



AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH HALL ANSLEY P.C. FOR PROFESSIONAL LEGAL SERVICES AND AMENDING THE 2023 ANNUAL BUDGET TO APPROPRIATE FUNDS FOR SAID CONTRACT.

Background:

The City is currently involved in a federal lawsuit styled as Galewood West Development, Inc. v. City of Nixa, Missouri, Case No. 6:23-CV-03024-MDH (W.D.Mo.)

Analysis:

Due to the nature of the litigation, it is recommended that the City engage with outside counsel to provide the necessary support to effectively defend the City.

Staff reached out to Mr. Timothy A. Riker with Hall Ansley P.C. who previously provided professional legal services to the City and is experienced with municipal law as well as federal litigation practice.

This Council Bill, if approved, will authorize the City Administrator to execute the Contract attached as Council Bill Exhibit A and appropriate funding for such purpose.

Recommendation:

Based on Mr. Riker and Hall Ansley's experience with municipal law and federal court practice, Staff recommends approval of the proposed this Council Bill.

MEMO SUBMITTED BY:

Nick Woodman | City Attorney

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY
2 ADMINISTRATOR TO EXECUTE A CONTRACT WITH HALL ANSLEY P.C. FOR
3 PROFESSIONAL LEGAL SERVICES AND AMENDING THE 2023 ANNUAL BUDGET
4 TO APPROPRIATE FUNDS FOR SAID CONTRACT.

5 _____
6

7 **WHEREAS** City Council desires to authorize the execution of the Contract,
8 attached hereto as "Council Bill Exhibit A," for the purpose described therein; and
9

10 **WHEREAS** Section 67.040 RSMo. provides that after a budget has been approved
11 no increase in the revenues or expenditures from any fund shall be made unless the
12 governing body adopts a measure setting forth the facts and reasons making the increase
13 necessary and authorizing the increase; and
14

15 **WHEREAS** Section 8.7 of the City Charter authorizes the City Council to amend
16 budgeted revenues and expenditures upon the request of the City Administrator; and
17

18 **WHEREAS** the City Administrator has requested a budget amendment as
19 reflected in "Council Bill Exhibit B" and for the purposes referenced therein; and
20

21 **WHEREAS** the City Council desires to amend the City's 2023 budget for the
22 purposes identified herein.
23

24 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
25 **NIXA, AS FOLLOWS, THAT:**
26

27 **SECTION 1:** The City Administrator, or designee, is hereby authorized to execute
28 the Contract attached hereto, and incorporated herein by this reference, as "Council Bill
29 Exhibit A," with Hall Ansley P.C. Said Contract shall be in substantially similar form as the
30 document attached hereto as "Council Bill Exhibit A."
31

32 **SECTION 2:** The City of Nixa's 2023 Annual Budget is hereby amended in the
33 accounts and the amounts as shown on "Council Bill Exhibit B," which is attached hereto
34 and incorporated herein by this reference.
35

36 **SECTION 3:** City Council finds that the budget amendment enacted by this
37 Ordinance has been recommended by the City Administrator. The City Administrator is
38 directed to cause the appropriate accounting entries to be made in the books and records
39 of the City to reflect the budget amendment enacted by this Ordinance.
40

41 **SECTION 4:** The City Administrator and the officers of the City are hereby
42 authorized to do all things necessary or convenient to carry out the terms and intent of
43 this Ordinance.
44

45 **SECTION 5:** This Ordinance shall be in full force and effect from and after its final
46 passage by the City Council and after its approval by the Mayor, subject to the provisions
47 of section 3.11(g) of the City Charter.
48

49

50 **ADOPTED BY THE COUNCIL THIS 27th DAY OF February, 2023.**

51

ATTEST:

52

53

54 _____

55 PRESIDING OFFICER

56

57 _____

CITY CLERK

58 **APPROVED BY THE MAYOR THIS ___ DAY OF _____, 2023.**

59

60

ATTEST:

61

62 _____

63 MAYOR

64

65 _____

CITY CLERK

66 APPROVED AS TO FORM:

67

68 _____

69 CITY ATTORNEY

COUNCIL BILL EXHIBIT A

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

EFFECTIVE DATE:	TERMINATION DATE:	CONTRACT NUMBER:
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NEW CONTRACT **ADDENDUM NO. __**

CITY	CONTRACTOR
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Name: City of Nixa, Missouri
Address: 715 W. Mt. Vernon St., PO Box 395
Nixa, MO 65714
Phone: 417.725.3785
Email: nwoodman@nixa.com
Attn: Nick Woodman **Dept:** Law

Name: Hall Ansley, P.C.
Address: 3275 E. Ridgeview
Springfield, MO 65804
Phone: 417.890.8700
Email: tricker@hallansley.com
Attn: Timothy A. Ricker

CONTRACT FOR PROFESSIONAL LEGAL SERVICES

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

WHEREAS the City is a constitutional charter city organized and existing under the laws of the state of Missouri; and

WHEREAS Contractor is a law firm organized and existing under the laws of the state of Missouri; and

WHEREAS the City desires to engage Contractor to perform to render certain professional legal consulting services with regard to the City’s defense in ***Galewood West Development, Inc. v. City of Nixa, Missouri, Case No. 6:23-CV-03024-MDH (W.D.Mo.)***; and

WHEREAS Contractor desires to perform such services under the terms and conditions of this Contract.

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

1. Services. The City agrees to engage the professional legal services of the Contractor and the Contractor agrees to perform said Services in connection with the above-styled matter in accordance with the standard of care, skill, and expertise ordinarily used by other members of Contractor’s profession in performing similar services. The performance of said services shall be in accordance with the **Engagement of Legal Services with Hall Ansley, P.C.**, attached hereto as **Exhibit A**, which is incorporated herein by this reference. Contractor shall furnish all supervision, labor, tools, equipment, materials, and supplies necessary to perform the Services at Contractor’s own expense in accordance with the contract documents, any applicable City ordinances, and any applicable state or federal laws. Contractor shall commence the provision of services as soon as practicable after the execution of this Contract and shall be undertaken and completed in such sequence as to assure their expeditions completion in light of the purposes of the Contract.

2. Addition to Services. The City may add to the Contractor’s services or delete therefrom services. The Contractor shall undertake such changed activities only upon the written direction of the

City. All such directives and changes shall be in written form and shall be accepted and countersigned by the Contractor.

3. Exchange of Data. All information, data, and reports in the City's possession and necessary for the carrying out of the Services, shall be furnished to the Contractor without charge, and the parties shall cooperate with each other in every possible way in the carrying out of the Services.

4. Personnel. The Contractor represents that Contractor shall secure at Contractor's own expense; all personnel required to perform the services called for under this Contract by Contractor. Such personnel shall not be considered employees of the City. All of the services required hereunder shall be performed by the Contractor or under Contractor's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the City.

5. Payment.

a. Conditioned on acceptable performance. Provided that Contractor performs the services in the manner set forth herein, the City shall pay the Contractor at the following rate hourly rate, with time being charged in tenths of an hour as follows:

1. \$200 per hour for the services of Shareholders of Contractor's firm, including but not limited to: Timothy A. Ricker and Steven J. Blair; and \$150 per hour for the services of associate attorneys; and

2. For all reasonable and necessary costs and expenses, including without limitation, photocopying, long distance telephone calls, travel expenses and delivery services.

Such payment shall constitute full and complete compensation for the Contractor's work provided. No partial payment to the Contractor shall operate as approval or acceptance of work done. Such compensation shall be paid in progress payments, as established by the City, subject to receipt of a requisition for payment and a statement of work provided by the Contractor and Contract by both the City and the Contractor that the Contractor has fully performed the work to be paid for in such progress payments in conformance with the contract.

b. Total compensation not to exceed. It is expressly understood that in no event shall the total compensation or reimbursement to be paid to the Contractor under the terms of this Contract exceed the sum of **\$50,000.00**. Contractor shall be required to keep track of the amount of hours billable under this contract at all times; and any work in excess of the fixed sum shall not be eligible for payment. Contractor shall notify the City if Contractor anticipates that the contract amount may be exceeded, in order to determine whether or not the City is prepared to increase the total compensation. Contractor shall establish a billing system showing the amount of money remaining on the contract which shall be shown in each monthly billing.

6. Termination.

a. Termination when. In light of the nature of the services provided, City may terminate this contract at any time for any reason. If, through any cause, the Attorney shall fail to fulfill in timely and proper manner his obligations under this contract, or if the Attorney shall violate any of the covenants, agreements, or stipulations of this contract, and the City terminates for this reason, then notwithstanding the above, the Attorney shall not be relieved of liability to the City for

damages sustained by the City by virtue of any such breach of the contract by the Attorney. In the event of any litigation arising from breach of this Contract, the City shall be entitled to recover from the Contractor all reasonable costs incurred for such litigation, including staff time, court costs, attorney fees, and all other related expenses incurred in such litigation.

b. Termination for Convenience. Either party shall have the right at any time upon 90 days written notice to the other to terminate and cancel this Contract, without cause, for convenience. In such event final payment to the Contractor shall be limited to services provided by the Contractor as of the effective date of said termination.

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

d. Documents, reports, and data to be provided to City. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the Contractor related to this Contract shall, at the option of the City, become the property of the City, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials; provided, that the Contractor shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of the Contract by the Contractor.

7. City's Right to Proceed. In the event this Contract is terminated, the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this Contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

8. Confidentiality. Any reports, data, or similar information given to, prepared or assembled by the Contractor under this Contract shall be considered the property of the City and shall not be made available to any individual or organization by the Contractor without prior written approval of the City.

9. Conflict of Interest. Contractor certifies that no member or officer of its firm or organization is an officer or employee of the City of Nixa, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest in this contract which would violate any applicable federal regulations or the provisions of RSMo Section 105.450 et seq.

10. Assignment. The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this Contract, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this Contract.

11. Nondiscrimination. The Contractor agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or

political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

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

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

12. Insurance Requirements. Contractor shall keep in full force and effect during the term of this Contract professional liability insurance with limits of not less than Two Million Dollars (\$2,000,000.00) and provide the City with an insurance certification of such coverage.

13. General Independent Contractor Clause. This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor shall be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation, and unemployment insurance laws. The Contractor shall retain sole and absolute discretion as to the judgment and manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Contract shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City shall not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

14. Liability and Indemnity.

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

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

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

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

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

15. Contract Documents. The entire Contract of the parties shall consist of the following documents:

- a. This Contract
- b. Engagement of Legal Services with Hall Ansley, P.C. (**Exhibit A**)

The above listed documents are attached hereto and incorporated by their reference herein as though fully set forth herein. No modification, amendment, or waiver of any of the provisions of this Contract shall be effective unless in writing specifically referring hereto and signed by both parties. This Contract shall also include any Exhibits incorporated by reference in the above-described documents. When any provisions of the Contract Documents conflict, the provisions contained in the Contract shall control followed by Exhibit A.

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

17. Right to Audit. Contractor agrees to furnish sufficient supporting details as may be required by the City to support any charges or invoices submitted to the City for payment under this Contract. Contractor shall make available for the City's inspection all records covering or relating to charges submitted to the City for payment. Contractor shall make appropriate adjustments in the event that discrepancies are found. The City shall have the right to audit the Contractor's records pertaining to the Services for a period of three (3) years after final payment.

18. Compliance with Laws. Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

19. City Benefits. The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

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

21. Affidavit for Contracts Over \$5,000.00. That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, if this contract exceeds the amount of \$5,000.00 and Contractor is associated with a business entity, Contractor shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Contractor must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

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

THE CITY OF NIXA, MISSOURI

CONTRACTOR

Jimmy Liles, City Administrator

Timothy A. Ricker, Shareholder

Date: _____

Date: _____

ATTEST:

Rebekka Coffey, City Clerk

Approved as to form:

Nick Woodman, City Attorney

Director of Finance Certification:

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, Director of Finance

HALL ANSLEY PC

ATTORNEYS AT LAW

Michael P. Mergen
Deborah K. Dodge
Timothy A. Ricker
Adam P. Pihana
Steven J. Blair
Charles T. Lee

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Springfield, MO 65804
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www.hallansley.com

Of Counsel
David W. Ansley
Benjamin A. Stringer
Eric M. Belk

Nurse Paralegal
Marlena E. Bennett, RN, BSN

January 25, 2023

Mr. Nick Woodman
City Attorney
City of Nixa
715 W. Mt. Vernon
Nixa, Missouri 65714

RE: Engagement of Legal Services with Hall Ansley, P.C.

Dear Mr. Woodman:

Please let this letter confirm that the City of Nixa has requested the legal services of Hall Ansley, P.C. for representation concerning litigation filed by Galewood West Development, Inc. against the City of Nixa, Missouri. Legal services will be billed on an hourly basis, with time being charged in tenths of an hour, at the following rates:

Shareholders = \$200 per hour
Associates/Of Counsel = \$150 per hour

Please note that Steve Blair and I will be taking the primary lead in this case.

In addition to fees for legal services, our firm will be entitled to payment or reimbursement for costs and expenses incurred for services, including but not limited to: photocopies, travel (including mileage, parking, airfare, lodging, meals, and ground transportation), long distance telephone, depositions, court costs, and filing fees.

Invoices for legal fees rendered and costs advanced or incurred are issued on a monthly basis. Furthermore, the attorney will maintain the client's file for ten (10) years after this matter is concluded. The client may request the file at any time during, upon conclusion of, or after conclusion of this matter. This agreement pertains only to legal services rendered and costs and expenses for the matter expressly stated above. It does not relate to any other matter for which the client seeks representation by the attorney. Any other matter will require a separate agreement.

We will attempt to keep you fully advised of all developments in the case. If at any time you have any thoughts, comments, questions, or concerns regarding the matter, you (or other members of the City's administration) should feel free to reach out and we will be happy to discuss

any issues, questions or concerns. We will endeavor to provide a budget for the litigation after our retention and an opportunity to explore the underlying facts.

We appreciate the City choosing this firm and look forward to working to represent the City's interests.

Yours very truly,

HALL ANSLEY, P.C.

By: _____

Timothy A. Ricker

Steven J. Blair

TAR

City of Nixa, MO
Budget Amendment

<u>Budget Amendment Amount</u>	<u>Fund</u>	<u>G/L Description</u>	<u>G/L Line #</u>	<u>Revenue Source</u>
\$50,000	03-Wastewater	Professional Fees - Attorney	03-900-5160002	Current Revenues

Explanation: To amend the current budget of the City of Nixa to appropriate funds for outside counsel to provide litigation support.

This proposed Budget Amendment has been approved and requested by the City Administrator, pursuant to City Charter section 8.7.

Jimmy Liles, City Administrator

Authorized by Passage of Ordinance No. _____

Date of Passage: _____

Total Budget Amendments by Department Year to Date:

- Electric
 - Water
 - Wastewater
 - ARPA
 - Admin
 - Legal
 - Economic Development
 - Police
 - Street
 - Park
 - Planning & Development
 - TOTAL
- _____

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