



Memo to City Council

Date: January 11, 2024

Submitted By: Jeff Roussell

Street Superintendent

RE: AGREEMENT WITH LIBERTY ELECTRIC FOR ENGINEERING SERVICES AND OTHER PREPARATORY WORK FOR UTILITY RELOCATIONS ON MAIN STREET

RESOLUTION #2024-07

Background:

With most, if not all major construction projects, utility re-locations are an important portion that takes a great deal of cooperation and coordination from all parties involved. When third-party utilities are located within their own individual easements, outside of public right-of-way, it is our responsibility to re-imburse or pay for these relocations, and any Engineering when necessary.

On the North Main Street expansion project, Liberty Electric assets, within their own easement, need to be re-engineered and then moved to accommodate the new roadway, sidewalk extensions and stormwater improvements. Liberty has proposed the attached agreement to reclaim these costs.

Analysis:

In the terms of this agreement, Liberty Electric is requesting 30% (\$260,139.66) of the estimated construction and engineering costs totaling \$ 867,132.19. This initial payment will not only pay for engineering, but it will also allow them to begin purchasing some of the needed materials for construction. Following the completion of all preparatory work, Liberty will provide a second agreement for construction and a final invoice for the remaining \$606,992.53.

Recommendation:

It is staff's recommendation that Council pass this Resolution and enter into this Engineering and Preparatory Agreement with Liberty Electric so that these utilities can be relocated for the North Main Street expansion project (CIP # ST 2022-03).

MEMO PREPARED BY:

Jeff Roussell | Street Superintendent

jroussell@nixa.com | 417-725-2353

RESOLUTION NO. 2024-07

1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**
2 **ADMINISTRATOR TO EXECUTE A CONTRACT WITH EMPIRE DISTRICT ELECTRIC**
3 **COMPANY D/B/A LIBERTY FOR SERVICES RELATED TO ENGINEERING**
4 **SERVICES AND OTHER PREPARATORY WORK FOR UTILITY RELOCATIONS ON**
5 **MAIN STREET.**

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8 **WHEREAS** as part of the North Main Street expansion project, Liberty Electric
9 assets, within Liberty easement, will need to be relocated as part of the project; and

10 **WHEREAS** Liberty has propped the contract attached hereto as "Resolution
11 Exhibit A," as a means to provide for reimbursement for relocation; and

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

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

16
17 **SECTION 1:** City Council hereby authorizes the City Administrator, or designee,
18 to enter into a contract with Empire District Electric Company d/b/a Liberty. Said contract
19 to be in substantially similar form as the document attached hereto, and incorporated
20 herein by this reference, as "Resolution Exhibit A."

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

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

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

RESOLUTION NO. 2024-07

47 **ADOPTED BY THE COUNCIL THIS 22nd DAY OF January, 2024.**

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ATTEST:

PRESIDING OFFICER

CITY CLERK

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

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ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY



Project Identifier(s):

**AGREEMENT FOR ENGINEERING SERVICES
AND OTHER PREPARATORY WORK**

This Agreement for Engineering Services and Other Preparatory Work (this “Agreement”) is by and between The Empire District Electric Company d/b/a Liberty, a corporation organized under the laws of the state of Kansas, licensed to and transacting business in the states of Missouri, Kansas, Oklahoma, and Arkansas, with its principal place of business in Joplin, Missouri (“Liberty” or the “Utility”) and _____ (“Customer”). The parties to this Agreement may be collectively referred to as the “Parties” or individually referred to as a “Party.”

In consideration of the premises and the mutual covenants set forth herein, the Utility and Customer agree as follows:

Recitals

1.1 Liberty is an investor-owned, vertically-integrated, regulated utility providing electric service in its certificated areas.

1.2 Customer owns and/or otherwise lawfully possesses certain real estate in _____ County, Missouri, with an address of _____ (the “Property”).

1.3 Liberty provides electric service to the Property, and Customer intends to make changes or improvements to the Property that may require changes to the current electric facilities installed near and/or around the Property. **Attachment A** further describes the Customer’s planned changes or improvements to the Property and the potential changes to the Utility’s electric facilities that may be necessary or requested.

1.4 Liberty will need to engage in engineering, permitting, land/easement acquisition and/or other investigation regarding its electric facilities and the Customer’s intended changes or improvements to the Property (“Preparatory Work”).

1.5 Upon completion of the Preparatory Work, if Customer elects to proceed with changes or improvements to the Property that will require changes to the current electric facilities installed near and/or around the Property, Utility and Customer will enter into a separate agreement for further services.

Term and Termination

2.1 This Agreement shall become effective upon execution by both Parties and shall be in effect until completion of the Preparatory Work, unless terminated earlier pursuant to the terms hereof.

2.2 This Agreement may be terminated early by Customer upon thirty days advance written notice to Utility, subject to payment of early termination costs.

2.3 If Customer elects to terminate this Agreement pursuant to Article 2.2 above, or if the Agreement is terminated pursuant to Article 2.4 below, Customer shall pay all Preparatory Work costs incurred (including any cancellation costs relating to orders or contracts for facilities and equipment) or charges assessed by any other entity, as of the date of receipt of notice of



Project Identifier(s):

termination, that are the responsibility of Customer under this Agreement.

2.4 In the event of a billing dispute between the Parties or of Customer's otherwise failure to make payments when due, Utility shall continue to provide services under this Agreement as long as Customer: (i) continues to make all payments not in dispute; and (ii) pays to Utility or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Customer fails to meet these two requirements for continuation of service, then Utility may provide notice to Customer of a default and this Agreement shall terminate upon the date of said notice, subject to Customer's obligation to pay early termination costs.

2.5 The terms of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this Agreement, and to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

Payment

3.1 Customer shall make an initial payment ("Initial Payment") equal to 30% of the total estimated Preparatory Work costs outlined below. The Initial Payment shall be provided to Utility within 30 days of the effective date of this Agreement and prior to Utility commencing any work. If this Agreement is terminated early, then the Initial Payment shall be refunded less any costs retained by Utility as described above (early termination costs).

CATEGORY	ESTIMATED PRICE	REIMBURSABLE	NON-REIMBURSABLE
Materials			
Const.			
ENG			
TOTAL		SUM:	SUM:

Total estimated reimbursable cost for Preparatory Work: _____

3.2 Customer agrees with the precursory findings above and authorizes the reimbursement of fees in accordance with this Agreement. Additional design iterations required by Customer will be billed as actual costs plus ten percent (10%) once the agreed upon 30% design deliverable is accepted by Customer and Utility.

3.3 Utility shall submit to Customer, on not more than a monthly basis, invoices of amounts due for the work performed.

3.4 Following completion of the Preparatory Work, Utility shall provide Customer with an invoice of the final cost due under this Agreement.

3.5 Invoices shall be paid in full within 30 days. All unpaid amounts remaining due shall bear interest calculated at 1% per month, compounding.

Performance Standards

4.1 Each Party shall perform all of its obligations under this Agreement in accordance with applicable laws and regulations and standard practices.



Liberty

Project Identifier(s):

4.2 If the Preparatory Work involves facilities located on property owned by persons other than Customer and/or if future work will be necessary on property owned by persons other than Customer, Utility shall, at Customer's expense, use best efforts to procure from such persons any rights of use, licenses, rights of way, and/or easements that are necessary to effectuate the request of Customer.

4.3 Utility and Customer shall cooperate with each other in good faith in obtaining all permits, licenses, and authorizations that may be necessary and in otherwise performing their obligations under this Agreement.

4.4 Utility and Customer shall submit specific information regarding the electrical characteristics of their respective facilities to each other as requested and in accordance with good utility practice.

4.5 Each Party shall make freely available to the other all directly pertinent books, documents, papers and records involving transactions related to or work to be performed under this Agreement.

4.6 Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party.

4.7 To the fullest extent permitted by law, Customer and its successors, assigns, and guarantors shall defend, indemnify and hold harmless Utility and its agents, employees, representatives, officers, directors, parents, subsidiaries, affiliates, consultants, insurers and/or sureties, from and against any and all liabilities, claims, direct damages, direct losses, costs, expenses (including but not limited to, attorney's fees, court costs and appellate proceedings), injuries, causes of action, or judgments related to Utility's performance under this Agreement, unless the sole cause of such liability and/or claim is the result of an intentional wrongful act by Utility or someone acting under it. Customer shall defend Utility at Customer's expense with legal counsel reasonably acceptable to Utility. This indemnity clause shall apply to any claim arising out of, related to or in any way incident to the performance of the Preparatory Work by Utility.

4.8 Nothing in this Agreement shall prevent Utility from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement.

4.9 Should Utility engage contractors, subcontractors, and/or consultants to perform any of the Preparatory Work or otherwise perform under this Agreement, all such work so performed shall be in compliance with the terms, provisions and conditions of this Agreement.

4.10 Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to any work to be performed hereunder if reasonably expected to affect the other Party.

Miscellaneous Provisions

5.1 The validity, interpretation, and performance of this Agreement and each of its provisions shall be governed by the laws of the state of Missouri, without regard to its conflicts of law principles.

5.2 No Party shall be liable to the other Party for any delay or failure in the performance of any of its obligations hereunder if and to the extent such delay or failure is a result of Force Majeure, meaning any act or event that (i) delays the affected Party's performance of its obligations, (ii) is beyond the reasonable control of the affected Party and is not due to its fault or



Project Identifier(s):

negligence, (iii) is not reasonably foreseeable, and (iv) could not have been prevented or avoided by the affected Party through the exercise of due diligence, including (to the extent consistent with the foregoing) any act of God, pandemics, any act or omission of any government authority, explosions, fire, riot, and war. Force Majeure shall not include: (a) economic hardship; (b) changes in market conditions; (c) failure to timely apply for permits or approvals; (d) any act or event to the extent resulting from the fault or negligence of any person claiming Force Majeure; or (e) the financial inability of any person to perform its obligations under the Agreement. No Force Majeure shall relieve, suspend or otherwise excuse any Party from performing any obligation to make any payment owed to another Party or to indemnify, defend, or hold harmless another Party. Upon the occurrence of a Force Majeure (or as soon as reasonably practicable thereafter), the Party declaring the Force Majeure shall act to resume normal performance within the shortest time practicable, taking into account the consequences resulting from such event of Force Majeure.

5.3 Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Customer and Utility, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials.

CUSTOMER:

By:

Printed Name:

Title:

Date:

UTILITY: The Empire District Electric Company d/b/a Liberty

By:

Printed Name:

Title:

Date:



Project Identifier(s):

ATTACHMENT A – LOCATION AND INITIAL REQUEST

[PROVIDE MAP AND THE WRITTEN REQUEST FROM CUSTOMER]

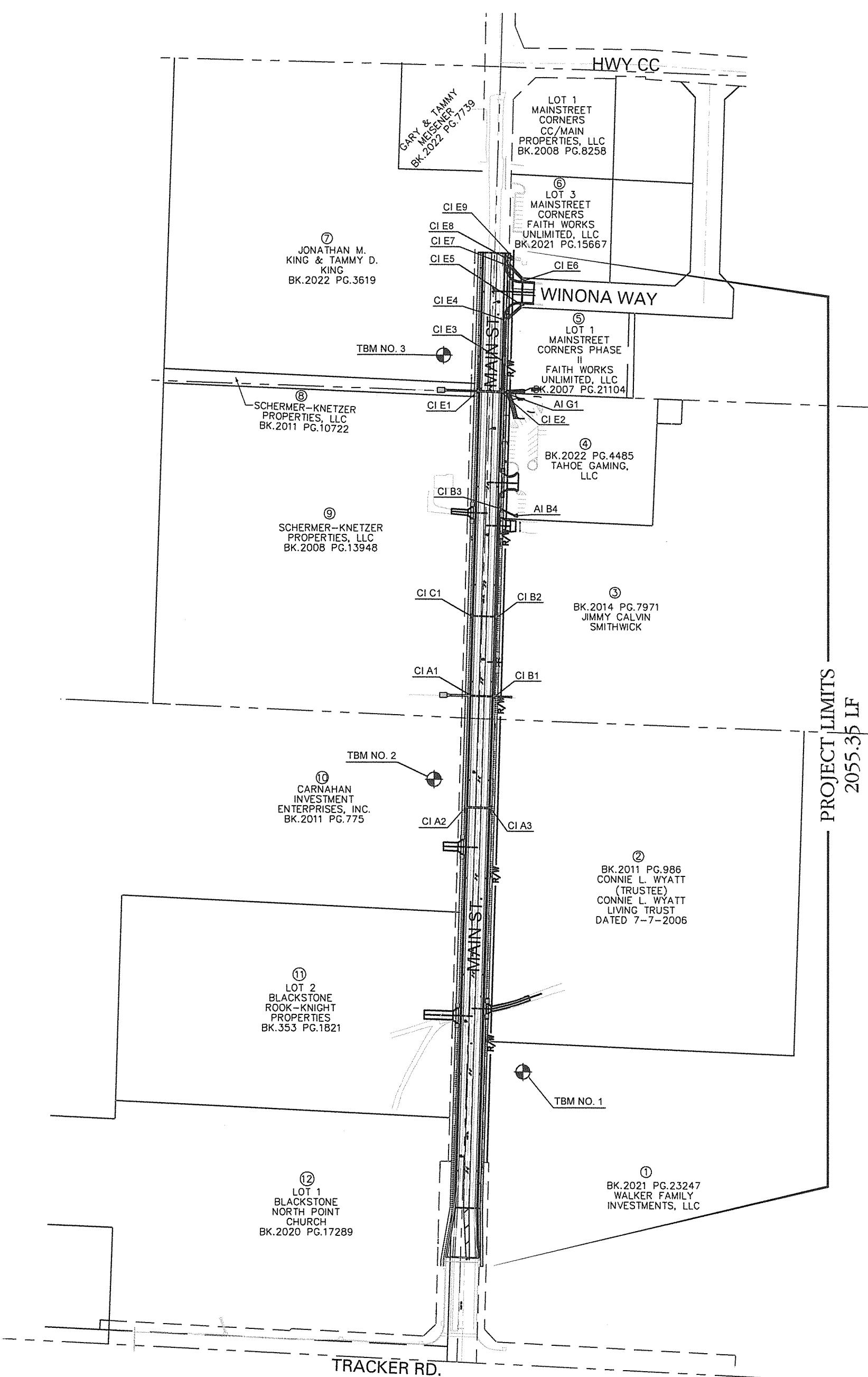
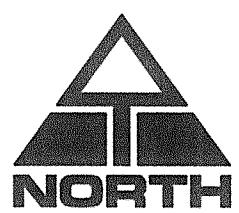
MAIN ST. IMPROVEMENTS

FROM TRACKER RD. TO HWY CC

CITY OF NIXA

CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI

Federal Project Number: STBG-9901(831)



PROJECT LIMITS

NTS

From: [Clayton Hines](#)
To: ["bryan.harp@libertyutilities.com"](mailto:bryan.harp@libertyutilities.com); ["John Renfro"](#); ["Roger Kaughman"](#)
Cc: ["Jeff Roussell"](#); ["Travis Cossey"](#); ["Doug Colvin"](#)
Subject: MAIN STREET IMPROVEMENTS (from Tracker Rd. to Hwy CC), NIXA, MO
Date: Monday, July 3, 2023 2:16:00 PM
Attachments: [222013-MAIN ST. 60% 061323.pdf](#)

Good Morning,

We are working on a road widening project for the City of Nixa. The project is for Main Street and its from Tracker Rd. to Hwy CC. MoDot is doing a separate project at Hwy CC where they are constructing a roundabout and our project will connect to their project.

We need to coordinate with you to get your electric lines moved. We realize you have quite a few poles along this route. We will also be doing some considerable “cutting and filling” of the new road so our project will be constructed in phases. Please see the cross sections as they show where the cut & fill is located.

We have completed our 60% Plans and they are attached. Take a look at the plans and let me know who will be my point of contact for this project and I will coordinate with them.

The City of Nixa will be acquiring r/w for this project and it would probably be best if you provide us what easements you will need and we can acquire your easements at the same time we are acquiring our r/w (this seems to work best so we don't have multiple entities contacting the property owners for easements).

I would be more than happy to have a meeting with you to go over this project.
If you have any questions, please let me know.

Thank you!

Clayton Hines, P.E.
President
Shaffer & Hines, Inc.
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Nixa, Missouri 65714
(417) 725-4663