City:

Doug Colvin
PO Box 395
Nixa, Missouri 65714

Property Owner:
AmiJen Properties, LLC
5160 North 22nd
Ozark, Missouri 65721

5. **Entire Agreement.** This Agreement contains the entire Agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by both parties.

6. **Jurisdiction and Venue.** This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Agreement be adjudicated, venue shall only be proper in the Circuit Court of Christian County, Missouri.

7. **Independent Parties.** The Parties are independent, and nothing contained herein shall constitute or designate Property Owner, or any of Property Owner's, agents, or employees, as agents or employees of the City.

8. **Indemnification.** This Agreement does not provide for indemnification on behalf of either party against the other for circumstances arising from this Agreement and Project. The Agreement does not intend, and therefore does not, modify the rights of non-contractual contribution.

9. **Access for Utilities and Road/Curb Cuts.** The construction and completion of this extension shall provide for access, in conformance with adopted City ordinances, to install utilities on said corridor, along with access to the extension from property tracts (commonly known as "curb cuts"). These initial access points are documented in the plans for this Project as specified in Paragraph 1.

10. **City Representative.** The City Administrator is designated as the City's representative for the purpose of administering the provisions of this Agreement.

[Remainder of Page intentionally left blank. Signature page to follow.]

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

CITY OF NIXA, MISSOURI


Jimmy Liles, City Administrator

Date: _____

Approved as to form:

City Attorney

PROPERTY OWNER

 member

Print name: DANNEL HENLEY

Date: 11/9/2021

Property Owner Acknowledgement

State of Missouri

County of Christian

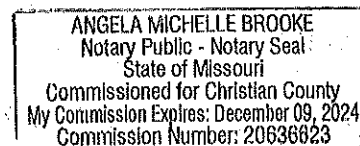
On this 9 day of November, 2021, before me, a Notary Public in and for said state, personally appeared DARREL HENLEY, a person known to me, in their capacity as member of Ami Ten Properties, a LLC, who executed this document, on behalf of said LLC and acknowledged to me that they executed the same for the purposes therein stated.

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

Notary Public: Angela M Brooke

Print Name: ANGELA M Brooke

"Notary Seal"



RIGHT OF WAY DEED

THIS INDENTURE, made this 9th day of November, 2021, by and between Amijen Properties LLC, a business ("Grantor") and the **City of Nixa, Missouri**, a Municipal Corporation ("Grantee"). The mailing address of Grantor is 1635 W Walnut, Springfield, MO 65806. The mailing address of Grantee is City of Nixa, 715 W Mt. Vernon, Nixa, Missouri 65714.

WITNESSETH, that said Grantor, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, to said Grantor in hand paid by the said Grantee, the receipt of which is hereby acknowledged, does by these presents grant, bargain and sell, convey and confirm unto the said Grantee, its heirs, successors and assigns, the following described interests in real estate in the County of Christian, State of Missouri, to-wit:

**SEE EXHIBIT "A"
WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE**

TO HAVE AND TO HOLD the same for the purpose of constructing and maintaining a public street improvement or related purposes or for such other purposes hereinabove set out, together with all and singular the rights, privileges, appurtenances and immunities thereto belonging, or in anywise appertaining, unto the said Grantee, and unto its successors and assigns, forever; the said Grantor hereby covenanting on its part and on behalf of its successors and assigns that said Grantor is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that said Grantor has good right to convey the same; that the said premises are free and clear of any encumbrances done or suffered by Grantor or those under whom Grantor claims; and that said Grantor will warrant and defend the title to the said premises unto the said Grantee and unto its successors and assigns forever against the lawful claims and demands of all persons whomsoever, except the lien of taxes for the current year and none.

The easement shall also confer on the Grantee the right to trim and/or remove all trees, shrubs, bushes, plantings, and other vegetation located within the easement.

Exhibit "B" depicts the general location of the real estate and is for illustrative purposes only.

BY SIGNING THIS INSTRUMENT, THE GRANTOR ACKNOWLEDGES THAT NO ORGANIZER, MEMBER, OR EMPLOYEE OF GRANTOR IS PRESENTLY EMPLOYED BY THE CITY OF NIXA, MISSOURI.

IN WITNESS WHEREOF, said Grantor has executed the above the day and year first above written.

GRANTOR

By: [Signature] member

Printed Name & Title: Darrell Henley, member

STATE OF MISSOURI)
COUNTY OF christian) ss.

ACKNOWLEDGEMENT OF CORPORATE OFFICIAL

On this 9 day of November, 2021, before me, a Notary Public in and for said state, personally appeared DARRELL HENLEY, member of Amijen Properties LLC, a Missouri corporation, known to me to be the person who executed the within document, on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Nixa, MO the day and year first above written.

Notary Public: Angela M Brooke

Type Name: ANGELA M BROOKE

"Notary Seal"



EXHIBIT "A"

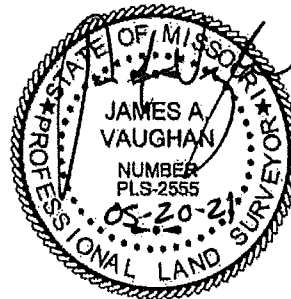
PERPETUAL STREET RIGHT-OF-WAY LYING IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER (NW¼, NE¼) AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER (SW¼, NE¼) OF SECTION 23, TOWNSHIP 27 NORTH, RANGE 22 WEST OF THE 5TH PRINCIPAL MERIDIAN, IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING STONE AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER (NE¼); THENCE N89°40'24"E, 108.37 FEET, ALONG THE NORTH LINE OF SAID NE¼, TO THE SOUTHEAST CORNER OF LOT 27 OF HEDGPETH ESTATES 4TH ADDITION, A SUBDIVISION RECORDED IN PLAT BOOK H, PAGE 125, CHRISTIAN COUNTY, MISSOURI RECORDER'S OFFICE, FOR THE **POINT OF BEGINNING**;

THENCE S89°40'24"W, 73.30 FEET, ALONG SAID NORTH LINE;
THENCE S34°43'57"W, 82.84 FEET, LEAVING SAID NORTH LINE;
THENCE SOUTHWEST, 212.87 FEET ALONG A 370.00 FOOT RADIUS CURVE TO THE LEFT, HAVING A CHORD WHICH BEARS S18°15'02"W, FOR 209.95 FEET;
THENCE S01°46'07"W, 1053.65 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF NORTON ROAD;
THENCE N89°35'00"W, 11.38 FEET, ALONG SAID NORTH RIGHT-OF-WAY LINE;
THENCE SOUTHWEST, 53.72 FEET ALONG A 75.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, HAVING A CHORD WHICH BEARS S69°53'44"W, FOR 52.58 FEET;
THENCE N89°48'03"W, 9.81 FEET;
THENCE N01°46'07"E, 1066.09 FEET;
THENCE NORTHEAST, 247.39 FEET ALONG A 430.00 FOOT RADIUS CURVE TO THE RIGHT, HAVING A CHORD WHICH BEARS N18°15'02"E, FOR 243.99 FEET;
THENCE N34°43'57"E, 40.73 FEET TO THE **POINT OF BEGINNING**.

CONTAINING **81,022 SQUARE FEET**

THIS DESCRIPTION WAS PREPARED BY CJW TRANSPORTATION CONSULTANTS, LLC; CORPORATE LAND SURVEY NUMBER 2007008003.



AMIJEN RIGHT-OF-WAY

POINT OF BEGINNING
SE CORNER LOT 27

POINT OF COMMENCING
EXISTING STONE
NW CORNER NE1/4
SEC. 23, TWP. 27N, RNG. 22W

N89° 40' 24"E
108.37'

N34° 43' 57"E
40.73'

Δ=32° 57' 50"
R=430.00'
L=247.39'
C=243.99'
CB=N18° 15' 02"E

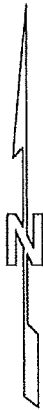
LOT 1

S89° 40' 24"W
73.30'

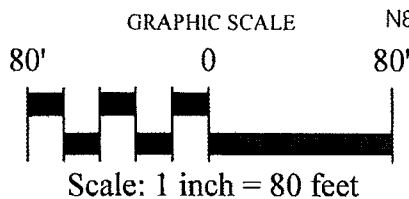
EX. EIP W/ ALUM CAP
"LC383", SW CORNER LOT 1

S34° 43' 57"W
82.84'

Δ=32° 57' 50"
R=370.00'
L=212.87'
C=209.95'
CB=S18° 15' 02"W



GRID NORTH
MISSOURI COORDINATE SYSTEM
1983 CENTRAL ZONE SCALE 1"=80'



NEW STREET
RIGHT-OF-WAY
81,022 SQ.FT.

AMIJEN PROPERTIES LLC
BOOK 2017 PAGE 002960

SEC. 23
TWP. 27N - RNG. 22W

N89° 48' 03"W
9.81'

Δ=41° 02' 31"
R=75.00'
L=53.72'
C=52.58'
CB=S69° 53' 44"W

N89° 35' 00"W
11.38'

THIS SKETCH IS NOT A BOUNDARY SURVEY IT IS
INTENDED TO SHOW THE CONFIGURATION OF, AND
TO ASSIST IN THE LOCATION OF, NEW STREET RIGHT
OF WAY. EXHIBIT A.

5051 S. National
Suite 7A
Springfield, MO 65810
Tel: 417.889.3400
Fax: 417.889.3402
www.GoCJW.com

SKETCH EXHIBIT "B"
AMIJEN PROPERTIES LLC
NEW STREET RIGHT-OF-WAY
NE 1/4 OF S 23, T 27 N, R 22 W
CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI

DATE 03/19/21
CJW PROJECT No. 15018C
Prepared by:
CJW
CJW Transportation
Consultants, L.L.C.
MO C.A. #2007008003

MATERIAL PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (hereinafter "Agreement") is entered into upon its execution by all parties and is made by and between the City of Nixa, Missouri, a constitutional charter city of the State of Missouri (hereinafter "City"), and Bigfoot Farms, LLC (hereinafter referred to as "BIGFOOT FARMS").

WHEREAS The City of Nixa desires to extend Truman Boulevard from Heather Glenn to the intersection of Pembroke Ave. to improve traffic flow and decrease congestion; and

WHEREAS BIGFOOT FARMS desires to purchase dirt for its farming and leveling operations

NOW, THEREFORE, the Parties identified above, do hereby mutually covenant and agree as follows:

1. **Project.** For purposes of this Agreement, the term "Project" shall refer to the Truman Boulevard Extension Project, said project being more specifically identified as Project #ST2021-05 in effect on the date of this Agreement. The detailed Plans for the Project are on file with the Director of Public Works of the City and are hereby incorporated by this reference as though fully set forth herein.
2. **Removal of Dirt.** The parties contemplate that the Project shall produce a large amount of dirt within the road to be constructed and the adjoining right-of-way. City will place excavated dirt from the Project, which is not necessary for road fill or completion of the Project, upon the adjoining property owned by Amijen Properties, LLC. BIGFOOT FARMS shall pay the City the sum of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) for the dirt as excavated and placed upon the adjoining property. BIGFOOT FARMS shall purchase the dirt "as is".
3. **Conflict of Interest.** In accepting this Agreement, BIGFOOT FARMS certifies that no member or officer of its business organization is an officer or employee of the City and further that no officer or employee of the City has a direct or indirect substantial financial interest in this Agreement.
4. **Notices.** All notices required or permitted in this Agreement which are required to be in writing may be given by electronic mail or by first class mail at the following addresses:

BIGFOOT FARMS
3608 West 76 Country Blvd
Branson, Missouri 65616

City:
Doug Colvin

PO Box 395
Nixa, Mo 65714

5. **Entire Agreement.** This Agreement contains the entire Agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by both parties.

6. **Jurisdiction and Venue.** This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Agreement be adjudicated, venue shall only be proper in the Circuit Court of Christian County, Missouri.

7. **Independent Parties.** The Parties are independent, and nothing contained herein shall constitute or designate BIGFOOT FARMS, or any of BIGFOOT FARM's, agents, or employees, as agents or employees of the City.

8. **City Representative.** The City Administrator is designated as the City's representative for the purpose of administering the provisions of this Agreement.

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

CITY OF NIXA, MISSOURI


Jimmy Liles, City Administrator

Date: _____

Approved as to form:

City Attorney

BIGFOOT FARMS, LLC

 member

Print name:

DANNEL HENCY, member

Date: 11/9/21