

## **RE: Solid Waste Provider Contract**

### **Background:**

The City's current contract with Republic Services expires at the end of this year. A request for proposal for trash service was opened in June and closed on July 28<sup>th</sup>, 2023. We received three (3) proposals. This included proposals from Republic Services, Cards NEO and Waste Corporation of Missouri LLC.

### **Analysis:**

A committee of 4 employees was formed to evaluate and score the proposals. The scoring process included points for price, experience working with municipalities or equal sized companies, efficiency/performance, and references. Upon the initial evaluation and scoring, the committee narrowed the selection down to the top 2, Republic Services and Cards NEO. The committee conducted interviews with representatives from each company. Upon completion of the interviews, the committee used the above criteria to make a recommendation for selection. Of the 4-person committee, 3 of the 4 selected Republic Services as the recommended company to select for trash services.

Based on this recommendation, contract negotiations were started between the City of Nixa and Republic Services. The contract presented to City Council for consideration was mutually agreed upon by both parties.

The contract includes the following pricing for a 95-gallon or a 65-gallon poly cart for residential curbside collection of solid waste:

- Year One: January 1, 2024 through December 31, 2024 (\$12.81 per month)
- Year Two: January 1, 2025 through December 31, 2025 (\$13.45 per month)
- Year Three: January 1, 2026 through December 31, 2026 (\$14.12 per month)
- Year Four: January 1, 2027 through December 31, 2027 (\$15.39 per month)
- Year Five: January 1, 2028 through December 31, 2028 (\$16.16 per month)

The contract also includes additional language that includes liquidated damages resulting from certain types of performance breaches. For example, the contract shall be liable to the City for liquidated damages in the amount of \$75.00 for the first incident, \$100.00 for the second incident and \$200.00 per incident thereafter upon a determination by the City that performance has not occurred, or the terms of the contract have been violated. A couple of examples of liquidated damages would include things such as, failure to pick up a missed collection for a resident or residence

by the timeline for collection established within the contract or a failure to address legitimate complaints.

The contract also includes a termination for convenience clause that would allow the City to give a 180-day written notice of termination to cancel the contract, without cause, for convenience.

**Recommendation:**

After completing the review of all proposals submitted, Staff recommends approval of this Resolution.

**MEMO PREPARED BY:**

**Jimmy Liles** | City Administrator

Jliles@nixa.com | 417-725-3785

**RESOLUTION NO. 2023-54**

1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**  
2 **ADMINISTRATOR TO EXECUTE A CONTRACT WITH ALLIED SERVICES, LLC,**  
3 **D/B/A REPUBLIC SERVICES OF THE OZARKS, FOR THE PURPOSE OF**  
4 **AUTHORIZING SAME AS THE CITY’S APPROVED SOLID WASTE CONTRACTOR**  
5 **PURSUANT TO CHAPTER 22, ARTICLE V OF THE NIXA CITY CODE.**  
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7

8 **WHEREAS** City staff have solicited proposal for the City’s approved solid waste  
9 contractor under the provisions of Chapter 22, Article V of the Nixa City Code (“Project”);  
10 and  
11

12 **WHEREAS** at the conclusion of the solicitation process, City staff determined that  
13 Allied Services, LLC, d/b/a Republic Services of the Ozarks (“Contractor”), submitted the  
14 best proposal for the Project; and  
15

16 **WHEREAS** City Council desires to award the Contract for the Project to the  
17 Contractor and to authorize the City Administrator to execute the Contract attached hereto  
18 as “Resolution Exhibit A.”  
19

20 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**  
21 **NIXA, AS FOLLOWS, THAT:**  
22

23 **SECTION 1:** City Council hereby accepts the proposal of the Contractor for the  
24 Project. The City Administrator, or designee, is hereby authorized to enter into a contract  
25 with the Contractor. Said contract to be in substantially similar form as the document  
26 attached hereto, and incorporated herein by this reference, as “Resolution Exhibit A.”  
27

28 **SECTION 2:** The City Administrator and the officers of the City are hereby  
29 authorized to do all things necessary or convenient to carry out the terms and intent of  
30 this Resolution.  
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32 **SECTION 3:** This Resolution shall be in full force and effect from and after its final  
33 passage by the City Council and after its approval by the Mayor, subject to the provisions  
34 of section 3.11(g) of the City Charter.  
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37 **[Remainder of page intentionally left blank. Signatures follow on next page.]**  
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**RESOLUTION NO. 2023-54**

47 **ADOPTED BY THE COUNCIL THIS 13<sup>th</sup> DAY OF November, 2023.**

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ATTEST:

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

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

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55 **APPROVED BY THE MAYOR THIS 13<sup>th</sup> DAY OF November, 2023.**

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ATTEST:

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MAYOR

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

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63 APPROVED AS TO FORM:

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

<b>EFFECTIVE DATE:</b>	<b>TERMINATION DATE:</b>	<b>CONTRACT NUMBER:</b>
( ) <b>NEW CONTRACT</b>		( ) <b>ADDENDUM NO. ___</b>
<b>CITY</b>		<b>CONTRACTOR</b>
Name: City of Nixa, Missouri Address: 715 W. Mt. Vernon St., PO Box 395 Nixa, MO 65714 Phone: 417.725.3785 Email: <a href="mailto:jliles@nixa.com">jliles@nixa.com</a> Attn: Jimmy Liles      Dept: Administration		Name: Allied Services, LLC d/b/a Republic Services of the Ozarks Address: 2115 W. Bennett St., Springfield, MO 65807 Phone: 407-499-3739 Email: <a href="mailto:jfagan2@republicservices.com">jfagan2@republicservices.com</a> Attn: Jennifer Fagan

**CONTRACT FOR RESIDENTIAL SOLID WASTE DISPOSAL**

**THIS CONTRACT FOR RESIDENTIAL SOLID WASTE DISPOSAL** (“Contract”) is made and entered into upon its execution by the parties identified above.

**WHEREAS** the City has adopted Chapter 22, Article V of the Nixa City Code, which, among other things, requires all occupants of residential dwelling units to use the City’s approved waste disposal contractor; and

**WHEREAS** the City, after conducting a Request for Proposal solicitation process, referenced as RFP-031-2023/UT desires to engage Contractor to function as the City’s approved waste disposal contractor for the duration of this Contract; 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. Purpose.** This Contract is entered into between the City and Contractor to authorize Contractor to function as the City’s approved waste disposal contractor as provided for in Chapter 22, Article V of the Nixa City Code. Contractor is responsible for collecting all residential solid waste and recycling within the city limits of City and performing all other services as provided for in this Contract. By executing this Contract, Contractor shall be considered the City’s approved waste disposal contractor for purposes of residential solid waste collection pursuant to Chapter 22, Article V of the Nixa City Code.

**2. Services – Generally.**

**2.1.** The work under this Contract consists of furnishing all supervision, labor, tools, equipment, materials, supplies, and service to perform all work and services necessary to satisfactorily collect all solid waste from all residential dwelling units located within the city limits of the City. The work shall also consist of the transportation of solid waste to appropriate disposal sites, and to perform all other work or services incidental to solid waste collection and disposal services. The services shall be performed in conformance with Chapter 22, Article V of the Nixa City Code and the terms of this Contract. Contractor agrees to perform said Services in accordance with the standard of care, skill, and expertise ordinarily used by other members of Contractor’s profession in performing similar services.

**2.2.** The Contractor shall furnish all necessary equipment required for the collection of all solid waste and the performance of other services required herein. The provision of all necessary equipment to be provided by the Contractor shall include, without limitation, the provision of the containers to be used by City residents for the collection services provided for herein. The Contractor shall provide each individual residential household with their choice of either a 96-gallon or 65-gallon poly cart for solid waste removal. High-density residential complexes shall be supplied by Contractor with one or more commercial containers to adequately handle the volume of solid waste and recycling generated at the location based on the \$5.45 per yard amount, increasing annually by 5%.

**2.3.** The City may add to the Contractor's services or delete therefrom services, provided that the total cost of such work does not exceed the total cost authorized herein. 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. Services – Manner of Collection.**

**3.1.** All solid waste shall be collected by the Contractor at least once each week in a 96- or 65-gallon cart provided by the Contractor. If a resident opts for curbside recycling service, then Contractor shall collect recyclables at least once every other week in a 96- or 65-gallon cart provided by the Contractor. Contractor shall collect cart contents only for solid waste disposal and recycling. Additional carts may be provided by Contractor to residents requiring additional services.

**3.2.** No change to the collection day shall be made by the Contractor until the Contractor has provided notice of such change to each individual impacted by the change and the City. Such notice may be included in the City's utility bill. The City may also support notifications of such changes in its sole discretion.

**3.3.** All collection vehicles utilized by the Contractor shall be of the "packer" variety and shall be constructed and maintained so as to prevent spillage of its contents.

**3.4.** The Contractor shall be solely responsible for transporting collected materials to a qualified place of disposal and shall be responsible for any charges related thereto.

**3.5.** The Contractor shall not be required to collect any hazardous materials, toxic substances, pollutants, contaminants, infectious wastes, medical wastes, or radioactive wastes (collectively "Excluded Waste"). Excluded Waste is defined by applicable federal, state, or local laws or regulation. If Excluded Waste is discovered before it is collected by Contractor, Contractor may refuse to collect the entire bin, container, bag, or bundle of waste. In such situations, Contractor shall contact the individual or individuals receiving service and such individual or individuals shall undertake appropriate action to ensure that such Excluded Waste is removed, and property disposed of by the depositor or generator of the waste. In the event any Excluded Waste is not discovered by Contractor before it is collected, Contractor may, in its sole discretion remove, transport, and dispose of such Excluded Waste at a location authorized to accept such Excluded Waste in accordance with all applicable laws and may charge the depositor or generator of such Excluded Waste all direct and indirect costs incurred due to the removal, remediation, handling, transportation, delivery, and disposal of such Excluded Waste. The City shall provide all reasonable assistance to Contractor to investigate and determine the identity of the depositor or generator of the Excluded Waste and to collect the costs incurred by Contractor in connection with such Excluded Waste.

#### **4. Services – Operation.**

**4.1.** The collection services provided by Contractor shall not start before 7:00 am and shall not continue past 7:00 pm. Exceptions to collection hours may be made approved by the City's City Administrator.

**4.2.** Collection routes shall be established by the Contractor. The Contractor shall submit a map or other written document designating the routes and collection schedule for the routes. This document shall be provided to the City promptly upon execution of this Contract. The Contractor may, from time to time, modify the routes and collection schedule provided that the Contractor promptly gives written notice to the City and any affected residents of the City.

**4.3.** The following shall be holidays for purposes of this Contract:

**4.3.1.** New Year's Day

**4.3.2.** Labor Day

**4.3.3.** Independence Day

**4.3.4.** Thanksgiving Day

**4.3.5.** Memorial Day

**4.3.6.** Christmas Day

Contractor may decide to observe any or all of the above-mentioned holidays by suspension of collection service on the holidays, but such decision in no manner relieves Contractor of its obligation to provide collection service at least once per week.

**4.4.** All complaints shall be made directly to the Contractor and shall be given prompt and courteous attention. In the case of an alleged missed scheduled collection, the Contractor shall investigate and, if such allegation is verified, arrange for the collection of missed materials within 48 hours after the complaint was received. The Contractor shall keep a log of all missed collections and provide it to the City Administrator on a semi-annual basis or upon request of the City's City Administrator.

**4.5.** The Contractor shall provide an adequate number of vehicles for collection services. All vehicles and other equipment shall be kept in good repair, appearance, and in a sanitary condition. Each vehicle shall have clearly visible on each side the identity and website of the Contractor.

**4.6.** The Contractor shall maintain a local or toll-free telephone number during the hours of 8:00 am and 5:00 pm Monday through Friday for the receipt of calls from City personnel and residents. The Contractor shall be solely responsible for notifying the City and residents of the City of any disruption in the services to be provided by the Contractor under this Contract. The City may also support such notifications in its sole discretion.

**4.7.** All materials hauled by the Contractor shall be so contained, tied, or enclosed such that leaking, spilling, or blowing are prevented.

**4.8.** All refuse materials collected for disposal by the Contractor shall be hauled to a licensed disposal site. The Contractor is responsible for the payment of any disposal fees.

**4.9.** Title to any solid waste material or recyclable material shall pass to the Contractor when placed in Contractor's collection vehicles. Title to and liability for any Excluded Waste shall remain with the generator or depositor of such waste and shall at no time pass to the Contractor.

**5. Services – Customer Service.**

**5.1.** The Contractor shall maintain throughout the duration of this Contract a designated single point of contact who is located within fifty miles of Nixa and who has sufficient authority to resolve issues when notified by the City Administrator of City.

**5.2.** The Contractor shall always respond to residents of the City in a responsive and friendly customer service manner.

**5.3.** The Contractor shall address all complaints it receives courteously and promptly. The Contractor shall log all complaints it receives and provide the log to the City Administrator of City if requested. The Contractor shall reasonably resolve complaints it receives. If the Contractor believes the complaint cannot be reasonably resolved, then the Contractor shall promptly contact the City to discuss further action.

**5.4.** If products are not collected by Contractor because they were not prepared properly for collection, Contractor shall leave the customer with an explanation why the items were not collected.

**5.5.** All of Contractor's vehicles used in connection with the contract shall be clean and in proper working order.

**6. Additional Services.** Services to be provided at no additional cost to the City are as follows:

**6.1.** Service clean-up of the City's "Sucker Day" event, which shall include the placement of an adequate number of containers prior to and during the event to accommodate the event and the removal of such containers after the event.

**6.2.** Service clean-up of the City's annual fireworks celebration event, which shall include the placement of an adequate number of containers prior to and during the event to accommodate the event and the removal of such containers after the event.

**6.3.** Carryout services to permanently disabled residents of the City.

**6.4.** Haul yard waste from the City's Recycling Facility located at 1093 Eaglecrest, Nixa, MO.

**6.5.** Provide the City with a "White Goods" recycling box for those items where the CFC or HCFC has been removed and provide hauling and recycling of such items.

**6.6.** Provide for the collection of one large item per week (including without limitation couches, chairs, end tables, television stands, not to exceed 70 lbs. each) per residential dwelling unit. Residents must contact customer services of Contractor to schedule the one large item pickup. Contractor shall provide sufficient contact information for customer services.



**6.7.** Provide roll off boxes for two City neighborhood cleanup events annually. Contractor shall provide at no additional charge two 30 yards hauled one time twice per year for a total of four hauls. Additional hauls will be at a rate of \$350.00 per haul up to 4 tons, \$55.00 per ton over 4.

**6.8.** Provide curbside recycling services for each resident of the City as an optional service. Service shall be every other week on the same day as the resident's solid waste pick up.

**6.9.** Provide the City with recycling services at the City Recycling Facility, located at 1093 N Eaglecrest, Nixa, MO.

**6.10.** Provide up to two 30-yard containers for the removal of yard waste at the City Recycling Facility. Items accepted: leaves, grass clippings, green garden waste. Contractor shall haul such material away.

**7. Services to City-Owned Facilities.** The Contractor shall be required to provide solid waste, yard waste, and recyclable collection services to all City owned facilities at no additional cost to City. The Contractor shall be required to provide the following equipment and collection schedule as outlined below. The City and Contractor, upon mutual agreement, may modify the provisions of this paragraph so long as such modification is in writing.

**7.1. City Solid Waste Container Requirements.** Once weekly collection (except where noted):

**7.1.1.** Two covered 95-gallon carts; one for trash and one for recyclables for the Utilities Office located at 707 W. Center Cr., Nixa, MO.

**7.1.2.** One four-yard container for the City Police Department located at 715 W. Center Cr., Nixa, MO.

**7.1.3.** One two-yard container for the Police dog pound/shooting range located at 972 Old Riverdale Rd., Nixa, MO.

**7.1.4.** One Cart for the Animal Control Office located 715 W. Center Cr., Nixa, MO.

**7.1.5.** Three six-yard containers for the City Parks Department located 701 N. Taylor Way, Nixa, MO. This service shall include a pickup at least three times a week from Memorial Day to Labor Day of each year. At least two pickups during the rest of the year.

**7.1.6.** Contractor will provide city facilities with a paper shred program. Contractor will also provide residents with a no charge shred day one time per year.

**7.2. Nixa Utilities and Public Works Container Requirements:**

**7.2.1.** For the location at 1010 Eaglecrest, Contractor shall provide: One (1) (5 yard) covered container for general trash for on-call pickup, One (1) roll-off (30 yard) container for treated wood (poles) for on-call pickup, One (1) (20 yard – short side) covered roll-off container for street sweepings and, One (1) 5 yard covered Recyclables container. Two (2) carts (95 gal.) and One (1) recycle cart (95 gal.).

**7.2.2.** For the location at 1111 W. Kathryn, Contractor shall provide: One (1) covered (5 yard) container for general trash for on-call pickup, and One (1) covered (5 yard)

Recyclables container. One (1) medium size roll-off for recyclable wire for on-call pickup.

**7.2.3.** For the Wastewater Treatment Plant, located at 972 S. Old Riverdale Rd., Nixa, MO, Contractor shall provide: Three (3) rolling (1-2 yard) and one (1) (20-30 yard) covered roll-off container, which requires analysis every three (3) years, and One (1) cart (95 gal.).

**7.2.4.** Twenty hauls under this Section shall be at no charge. Any hauls over this per year shall be at a rate of \$350 per haul up to 4 tons, \$55.00 per ton over 4.

**7.3.** Recycling Center Container Requirements. As needed and on-call:

**7.3.1.** One enclosed roll-off (25 Yards) for plastics.

**7.3.2.** One enclosed roll-off (25 Yards) for glass.

**7.3.3.** One enclosed roll-off (25 Yards) for plastic, tin and paper.

**7.3.4.** Three enclosed roll-offs (25 Yards) for cardboard.

**7.3.5.** One year-round open top roll off (30 Yards) for yard waste.

**7.3.6.** One fall season (September 1 to November 30) open top roll-off (30 Yards) for yard waste.

**7.3.7.** One roll-off (30 Yards) for "white goods" (all items CFC and HCFC free).

**7.3.8.** 220 hauls of recycling rolloffs shall be at no charge and 125 hauls of yard waste shall be at no charge. Any additional hauls shall be at \$350 per haul up to 4 tons, \$55.00 per ton over 4.

## **8. Contract Rate and Payment.**

**8.1.** The Contractor shall be paid the following monthly rate per residential dwelling unit within the City of Nixa where the Contractor collects the solid waste from the residential dwelling unit:

**8.1.1.** Year One: January 1, 2024, through December 31, 2024 (\$12.81 per month);

**8.1.2.** Year Two: January 1, 2025, through December 31, 2025 (\$13.45 per month);

**8.1.3.** Year Three: January 1, 2026, through December 31, 2025 (\$14.12 per month);

**8.1.4.** Year Four: January 1, 2027, through December 31, 2027 (\$15.39 per month);

**8.1.5.** Year Five: January 1, 2028, through December 31, 2028 (\$16.16 per month).

**8.2.** The Contractor shall be paid the following monthly rate per residential dwelling unit within the City of Nixa when the customer for such service accepts services of an additional 95-gallon poly-cart or 65-gallon poly cart for residential curbside collection of solid waste (not to exceed four additional carts per household) and where the Contractor collects the solid waste:

**8.2.1.** Year One: January 1, 2024, through December 31, 2024 (\$4.36 per month/extra  
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95 gallon or \$12.81 per month for 65 gallons);

**8.2.2.** Year Two: January 1, 2025, through December 31, 2025 (\$4.58 per month/extra 95 gallon or \$13.45 per month for 65 gallons);

**8.2.3.** Year Three: January 1, 2026, through December 31, 2025 (\$4.81 per month/extra 95 gallon or \$14.12 per month for 65 gallons);

**8.2.4.** Year Four: January 1, 2027, through December 31, 2027 (\$5.05 per month/extra 95 gallon or \$15.39 per month for 65 gallons);

**8.2.5.** Year Five: January 1, 2028, through December 31, 2028 (\$5.30 per month/extra 95 gallon or \$16.16 per month for 65 gallon).

**8.3.** The City shall collect the monthly fees from each of its residents and shall segregate said funds for payment to the Contractor.

**8.4.** The City shall withhold 9% of all amounts collected as payment as an administrative fee to the City to cover expenses incurred by the City in connection with the collection and distribution of said funds.

**8.5.** Unless specified elsewhere in this Contract, City shall pay Contractor within one month after the date of City's issuance of the remittance form generated by the City. City shall pay all taxes, fees, and other governmental charges assessed against or passed through to Contractor (other than income or real property taxes). The City shall not be responsible and shall not be required to pay any fees, fines, or assessments due to Contractor's violation of any laws or governmental rules or regulations.

## **9. Liquidated Damages.**

**9.1.** The parties mutually agree and stipulate that the imposition of liquidated damages is not a penalty but is a recognition of the difficulty of ascertaining damages resulting from certain types of performance breaches. The assessment of liquidated damages shall be at the reasonable discretion of the City and shall be in lieu of other remedies available to the City for the specific performance breach, if imposed.

**9.2.** The City may deduct the full amount of any liquidated damages from any payment due to the Contractor, but any liquidated damages not so deducted shall remain the obligation of the Contractor and be payable to the City on demand.

**9.3.** The City may assess liquidated damages in lieu of other remedies available to the City for breach of this Contract. Failure to impose liquidated damages for lack of performance shall not constitute a waiver of the City's other rights or remedies.

**9.4.** The Contractor shall be liable to the City for liquidated damages, in the amount of \$75.00 for the first incident, \$100.00 for the second incident, and \$200.00 per incident thereafter upon a determination by the City that performance has not occurred, or the terms of this Contract have been violated. Examples of situations in which the City may seek liquidated damages in lieu of other remedies include, without limitation, the following:

**9.4.1.** Failure to pick up a missed collection for a resident or residence by the timeline for  
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collection established herein.

**9.4.2.** Failure to request and obtain permission from the City for collecting earlier than 7:00 am or later than 7:00 pm, unless prior approval is provided by the City.

**9.4.3.** Failure to address legitimate complaints, whether submitted by residents or the City.

**9.4.4.** Failure to clean up scattered or spilled materials spilled by the Contractor within five hours of written or oral notice from the City.

**9.4.5.** Failure to adhere to other collection restrictions and requirements set forth in this Contract. The City shall notify the Contractor in writing with a cure period of 24 hours prior to any further action. If the Contractor has violated or failed to follow multiple collection restrictions or requirements in a specific incident, the City may treat each violation or failure as a separate incident for the purpose of calculating liquidated damages.

**10. Storms and Other Disasters.** Except for the City's obligation to pay amounts due to Contractor, any failure or delay in performance under this Contract due to contingencies beyond a party's reasonable control, including, but not limited to, strikes, riots, terrorist acts, compliance with applicable laws or governmental orders, fires, inclement weather, and acts of God, shall not constitute a breach of this Contract but shall entitle the affected party to be relieve of performances under this Contract during the term of such event and for a reasonable time thereafter.

**11. Conditions Affecting Work.** The Contractor states that it has taken all steps necessary to ascertain the nature and location of the work and any peculiar local conditions, which can affect the work or its cost. The City of Nixa assumes no responsibility for any understanding or representation made by any person at any time, unless it is included in the Contract documents.

**12. 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.

**13. Personnel.** The Contractor represents that the 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.

**14. Term.** This Contract shall be for a period of five years, commencing on the 1<sup>st</sup> day of January 2024 and terminating the 31<sup>st</sup> day of December 2029, unless otherwise terminated as provided for herein. Contractor and City may negotiate an optional five-year extension at least 90 days prior to December 31, 2029.

**15. Termination.**

**15.1. Termination for breach.** Failure of Contractor to fulfill Contractor's obligations under this Contract in a timely and satisfactory manner in accordance with the terms of this Contract shall constitute a breach of the Contract, and the City shall thereupon have the right to immediately

terminate the Contract. The City shall give written notice of termination to the Contractor. 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.

**15.2. Termination for Convenience.**

**15.2.1.**The City shall have the right at any time upon 180 days written notice to the Contractor to terminate and cancel this Contract, without cause, for convenience. In such an event final payment to the Contractor shall be limited to services provided by the Contractor as of the effective date of said termination.

**15.2.2.**The Contractor shall have the right at any time upon 180 days written notice to the City to terminate and cancel this Contract, without cause, for convenience. In such an event final payment to the Contractor shall be limited to services provided by the Contractor as of the effective date of said termination.

**15.3. 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.

**15.4. 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.

**16. 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.

**17. 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.

**18. 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 or the provisions of Nixa City Charter Section 13.1.

**19. 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.

**20. 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.

**20.1.** 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.

**20.2.** 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.

**21. 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.

**22. 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. Contractor shall procure insurance as required herein from insurance companies rated A-VIII or higher by A.M. Best on ISO forms and with limits no less than the limits set forth in this Paragraph. 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 blanket-form endorsements hereunder, shall be provided to the City within 10 days of execution of this Contract. All insurance policies, except Workers' Compensation and Employer's Liability, shall be endorsed via blanket-form endorsement to require that the insurance company, or the insurance company's authorized representative, provides 30 days written notice prior to any material change or cancellation of such insurance. Such notices shall be emailed, mailed, or 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:

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

**22.2. Commercial General Liability Insurance**, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion Liability, Collapse, and Underground Property Damage. 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 via blanket-form endorsement, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

**22.3. Automobile Liability Insurance** covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at \$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.

**22.4. 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.

**22.5. Notice.** The Contractor and/or subcontractor shall furnish to the City prior to beginning the work contemplated by this Contract, an ACORD 25 Certificate of Insurance evidencing all the insurance required by this Contract, and supplemented with blanket-form notice of cancellation endorsement providing that the policies, except Workers’ Compensation and Employer’s Liability, shall not be canceled, materially changed or non-renewed without 30 days written notice to the City.

**22.6. 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.

**23. 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.

**24. 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.

**25. Liability and Indemnity.**

**25.1.** 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.

**25.2.** 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 reasonable 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.

**25.3.** The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees of the Contractor 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.

**25.4.** 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.

**25.5.** 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.



**25.6.** 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.

**25.7.** 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.

**26. Performance Bond.** The Contractor shall furnish a Performance Bond with a surety approved by the City and on the forms approved by the City, said bond shall be in the amount of \$1,115,000.00 and shall be conditioned upon the full and faithful performance of all major terms and conditions of this Contract. 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.

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

**27.1.** 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.

**27.2.** 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.

**28. 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.

**29. 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. Contractor may request annually a list of addresses being billed by City which shall include details on the trash service provided to said address.

**30. 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 herein. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

**31. 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.

**32. 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.

**33. 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.

**34. Affidavit for Compliance with Anti-Discrimination against Israel Act.** Pursuant to Section 34.600 RSMo, 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.

**35. City's Authorized Representative.** The City Administrator of the City is designated as the City's authorized representative for purposes of this Contract. The City Administrator is charged by the City with carrying out the terms of this Contract on behalf of the City and providing whatever approvals are required by the City herein. Unless specifically provided to the contrary herein, approvals of City herein may be given by the City Administrator, or their authorized designee, without the need of any further action of the City Council.

**36. Specifications for all Recyclable Material.** Recyclable Material shall comply with any and all specifications provided by Contractor in order to meet quality thresholds for commodity markets and be free of contamination.

**[Remainder of page intentionally left blank. Signatures follow on next page.]**

