

## **RE: 1111 Kathryn Bathroom Expansion**

### **Background:**

Included in the 2023 Capital Improvement Budget is funding for a restroom expansion at the Public Works facility located at 1111 Kathryn. The 1111 facility houses the administration functions for Nixa Utilities & Public Works as well as the Street Dept. and Electric Dept. As staff numbers increase at this location, the need for more restroom facilities continues to increase. This project is the second in a series of restroom expansions to increase the number of facilities and provide ADA compliance at Public Works spaces. Last year funding was provided to remodel the restrooms at the Water Quality building located at 1010 Eaglecrest. The expansion at 1111 Kathryn will complete the needed restroom expansion at these locations to accommodate existing and future growth.

### **Analysis:**

The 2023 budget included funding in the amount of \$175,000.00 for the proposed improvements. The city received one bid for the project from Masters Plumbing for \$141,700.00.

### **Recommendation:**

Attached is a resolution and contract with Masters Plumbing for \$141,700, if awarded the project will be completed \$33,300.00 under budget. Staff recommends approval of the resolution authorizing the City Administrator to enter into a contract with Masters Plumbing for the proposed improvement.

### **MEMO SUBMITTED BY:**

**Travis Cossey** | Asst. Director Nixa Utilities & Public Works

**RESOLUTION NO. 2023-36**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA ACCEPTING THE BID OF MASTERS PLUMBING FOR THE 1111 RESTROOM EXPANSION (PW 2023-01 PROJECT AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT FOR SAME.**

**WHEREAS** City Council, by passage of Resolution 2022-123, adopted the 2023-2027 Capital Improvement Program ("CIP"); and

**WHEREAS** included in the CIP is a project known as the "1111 Restroom Expansion (PW 2023-01)" ("Project"); and

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

**WHEREAS** after reviewing all submitted bids, City staff has determined that Masters Plumbing ("Contractor") provided the best bid for the Project; and

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

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

**SECTION 1:** City Council hereby accepts the bid of the Contractor for the Project at the price and sum of \$141,700.00. 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."

**SECTION 2:** The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

**SECTION 3:** If applicable, all workers performing work under the contract authorized by this Resolution 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. 2023-36**

**SECTION 4:** This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**ADOPTED BY THE COUNCIL THIS 14<sup>th</sup> DAY OF August, 2023.**

ATTEST:

\_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
CITY CLERK

**APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

**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:**

**(X) NEW CONTRACT ( ) ADDENDUM NO. \_\_**

**CITY**

Name: City of Nixa, Missouri  
Address: 715 W. Mt. Vernon St., PO Box 395  
Nixa, MO 65714  
Phone: 417.725.3785  
Email: tcossey@nixa.com  
Attn: Trais Cossey Dept: Public Works

**CONTRACTOR**

Name: Masters Plumbing  
Address: 224 N. Stewart Ave., Ste 108  
Springfield, MO 65802  
Phone: 417-840-3456  
Email: info@mastersplumbingllc.com  
Attn: Jerry Kendall

**CONTRACT FOR CONSTRUCTION OF PUBLIC WORKS RESTROOMS**

**THIS CONSTRUCTION CONTRACT FOR PUBLIC WORKS RESTROOMS** ("Contract") is made and entered into upon its execution by the parties identified above.

**WHEREAS** the City, after conducting a Request for Bid solicitation process, referenced as RFB-030-2023/PW desires to engage Contractor to perform certain construction work; and

**WHEREAS** the City desires to engage Contractor to perform such work under the terms and conditions of this Contract; and

**WHEREAS** contractor desires to perform such work 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. Manner and Time for Completion.** The City agrees to engage the Services of the Contractor and the Contractor agrees to perform said Services in accordance with the standard of care, skill, and expertise ordinarily used by members of the Contractor's profession in the performance of similar services. The Services are more specifically described in Exhibit A, which is attached hereto and 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 within 120 calendar days from the date Contractor is ordered to proceed, which order shall be issued by the City Administrator within 30 days after the date of execution of this Contract. If such order is not issued within 30 days after execution of this Contract, then this Contract shall terminate.

**2. Payment.**

**2.1. Conditioned on acceptable performance.** Provided that Contractor performs the Services in the manner set forth herein, the City shall pay the Contractor in accordance with the provisions set forth in Exhibit B, which shall constitute full and complete compensation for the Contractor's work provided hereunder. No partial payment to the Contractor shall operate as approval of acceptance of work done or materials furnished hereunder. Such compensation will

be paid in progress payments, as established by the City but occurring at least monthly, subject to receipt of a requisition for payment and a statement of work provided by the Contractor which shall include an acknowledgement signed 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. City shall withhold 5% from each progress payment as retainage to ensure performance and completion of the Contract. Retainage amounts shall be paid as part of City's Final Payment to Contractor.

**2.2. Total compensation not to exceed.** It is expressly understood that in no event shall the total compensation and reimbursement to be paid to the Contractor under the terms of this Contract exceed the sum of \$141,700.00 unless specifically and mutually agreed to in writing by both the City and the Contractor.

**2.3. Final Completion and Final Payment.**

**2.3.1.** Final Completion is the point at which all work under this Contract has been completed by Contractor in strict compliance with the terms of this Contract and the Contractor is ready to receive its Final Payment. Final Completion will only occur when all of the following conditions, unless waived in writing by the City, have been satisfied:

**2.3.1.1.** All work is complete and in compliance with this Contract.

**2.3.1.2.** Contractor has submitted to the City a Final Payment Application for all funds remaining due under the Contract.

**2.3.1.3.** Contractor has completed all of its obligations under this Contract, including, without limitation, provided all manufacturer's warranties or any other warranties which are part of the project, provided any manuals for the operation and maintenance of equipment and systems which are part of the project, provided any as-builts or other drawings, any documentation transferring to City ownership of all equipment and materials which are part of the project, and any other close-out requirements reasonably required by the City.

**2.3.1.4.** Contractor has delivered to the City a final claim statement setting forth in detail all claims of any kind pending against the City or any indemnitee connected with or arising out of this Contract that are pending but not yet resolved. Any claim not specified by the Contractor, whether on behalf of itself or its subcontractors, shall be deemed waived.

**2.3.2.** The Contractor shall notify the City, in writing, when it considers Final Completion achieved. After receiving such notice, the City shall, within a reasonable time, thereafter, schedule an inspection of the work to determine if Final Completion has been achieved. If the City determines that Final Completion has not been achieved, the City shall promptly provide the Contractor with a list of items to be completed or corrected to enable City to certify that Final Completion has been achieved. The Contractor shall promptly perform such work and notify the City upon completion so another inspection can be scheduled. If the City determines that Final Completion has been achieved, the City shall promptly notify the Contractor that all requirements have been met.

**2.3.3.** The acceptance of Final Payment under this Contract expressly constitutes a release of the City by the Contractor and its subcontractors from any and all claims which

were made or could have been made by the Contractor and its subcontractors against the City which may arise out of or are related to this Contract.

**3. Insurance Requirements.** Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City against all hazards or risks of loss as hereunder specified or which may arise out of the performance of this Contract. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City. Regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times during the term of this Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under this Contract.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be provided to the City within 10 days of execution of this Contract. All insurance policies shall require that the insurance company in question provides 30 days written notice prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to the address for the City listed at the top of this Contract.

The required minimum coverage for the insurance referred to herein shall be as set out below:

**3.1. Workers' Compensation** – Statutory coverage per RSMo. 287.010 et seq.  
**Employer's Liability** – \$1,000,000.00

**3.2. Commercial General Liability Insurance**, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and blasting if blasting is required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least \$3,258,368.00 for all claims arising out of a single accident or occurrence and at least \$488,755.00 with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least \$1,000,000 for all claims to property arising out of a single occurrence and at least \$100,000 to any one owner with respect to damages to property. Contractor agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorney's fees of Contractor, its employees, officers or agents. Contractor agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

**3.3. Automobile Liability Insurance** covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of \$3,258,368.00 for all claims arising out of a single accident or occurrence and at least \$488,755.00 with respect to injuries and/or death of any one person in a single accident or occurrence.

**3.4. Owner's and Contractor's Protective Liability Insurance.** To protect the City, its agents, servants, and employees from claims which may arise from the performance of this Contract, with limits of at least \$3,258,368.00 for all claims arising out of a single accident or occurrence and at least \$488,755.00 with respect to injuries and/or death of any one person in a single accident or occurrence. The Owner's and Contractor's Protective Liability Insurance

must:

- 3.4.1. Be a separate policy with the named insured being: The City of Nixa, Missouri; and
- 3.4.2. Be with the same insurance company with which the Contractor carries its Commercial General Liability Insurance and Automotive Liability Insurance; and
- 3.4.3. Contain an endorsement that disclaims coverage for any claim barred by the doctrines of sovereign immunity or official immunity, except attorney's fees and other litigation costs incurred in defending a claim. Nothing contained in this policy (or this endorsement thereto) shall constitute any waiver of whatever kind of these defenses or sovereign immunity or official immunity for any monetary amount whatsoever.

**3.5. Subcontracts.** In case any or all of the performance of this Contract is sublet, the Contractor shall require the subcontractor to procure and maintain all insurance required in subparagraphs (a), (b) and (c) hereof and in like amounts. Contractor shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City through insurance against applicable hazards or risks and shall, upon request of the City, provide evidence of such insurance.

**3.6. Notice.** The Contractor and/or subcontractor shall furnish to the City prior to beginning the work contemplated by this Contract, the policy as specified in subparagraph (d), and satisfactory proof of bearing all the insurance required by this Contract, with the provision that policies shall not be canceled, modified or non-renewed without 30 days written notice to the City.

**3.7. Legislative or Judicial Changes.** In the event the scope or extent of the City's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo is broadened or increased during the term of this Contract by legislative or judicial action, the City may require Contractor, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

**4. Performance and Payment Bonds.** The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the City and on the forms approved by the City, each bond shall be in the amount of \$141,700.00 (full amount of contract) conditioned upon the full and faithful performance of all major terms and conditions of this Contract and payment of all labor and material suppliers. It is further mutually agreed between the parties that if at any time after the execution of this Contract the City deems the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within 5 days after the receipt of notice from the City to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Contractor shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the City. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds \$25,000.00 must be listed in United States Treasury Circular 570.

**5. Contractor's responsibility for subcontractors.** The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this Contract, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City.

**6. 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.

**7. Termination.**

**7.1. For Cause.** The City reserves the right to terminate this Contract by giving at least five days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract.

**7.2. For Convenience.** The City shall have the right at any time by written notice to Contractor to terminate and cancel this Contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the Contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

**7.3. 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. Liability and Indemnity.**

**8.1.** 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.

**8.2.** 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.

**8.3.** 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.

**8.4.** 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.

**8.5.** 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.

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

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

**9. Payment for Labor and Materials.** The Contractor agrees and binds itself to pay for all labor done, and for all the materials used in the construction of the work to be completed pursuant to this contract.

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

- This Contract
- Exhibit A- Scope of Work
- Exhibit B- Rate Sheet
- Exhibit C- Prevailing Wage Order
- Exhibit D- Project Specifications

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. In the event of a conflict between terms, the terms of this Contract shall control over the terms of the exhibits.

**11. Conflict of Interest.** Contractor certifies that no member or officer of its firm or corporation 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 or the provisions of Nixa City Charter Section 13.1.

**12. 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.

**13. 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.

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

**13.2.** 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.

**14. Nonresident/Foreign Contractors.** The Contractor shall procure and maintain during the life of this Contract:

**14.1.** If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 RSMo.

**14.2.** A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

**15. Notices.** All notices required or permitted hereinunder and required to be in writing may be given by email 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 email 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.

**16. 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 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 Offeror's records pertaining to the work/product for a period of three (3) years after final payment.

**17. Occupational License.** The Contractor shall obtain and maintain an occupational license or business registration with the City of Nixa, Missouri, if required by city code and any required state or federal requirement. The cost for this occupational license shall be borne by the Contractor. No contract will be executed by the City until this occupational license has been obtained.

**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. Prevailing Wage.** In compliance with sections 290.210 through 290.340 RSMo, all workers performing work under this Contract 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, as set out in the Wage Order attached hereto as Exhibit C and made part of this Contract. If at any time the Contractor is found to not have paid prevailing wages, the Contractor shall forfeit as a penalty to the City \$100.00 for each calendar day or portion of a calendar day for each worker paid less than the stipulated required rates for any work done under this Contract by the Contractor or by any subcontractor under the Contractor. Notwithstanding the foregoing, if the engineer's estimate of the total project cost or the bid accepted by the City is \$75,000.00 or less, then all labor utilized in the construction of the improvements shall not be required to pay the "prevailing rate

of wages" or the public works minimum wage. However, if the project becomes subject to a change order that increases the total project cost to more than \$75,000.00, a "prevailing hourly rate of wages" or the public works contracting minimum wage, whichever is applicable, shall be paid for all labor utilized in the construction of the improvements but only for that portion of the project which exceeds \$75,000.00.

**22. Safety Training.** Pursuant to Missouri Revised Statute Section 292.675, Contractors and subcontractors who sign a contract to work on public works projects must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within sixty (60) days of beginning work on the construction project. The Contractor shall provide an acceptable notarized affidavit stating that Contractor has verified the completion of a 10-hour constructions safety program with respect to the employees working in connection with the contracted services. Contractors and subcontractors in violation of this provision will forfeit to the public body \$2,500.00 plus \$100 a day for each employee who is employed without training. Public bodies and contractors may withhold assessed penalties from the payment due to those Contractors and subcontractors. The penalties shall not begin to accrue until the time periods in the statute have elapsed (60 days after notice to proceed and 20 days to produce documentation for employee found in violation).

**23. 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.

**24. Affidavit for Compliance with Anti-Discrimination against Israel Act.** Pursuant to Missouri Revised Statute Section 34.600, if this Contract exceeds the amount of \$100,000 for Contractors with ten or more employees, Contractor shall provide an acceptable notarized affidavit stating that the associated business is not currently engaged in and shall not for the duration of the contract, engage in a boycott of goods or services from the State of Israel; is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or is not currently engaged in and shall not for the duration of this contract, engage in a boycott of goods or services from persons or entities doing business in the state of Israel.

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

**THE CITY OF NIXA, MISSOURI**

\_\_\_\_\_  
Jimmy Liles, City Administrator

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

**CONTRACTOR**

\_\_\_\_\_  
*Jerry D Kendall*

\_\_\_\_\_  
Jerry D Kendall  
Printed Name

\_\_\_\_\_  
Owner  
Title

Date: 08-03-2023

**ATTEST:**

\_\_\_\_\_  
*Christa Kendall*

\_\_\_\_\_  
Christa Kendall  
Printed Name

Title: Bookkeeper

## **SCOPE OF WORK**

The Scope of Work for this project is limited to the addition of new restrooms, sign room, and double doors to the current break room located at the Public Works facility at 1111 W. Kathryn St., Nixa, MO. No work is being done in other parts of the building. Construction shall include all fixtures, finishes, walls, and doors. The Scope also includes making the restrooms ADA Accessible.

Specifications for the project are provided in the Attachments tab in the bid. Construction of the project must be followed exactly as stated in these plans.

City staff will monitor and inspect the progress and completion of the project. If any changes or modifications need to be made, the contractor will be required to do so upon request.

No partial payment to the Contractor shall operate as approval of acceptance of work done or materials furnished. Progress payments, as established by the City but occurring at least monthly, will be subject to receipt of a requisition for payment and a statement of work provided by the Contractor which shall include an acknowledgement signed by both the City and the Contractor that the Contractor has fully performed the work to be paid for. The City shall withhold 5% from each progress payment as retainage to ensure performance and completion of the Contract. Retainage amounts shall be paid as part of City's Final Payment to Contractor.

