



RE: Contract With the Nixa Chamber of Commerce

Background:

The City's contract with the Nixa Chamber of Commerce has expired and a new contract is needed to continue the City's investment with the Chamber.

Analysis:

The contract that is being presented to Nixa City Council is similar in scope to the old contract, but I would like to point out a few noteworthy changes. Although the investment amount is the same as in the previous contract (\$44,000 annually) there are some additional services that will be provided if the contract is approved. The City of Nixa will be provided with the benefits of the "Marketing Partnership" member level, which will provide a high level of recognition for the City of Nixa. The Nixa Utilities brand will now also be promoted on the Chamber's website, app, and other prominent locations. The number of tickets the City will receive for the Chamber lunches will increase from six (6) to eight (8), and the number of tickets for the Working Women in Nixa luncheon will increase from one (1) to two (2.) The City will also be provided one (1) table at the annual Nixies Gala. The contract also includes four (4) tables at the annual NIXPO event. It is important to point out that the main function of the contract is to provide support, through the Chamber, to Nixa's business community. As you will see, the majority of the contract lays out a number of services that will be provided to ensure that the City's businesses and community are supported and promoted. The contract that is presented is a 3-year contract that will terminate on January 31, 2027, unless otherwise extended by mutual agreement of both parties.

Recommendation:

The City's continued support for our local businesses is vital to the health of our community. The financial support the City provides through the Nixa Chamber of Commerce has proven to be a beneficial way to continue to ensure our local businesses and community, therefore staff recommends approval of the resolution supported the contract with the Nixa Chamber of Commerce.

MEMO PREPARED BY:

Jimmy Liles | City Administrator

Jliles@nixa.com | 417-725-3785

RESOLUTION NO. 2024-03

1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**
2 **ADMINISTRATOR TO EXECUTE A CONTRACT WITH THE NIXA CHAMBER OF**
3 **COMMERCE.**

4 _____
5
6 **WHEREAS** as part of the City’s continued support for local business, City staff and
7 staff with the Nixa Chamber of Commerce have negotiated a Service Contract between
8 the City and the Chamber of Commerce; and
9

10 **WHEREAS** City Council desires to enter into a contract with same and to authorize
11 the City Administrator to execute the Contract attached hereto as “Resolution Exhibit A.”
12

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

15
16 **SECTION 1:** City Council hereby authorizes the City Administrator, or designee,
17 to enter into a contract with the Nixa Chamber of Commerce. Said contract to be in
18 substantially similar form as the document attached hereto, and incorporated herein by
19 this reference, as “Resolution Exhibit A.”
20

21 **SECTION 2:** The City Administrator and the officers of the City are hereby
22 authorized to do all things necessary or convenient to carry out the terms and intent of
23 this Resolution.
24

25 **SECTION 3:** This Resolution shall be in full force and effect from and after its final
26 passage by the City Council and after its approval by the Mayor, subject to the provisions
27 of section 3.11(g) of the City Charter.
28

29 **ADOPTED BY THE COUNCIL THIS 6th DAY OF February, 2024.**

30
31 ATTEST:

32
33 _____
34 PRESIDING OFFICER

35 _____
36 CITY CLERK

37 **APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2024.**

38 ATTEST:

39
40 _____
41 MAYOR

42 _____
43 CITY CLERK

44 APPROVED AS TO FORM:

45 _____
46 CITY ATTORNEY

1.2.11. Advocate within Nixa for the importance of regionalism and partnerships.

1.3. Contractor shall report on their performance under this Contract at least twice annually at a regular meeting of the City Council of City.

1.4. Contractor shall provide eight tickets to the City for each general membership luncheon held by Contractor.

1.5. Contract shall provide two tickets to the City for each Working Women in Nixa luncheon held by Contractor.

1.6. City staff shall be provided with an opportunity to provide updates on City matters at each general membership luncheon held by Contractor.

1.7. Contractor shall provide one table for the City at the annual Nixies Gala.

1.8. Contractor shall provide four booths at the NIXPO event for the City's use.

1.9. Contractor shall provide the City of Nixa with the annual benefits of the "Marketing Partnership" membership level. Contractor shall provide recognition of Nixa Utilities on its website, app, and other prominent locations.

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 **\$44,000.00** annually, which shall constitute full and complete compensation for the Contractor's work provided that no partial payment to the Contractor shall operate as approval of acceptance of work done. Such compensation shall be paid in quarterly progress payments, totaling **\$11,000.00** each payment, 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. The acceptance of any 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 the performance of this Contract at the time of payment.

2.2. Total compensation not to exceed. It is expressly understood that in no event shall the annual total compensation or reimbursement to be paid to the Contractor under the terms of this Contract exceed the sum of **\$44,000.00** unless specifically and mutually agreed to in writing by both the City and the Contractor.

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

4. Personnel. The Contractor represents that Contractor shall secure at Contractor's own expense; all personnel required to perform the services called for under this Contract by Contractor. Such personnel shall not be considered employees of the City. All of the services required hereunder shall be performed by the Contractor or under Contractor's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform

such services. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the City.

5. Contract Term. This Contract shall terminate on January 31, 2027, unless extended by mutual agreement of the Parties.

6. Termination.

6.1. 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.

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

6.3. 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.

6.4. 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.

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

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

9. Conflict of Interest. Contractor certifies that no member or officer of its firm or organization is an officer or employee of the City of Nixa, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest in this contract which would violate any applicable federal regulations or the provisions of RSMo Section 105.450 et seq or the provisions of Nixa City Charter Section 13.1.

10. Assignment. The Contractor shall not assign any interest in this Contract and shall not transfer

any interest in the same (whether by assignment or novation), without prior written consent of the City, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this Contract, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this Contract.

11. Nondiscrimination. The Contractor agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

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

11.2. 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.

12. 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.

13. 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.

14. 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.

15. Liability and Indemnity.

15.1. 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.

15.2. 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.

15.3. 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.

15.4. 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.

15.5. 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.

15.6. 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.

15.7. 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.

16. Entire Agreement. This Contract contains the entire agreement of the parties. 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.

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

17.1. 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.

17.2. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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. 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 for any further action of the City Council.

[Remainder of Page Intentionally Left Blank. Signature Page Follows.]

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

THE CITY OF NIXA, MISSOURI

CONTRACTOR

Jimmy Liles, City Administrator

Date: _____

Printed Name

ATTEST:

Title

Rebekka Coffey, City Clerk

Date: _____

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 VERIFICATION

STATE OF MISSOURI)
) ss
COUNTY OF CHRISTIAN)

On this _____ day of _____, 20_____, before me personally appeared _____, for _____, INC., known to me to be the person described in and who executed the above agreement and acknowledged to me that they executed the same as their free act and deed on behalf of said INC.

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

Notary Public

My commission expires: _____.