

RE: SECOND READING COUNCIL BILL #2023-16 – AN ORDINANCE AUTHORIZING AN AGREEMENT WITH THE MISSOURI PUBLIC UTILITY ALLIANCE RESOURCES SERVICES COMMISSION

Background:

As presented at the March 27th Council meeting, passage of this ordinance authorizes the City Administrator to enter into a Master Services Agreement (MSA) with the Missouri Public Utility Alliance Resource Services Commission (MPUA-RSC or RSC) for materials purchasing and utility services that may be beneficial to the city in the future.

Analysis:

One of the new programs coming out of the recently adopted MPAUA Strategic Plan is the offer of various services ranging from electric line maintenance or repair work to purchasing materials such as transformers or meters. MPAUA developed the Resource Services Commission, a 501(c)(3) entity, to provide a way to offer various services cities may need that can't be obtained economically through the regular bidding and procurement processes or in the case of smaller cities, provide services that they do not have the resources to do on their own.

Because the service list and material lists can become very broad, the MPAUA-RSC has developed the attached Master Services Agreement (MSA). The MSA does not bind the city to do any work with MPAUA-RSC rather it establishes the general terms and conditions that shall apply to all potential Project Services Agreements between MPAUA RSC and the City. Project Services Agreements are akin to Work Orders or Purchase Orders where the service to be received by the city are specifically spelled out and priced but governed by the MSA.

As example, say the electric department wishes to have testing completed on one of the 25 MVA substation transformers, a process we do not have the resources to do in-house and, MPAUA-RSC may offer that service as a cost-plus materials reimbursement project. Under this MSA, the city would request a Project Services Agreement which would provide a detailed scope of work along with a price to complete the testing. All other related responsibilities such as insurance, workers compensation, payment terms and etc. revert back to the MSA for governance.

Another potential benefit is in the procurement of materials. Because the MPAUA-RSC will utilize competitive sealed bids and related procurement procedures just as we would, we can order materials through them just as we would through another agency

contract like the State of Missouri. We always retain our right to procure services as adopted by our regular procurement policies but under this agreement will have the option to also bid MPUA RSC pricing with our other competitive bids. Again, it is yet another tool to assist us with potential savings or an opportunity to obtain materials sooner than a direct order through a regular vendor.

The MSA is an open-ended agreement without a term and without a cost. There are no fees associated with the MSA itself and cancellation or modification can take place at any time within the scope provided.

Recommendation:

Staff recommends passage of Council Bill #2023-16 approving the MPUA-RSC Master Services Agreement.

MEMO SUBMITTED BY:

Doug Colvin | Assistant City Administrator, Director Nixa Utilities and Public Works

dcolvin@nixa.com | 417-725-2353

RE: RESOLUTION AUTHORIZING AN AGREEMENT WITH THE MISSOURI PUBLIC UTILITY ALLIANCE RESOURCES SERVICES COMMISSION

Background:

Passage of this Resolution authorizes the City Administrator to enter into a Master Services Agreement (MSA) with the Missouri Public Utility Alliance Resource Services Commission (MPUA-RSC or RSC) for materials purchasing and utility services that may be beneficial to the city in the future.

Analysis:

One of the new programs coming out of the recently adopted MPUA Strategic Plan is the offer of various services ranging from electric line maintenance or repair work to purchasing materials such as transformers or meters. MPUA developed the Resource Services Commission, a 501 (c)(3) entity, to provide a way to offer various services cities may need that can't be obtained economically through the regular bidding and procurement processes or in the case of smaller cities, provide services that they do not have the resources to do on their own.

Because the service list and material lists can become very broad, the MPUA-RSC has developed the attached Master Services Agreement (MSA). The MSA does not bind the city to do any work with MPUA-RSC rather it establishes the general terms and conditions that shall apply to all potential Project Services Agreements between MPUA RSC and the City. Project Services Agreements are akin to Work Orders or Purchase Orders where the service to be received by the city are specifically spelled out and priced but governed by the MSA.

As an example, say the electric department wishes to have testing completed on one of the 25 MVA substation transformers, a process we do not have the resources to do in-house and, MPUA-RSC may offer that service as a cost-plus materials reimbursement project. Under this MSA, the city would request a Project Services Agreement which would provide a detailed scope of work along with a price to complete the testing. All other related responsibilities such as insurance, workers compensation, payment terms and etc. revert back to the MSA for governance.

Another potential benefit is in the procurement of materials. Because the MPUA-RSC will utilize competitive sealed bids and related procurement procedures just as we would, we can order materials through them just as we would through another agency contract like the State of Missouri. We always retain our right to procure services as

adopted by our regular procurement policies but under this agreement will have the option to also bid MPUA RSC pricing with our other competitive bids. Again, it is yet another tool to assist us with potential savings or an opportunity to obtain materials sooner than a direct order through a regular vendor.

The MSA is an open-ended agreement without a term and without a cost. There are no fees associated with the MSA itself and cancellation or modification can take place at any time within the scope provided.

Recommendation:

As mentioned above, passage of this resolution authorizes the City Administrator to execute the Master Services Agreement and any future Project Services Agreement so long as the project and cost are authorized within the current budget.

Staff recommends passage of Resolution #2023-16 approving the MPUA-RSC Master Services Agreement.

MEMO SUBMITTED BY:

Doug Colvin | Assistant City Administrator, Director Nixa Utilities and Public Works

dcolvin@nixa.com | 417-725-2353

1 AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY
2 ADMINISTRATOR TO EXECUTE A CONTRACT WITH MISSOURI PUBLIC UTILITY
3 ALLIANCE RESOURCE SERVICES COMMISSION FOR CERTAIN MATERIALS AND
4 SERVICES THAT MAY BE REQUESTED IN THE FUTURE.
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7 WHEREAS the Missouri Public Utility Alliance (MPUA) has recently engaged in
8 providing electric line maintenance and repair work as a service for cities; and
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10 WHEREAS these services will be provided by the Missouri Public Utility Alliance
11 Resource Services Commission (MPUA-RSC); and
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13 WHEREAS MPUA-RSC has developed a Master Services Agreement to allow
14 member cities to engage the services of MPUA-RSC; and
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16 WHEREAS City Council desires to authorize the execution of the Agreement,
17 attached hereto as "Council Bill Exhibit A," for the purpose described therein.
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19 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
20 NIXA, AS FOLLOWS, THAT:
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22 SECTION 1: The City Administrator, or designee, is hereby authorized to execute
23 the Agreement attached hereto, and incorporated herein by this reference, as "Council
24 Bill Exhibit A." Said Contract shall be in substantially similar form as the document
25 attached hereto as "Council Bill Exhibit A."
26

27 SECTION 2: The City Administrator and the officers of the City are hereby
28 authorized to do all things necessary or convenient to carry out the terms and intent of
29 this Ordinance.
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31 SECTION 3: This Ordinance shall be in full force and effect from and after its final
32 passage by the City Council and after its approval by the Mayor, subject to the provisions
33 of section 3.11(g) of the City Charter.
34
35

36 ADOPTED BY THE COUNCIL THIS _____ DAY OF _____, 2023.
37

38 ATTEST:
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40 _____
41 PRESIDING OFFICER CITY CLERK
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43 APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2023.
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45 ATTEST:
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COUNCIL BILL NO. 2023-16

ORDINANCE NO. _____

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MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

MASTER SERVICES AGREEMENT

BETWEEN

**MPUA
RESOURCE SERVICES CORPORATION**

AND

The City of Nixa

("City")

THIS MASTER SERVICES AGREEMENT is made as of this ____ day of _____, 20__ (“Effective Date”), by and between the MPUA Resource Services Corporation (“MPUA RSC”), a 501(C)(3) entity, created and existing under the laws of the state of Missouri, and the City of _Nixa_____ (“City”), a member city of the Missouri Public Utility Alliance.

1.0 PURPOSE AND CONSTRUCTION OF AGREEMENT

- 1.1 MPUA RSC and the City (herein after the “Party” or “Parties”) intend to enter into one or more agreements whereby MPUA RSC provides services to the City (each a “Project Services Agreement”). The Parties wish to establish the general terms and conditions that shall apply to all Project Services Agreements between MPUA RSC and the City. As used herein, “Agreement” means and includes this Master Services Agreement and any subsequent Project Services Agreement(s), including all exhibits and attachments thereto. In consideration of the mutual covenants, promises and consideration set forth in this Agreement and in any subsequent Project Services Agreement(s), the Parties hereto agree as follows.
- 1.2 After discussion, MPUA RSC and the City have entered into this Agreement with the intent to provide the City’s ratepayers the benefit and advantage of highly qualified services at fair and reasonable prices.
- 1.3 This agreement is not exclusive. MPUA RSC and the City both have the right to enter into and contract with other parties for the provision of the same or similar services. It is expressly understood and agreed that nothing in this Agreement shall preclude MPUA RSC from contracting with other cities or towns to provide the same or similar services. It is also expressly understood and agreed that nothing in this Agreement requires City to use, request or acquire any service(s) from MPUA RSC.
- 1.4 This Agreement does not confer any other rights not described herein.
- 1.5 Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition on MPUA RSC or the City with respect to any agreement or arrangement either Party has heretofore entered or may enter into in the future with respect to any services.
- 1.6 The words “shall” and “will” are always mandatory and not merely permissive.

2.0 TERM AND EFFECT OF AGREEMENT

- 2.1 This Agreement shall remain in effect until terminated or until superseded by a subsequent Master Services Agreement signed by both Parties.
- 2.2 This Agreement shall govern the contractual relationship between MPUA RSC and the City whenever MPUA RSC provides services to the City under a Project Services Agreement administered by the designated MPUA RSC manager.

3.0 PREVAILING WAGE

- 3.1 Prevailing Wage: If a Project Services Agreement includes work that requires payment of prevailing wage as set forth in §§ 290.210 to 290.340, RSMo., the State of Missouri Prevailing Wage Law (the “Law”), then MPUA RSC shall pay workers prevailing wage in accordance with this Section and the Law. City shall be responsible for notification to MPUA RSC of project(s) which will be subject to prevailing wage requirements. MPUA will provide a prevailing wage affidavit to the city for each project(s) designated by the City as requiring prevailing wage.
 - 3.1.1 MPUA RSC shall comply and require its subcontractors to comply with the Law, as well as 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the “Rules”); the Annual Wage Order (“Wage Order”) issued by the State of Missouri’s Department of Labor and Industrial Relations; and any applicable Annual Incremental Wage Increase (“Wage Increase”) to the Annual Wage Order. The Law, Rules, Wage Order and any Wage Increase are incorporated into and made part of this Agreement and shall be collectively referred to as the “Prevailing Wage Requirements.”
 - 3.1.2 Under the Law, work that meets the definition of “construction” includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair.” 290.210(2), RSMo. “Maintenance work,” that is not subject to the Law, is defined as “the repair, but not the replacement, of existing facilities when the size, type or extent of the existing facilities is not thereby changed or increased.” 290.210(6), RSMo.
- 3.2 MPUA RSC shall pay and require its subcontractors to pay to all workers performing work under this Agreement not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Law, Rules, Wage Order, and any applicable Wage Increase. MPUA RSC

shall take whatever steps are necessary to ensure that the prevailing hourly wage rates are paid and that all workers for MPUA RSC and each of its subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements.

3.2.1 MPUA RSC shall maintain and require each of its subcontractors engaged in the construction of public works in performance of this Agreement to submit in a format prescribed by MPUA RSC, payroll report information indicating the worker's name, address, social security number, occupation(s), craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid in connection with the Project Services Agreement.

3.3 MPUA RSC will make all of its records, pertinent to this Agreement and/or any Project Services Agreement with the City, open for inspection by any authorized representative of the City and the Missouri Department of Labor and Industrial Relations at any reasonable time and as often as they may be necessary and such records will not be destroyed or removed from the State of Missouri for a period of one (1) year following the completion of the public work in connection with which the records are made.

4.0 E-VERIFY

4.1 Pursuant to §285.530, RSMo., both MPUA RSC and the City will comply with all state and federal laws in verifying the work eligibility status of all newly hired employees through E-Verify or any subsequent replacement program.

4.2 MPUA RSC and the City hereby affirm that they do not knowingly employ any unauthorized alien, as that term is used in §285.530, RSMo.

5.0 SERVICES RENDERED

5.1 Services. MPUA RSC will perform services for the City as specifically described in a Project Services Agreement, including all exhibits and attachments thereto.

5.2 Conflicts. In the event a Project Services Agreement conflicts with the terms of this Agreement, this Master Services Agreement shall control and supersede any conflicting provisions of a Project Services Agreement.

6.0 PAYMENT, RECORDS, AND AUDIT

- 6.1 Payment. All payments to MPUA RSC for services satisfactorily performed pursuant to a Project Services Agreement will be made directly to MPUA RSC and directed to the attention of the individual or organization specified in the Project Services Agreement, unless MPUA RSC requests otherwise.
- 6.2 Method of Payment. As a condition to payment for services performed under a Project Services Agreement, MPUA RSC shall submit properly executed invoices and any additional reports or documents required by the Project Services Agreement. All invoices, performance reports and work statements shall state MPUA RSC's name and address and the Project Services Agreement contract number. Invoices must be signed by the designated MPUA RSC manager, who shall verify that the invoiced services have been performed.
- 6.3 Documentation of Costs. MPUA RSC will document all actual costs in connection with the services provided under any Project Services Agreement with properly executed payrolls, time records, invoices, records of service delivery, or any other official documentation evidencing in proper detail the nature and reasonableness of such costs. Such records and documents shall be retained for a period of five (5) years after receipt of final payment under the Project Services Agreement; provided, that for any records and documents that are the subject of audit findings, those records shall be maintained for either ten (10) years following final payment or until the audit findings are resolved, whichever is longer.
- 6.4 Notice Affecting Performance. Each Party shall notify the other of any matters that could adversely affect MPUA RSC's ability or eligibility to continue to perform services under the Project Services Agreement, or the City's ability to pay for services under the Project Services Agreement and shall do so immediately after discovery of such matter(s).

7.0 MANNER OF PERFORMANCE

- 7.1 Usual Utility Practice. MPUA RSC shall provide all services according to "Usual Utility Practice," which means at a particular time, any of the practices, methods, standards and acts which, in the objective exercise of reasonable judgment in light of the facts and circumstances (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the municipal utility industry prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost

consistent with reliability and safety. Usual Utility Practice shall, at a minimum, comply with applicable national safety codes and standards.

Usual Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a number of possible practices, methods, or acts. In evaluating whether any matter conforms to Usual Utility Practice as used in this Agreement, the parties hereto shall take into account, among other facts, (A) the fact that MPUA RSC and the City are public bodies organized under the laws of the State of Missouri, with the statutory duties and responsibilities thereof, and (B) the intended purposes and obligations of MPUA RSC and the City under this Agreement.

- 7.2 Quality of Performance. Notwithstanding the foregoing Section 6.1, MPUA RSC shall be solely responsible for the quality and suitability of services provided under the Project Services Agreement. If during the course of the Project Services Agreement, the City determines services being provided by MPUA RSC are not satisfactory, MPUA RSC and the City, working together, will determine a corrective course of action and time period in which such action is to be taken.

8.0 CONTRACTUAL RELATIONSHIP

- 8.1 The relationship of MPUA RSC to the City by reason of this Agreement shall be that of an independent contractor, and the Parties agree that no employee of either Party shall be deemed or claimed to be an employee of the other Party for any purpose.
- 8.2 This Agreement does not authorize either Party to act as the agent or legal representative of the other Party for any purpose whatsoever. Neither Party is granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the other Party or to bind the other Party in any manner or thing whatsoever.

9.0 GRIEVANCES BY THE CITY

- 9.1 MPUA RSC will establish a system through which the City under the Project Services Agreement may present grievances about the activities of MPUA RSC or any of MPUA RSC's employees. The system shall provide the City with an informal hearing before representatives of MPUA RSC. If the informal hearing does not produce a mutual agreement, a meeting between the City Manager, or designee, and the MPUA RSC CEO shall be held within 30 days of the request of the City Manager.

10.0 INDEMNIFICATION AND INSURANCE

10.1 Indemnification. To the fullest extent permitted by applicable law, each Party agrees to indemnify and hold the other Party harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including reasonable legal and other fees, expenses and reasonable attorneys' fees), actions or damages of any sort whatsoever arising out of any actual or alleged property damage, bodily injury or monetary penalty resulting from negligent acts or willful misconduct, errors or omissions of that respective Party in performing its obligations under this Agreement or any Project Services Agreement; provided, however, that neither Party will be required to indemnify the other Party in the event that any such loss, damage, expense, liability or claim is the direct result of the other Party or its officers, commissioners, council members, directors, members, employees, contractors, subcontractors, agents, or attorneys. Such defense by either Party extends, without limitation, to any and all expenses whatsoever, reasonably incurred by any Indemnified Party in connection with investigating, preparing for or defending against, or providing evidence, producing documents, or taking any other reasonable action in respect of any loss, damage, expense, liability, or claim referred to in this paragraph (or action in respect thereof), whether or not resulting in any liability. The indemnity will include the aggregate amount paid in settlement of any litigation, commenced or threatened, or of any claim whatsoever as set forth herein, if such settlement is effected with the written consent of the other Party. In addition, none of the officers, commissioners, council members, Mayor, directors, members, employees, contractors, subcontractors, agents, or attorneys of either Party shall be personally liable for the performance of that respective Party's obligations under this Agreement or any Project Services Agreement.

10.2 The Parties further agree that the Parties shall not be liable to each other for any indirect, incidental, consequential, punitive, multiple, exemplary damages or lost profits arising out of, due to, or in connection with the Parties' performance or nonperformance under this Agreement or any Project Services Agreement, or any of its obligations herein, whether based on contract, tort, strict liability, warranty or otherwise.

10.3 Insurance.

10.3.1 MPUA RSC will obtain and maintain at all times during the term of any Project Services Agreement the minimum insurance coverage set forth in each specific Project Services Agreement.

- 10.3.2 All insurance policies will be written by a fully qualified insurance company licensed to provide insurance in the state of Missouri with an A.M. Best rating of at least A-VI.
- 10.3.3 Prior to commencing any services hereunder, and at all times during the term of the Project Services Agreement, at the request of the City, MPUA RSC will submit satisfactory evidence to the City that such insurance is in effect and shall not be cancelled or materially altered until at least thirty (30) days prior written notice has been given to the City.
- 10.3.4 MPUA RSC and the City will require that all subcontractors employed by them in the performance of this Agreement will maintain Workers' Compensation and all Liability coverage as required in the Project Services Agreement.
- 10.3.5 MPUA RSC and the City hereby waive their respective rights of recovery and release each other from any claim for damages caused to any of their property (including buildings, personal property, vehicles, and equipment) and shall each have any insurance policies covering such properties endorsed to include waiver of subrogation.
- 10.3.6 MPUA RSC and the City both waive their respective rights of subrogation and the rights of subrogation of their insurers against each other as respects all Workers' Compensation claims and each shall have their policies include a provision memorializing this waiver.

11 GENERAL CONDITIONS

- 11.1 Compliance with Laws: MPUA RSC and the City will comply with all applicable laws of the United States, the state of Missouri and the City; and the rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, MPUA RSC will specifically comply with the following requirements of this Section.
- 11.2 Licenses and Accreditation Standards: MPUA RSC will secure and maintain in full force and effect all required licenses, including all City licenses, permits, accreditation standards and similar legal authorizations and will comply with all requirements thereof.

12 ASSIGNMENT AND SUBCONTRACTING

- 12.1 MPUA RSC will not assign or subcontract any of its obligations under this Agreement or a Project Services Agreement(s) without the City's written consent, which will not unreasonably be withheld. Any subcontract made by MPUA RSC will incorporate by reference all the terms of this Agreement and the Project Services Agreement. MPUA RSC will ensure that all subcontractors comply with the obligations and requirements of the subcontract.

13 TERMINATION AND SUSPENSION

- 13.1 For Convenience: Either Party may suspend or terminate this Master Services Agreement for any reason. However, the City would remain obligated to pay MPUA RSC for all services rendered and funds expended by MPUA RSC as of the effective date of such suspension or termination.
- 13.2 If the City sells or otherwise disposes of its utility system (by lease, merger, consolidation or otherwise) prior to the termination of this Agreement or a Project Services Agreement; MPUA RSC may terminate this Agreement along with any active Project Services Agreement(s) by serving written notice thereof upon the City, and such termination shall become effective as of the effective date of the sale or other disposition of the utility system.
- 13.3 Force Majeure: Neither MPUA RSC or the City will be deemed in default nor be liable for damages arising from its failure to perform its obligations under this Agreement or any Project Services Agreement, if performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control, such as, but not limited to, an act of nature; an epidemic or pandemic; war or warlike operation; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control. If either Party is rendered wholly or partly unable to perform its material obligations under this Agreement or any Project Services Agreement for reasons described under this subsection for a period of time exceeding thirty (30) days, then either Party may terminate this Agreement upon written notice to the other.
- 13.4 Loss of Funds: In the event that for any reason funds allocated to or by the City for services contracted under a Project Services Agreement are or become no longer available to the City for the purpose of compensating MPUA RSC, MPUA RSC may suspend or terminate, without recourse, MPUA RSC's obligation to render services to the City. The City would remain obligated to pay MPUA RSC for all services rendered and funds expended by MPUA RSC as of the effective date of such suspension or termination.

13.5 Notice of Suspension or Termination of this Master Services Agreement: Notice of suspension or termination of this Master Services Agreement shall be given by the Party suspending or terminating this Agreement to the other not less than thirty (30) days prior to the effective date of suspension or termination.

13.5.1 Notice of suspension or termination of a Project Services Agreement. Notice of suspension or termination of a Project Services Agreement shall be given by the City to MPUA RSC not less than sixty (60) days prior to the effective date of suspension or termination and notice of suspension or termination of a Project Services Agreement shall be given by MPUA RSC to the City not less than one hundred twenty (120) days prior to the effective dates of suspension or termination.

13.6 Actions upon Suspension or Termination: In the event of suspension or termination not the fault of MPUA RSC, MPUA RSC shall be paid for all services properly performed and all funds expended prior to termination, together with any reimbursable expenses then due.

13.7 Survival: Where any covenants, obligations, indemnities, or other provisions contained in this Agreement, or in any other instrument executed in connection with this Agreement, by its context or otherwise, evidences the intent of the Parties that such provision should survive the termination of this Agreement or the associated instrument, the provision shall survive the termination. Without limiting the generality of the foregoing, the Parties specifically acknowledge and agree that all covenants, obligations, and indemnities made in Sections 6.0, 10.1, 10.2, 10.3.5 and 10.3.6 shall survive this Agreement or any Project Services Agreement.

14 MISCELLANEOUS PROVISIONS

14.1 Amendments: Any changes, alterations, or variations to the terms of this Agreement or any Project Services Agreement(s) will not be valid unless made by formal written amendment and signed by authorized representatives of both Parties.

14.2 Notices: All notices to be given hereunder shall be in writing and may be given, served, or made by electronic mail, by depositing in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested or by delivering in person to such person. All notices shall be sent to the following addresses:

If to MPUA RSC: Missouri Public Utility Alliance Resource Services Corporation, Inc.
Attn: Randy Norden, MPUA RSC Manager
2200 Maguire Blvd
Columbia, MO 65201
Email address: _____
Telephone: (573) 445-3279

If to City: City of Nixa
Attn: City Administrator
Address: P.O. Box 395
Nixa, MO 65714
Email: jliles@nixa.com
With Email CC to: dcolvin@nixa.com
Telephone: (417) 725-3785
Facsimile: _____

14.3 Applicable Law/Venue: This Agreement shall be construed and interpreted in accordance with the law of the state of Missouri. The venue of any action brought hereunder shall be in Boone County, Missouri.

14.4 Guaranteed Best Pricing: MPUA RSC represents that the Project Services Agreement will contain MPUA RSC's best pricing for all services supplied by MPUA RSC to the City as of the date of the Project Services Agreement. MPUA RSC represents that the prices provided will not be less favorable than those currently extended to any other similarly situated city for the same goods or services, in equal quantities, as part of a similar market and under similar terms, but it is understood and agreed that the prevailing wage levels will impact the ultimate prices.

14.5 No Implied Waiver: Either Party may, at any time, waive, solely for that Party, compliance by the other Party with any obligation, covenant or condition contained in this Agreement or any Project Services Agreement(s). No such waiver, however, shall be deemed to constitute the waiver of such obligation, covenant, or condition in any other circumstance or the waiver of any other obligation, covenant, or condition. The failure by any Party hereto from time to time to exercise such right or power provided herein shall not be construed as a waiver by such Party to exercise such right or power at any subsequent time or against any other Party.

14.6 Severability: If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14.7 Entire Agreement: This Agreement including all appendices, exhibits and Project Services Agreement(s) executed in connection with this Agreement constitute the entire Master Services Agreement between the Parties. No verbal agreement or conversation between any officer, agent, associate, or employee of either the City or of MPUA RSC shall affect or modify any of the terms or obligations contained in this Agreement. This Agreement supersedes any and all previous agreements, whether written or oral, between the Parties relating to the subject matter hereof. Further, in the event of conflict between this Agreement and any appendices, exhibits or Project Services Agreement(s); this Agreement shall control.

14.8 Mutual Agreement: The Parties acknowledge that this Agreement is entered into by mutual agreement of the Parties, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any Party on the basis of such Party's draftsmanship thereof.

14.9 Contract Execution: This Agreement may be executed in one or more counterparts, each of which will be deemed an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement. This Agreement shall be effective upon the execution of counterparts by both Parties, notwithstanding that both Parties may not sign the same counterpart. The Parties' signatures transmitted by facsimile or by other electronic means shall be proof of the execution of this Agreement and shall be acceptable in a court of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement by having their representatives affix their signatures below.

Missouri Public Utility Alliance Resource Services Corporation, Inc. by:

The City of Nixa
by:

John Twitty
Name (Typed or Printed)

Jimmy
Liles
Name (Typed or Printed)

MPUA RSC Chair
Title

City Administrator
Title

Date

Date