

RE: Resolution #2024-10 Authorizing staff to solicit bids for stump grinding and authorizing the City Administrator to execute a contract for such.

Background:

This resolution authorizes staff to solicit bids for stump grinding as outlined in the attached bid documents. Once bids are received and a contractor selected, staff will recommend a contract for the City Administrators execution.

Analysis:

As part of our tree trimming operations, mostly related to clearing power lines, staff has to occasionally grind the remaining stump. Obviously, this work is directly tied to needs based on the tree removal work so is not a set number per year. In many cases, the stump doesn't need to be removed at all. In some years we may do a dozen while in another year we may do thirty-five. We anticipate less than 100 over the course of the agreement.

The attached bid documents and contract outline specifications for the work as well as requirements for the contractor. Bids are solicited based on the size of the stump. As with the fluctuating volume, so goes the amount we spend, which could range from a few thousand dollars to twenty thousand plus. In most years, it's closer to the lower number. These funds are authorized within the electric department operations and maintenance budget.

The agreement is very similar to other similar contracts for services, including a three-year term with two optional one-year extensions. There is also an escalation clause allowing for an annual price adjustment within limits. Staff may or may not extend an agreement based on several factors including price or poor work performance as example.

Recommendation:

Staff recommends passing the resolution authorizing the bidding and contracting for stump grinding.

MEMO SUBMITTED BY:

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

dcolvin@nixa.com | 417-725-2353

RESOLUTION NO. 2024-10

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO SOLICIT PROPOSALS FOR STUMP GRINDING SERVICES AS PART OF THE CITY’S VEGETATION MANAGEMENT OPERATIONS.

WHEREAS Chapter 2, Article V, Division 1, of the Nixa City Code authorizes the City Administrator to purchase supplies, materials, equipment, and services on behalf of the City when a competitive procurement method is utilized; and

WHEREAS Section 2-165 of the Nixa City Code requires the City Administrator to obtain an authorizing resolution from the City Council prior to soliciting for purchases totaling \$10,000.00 or more; and

WHEREAS City staff is seeking authorization to solicit proposals for stump grinding services related to the City’s vegetation management operations; and

WHEREAS the City Council desires to authorize City staff to undertake the purchase described herein.

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

SECTION 1: The City Administrator, or designee, is hereby authorized, pursuant to Section 2-165 of the Nixa City Code, to undertake the purchase described in “Resolution Exhibit A,” which said Exhibit is attached hereto and incorporated herein by this reference.

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

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

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

RESOLUTION NO. 2024-10

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

48

49

ATTEST:

50

51

52 _____
PRESIDING OFFICER

CITY CLERK

53

54

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

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57

ATTEST:

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60 _____
MAYOR

CITY CLERK

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62

63 APPROVED AS TO FORM:

64

65

66 _____
CITY ATTORNEY



RFP-001-2024/E

Stump Grinding

Issue Date: 1/16/2024

Questions Deadline: 1/24/2024 12:00 PM (CT)

Response Deadline: 1/31/2024 10:00 AM (CT)

Contact Information

Contact: Stephanie Ewing
Address: Purchasing
City Hall
715 W. Mt. Vernon St.
PO Box 395
Nixa, MO 65714
Phone: (417) 449-0555
Email: sewing@nixa.com

Event Information

Number: RFP-001-2024/E
Title: Stump Grinding
Type: Request for Proposal
Issue Date: 1/16/2024
Question Deadline: 1/24/2024 12:00 PM (CT)
Response Deadline: 1/31/2024 10:00 AM (CT)
Notes: The City of Nixa is issuing a Request for Proposal for the procurement of Stump Grinding services.

The City highly encourages electronic submissions via this online bidding system as it expedites the process and helps to alleviate errors. However, paper bids will still be accepted, if necessary. If you are manually submitting a bid, all bid content must be in a sealed envelope. Bids must be delivered by the stated close date and time. **NO EMAILED OR FAXED** bids will be accepted.

Public unsealing of bid responses will take place at:
City of Nixa
Purchasing
715 W. Mt. Vernon St.
Nixa, MO 65714

Please submit any questions regarding this bid in writing to the Purchasing Manager, Stephanie Ewing at sewing@nixa.com.

All quantities listed in this bid are estimated and can be changed +/- upon ordering. The City of Nixa reserves the right to accept or refuse any or all bids.

Ship To Information

Contact: Brian Denney
Address: Electric
1111 Kathryn Street
Nixa, MO 65714
Phone: (417) 725-2353

Billing Information

Address: 715 W. Mt. Vernon Street
PO Box 395
Nixa, MO 65714
Phone: (417) 725-2353

Bid Attachments

Affidavit of Business Entity.pdf

E-Verify

[View Online](#)

W-9.pdf

W-9

[View Online](#)

Vendor Application.pdf

Vendor Application

[View Online](#)

Terms and Conditions

ACH Authorization

Requested Attachments

E-Verify

(Attachment required)

Please download the "Affidavit of Business Entity", located on the Attachment tab. Complete the document and upload it here.

Additional Documentation

If you have additional documentation you wish to provide, please upload it here. File size limitation is 250MB. If your files are larger than the limitation, a zip file containing the documents can also be uploaded.

Vendor Application Form/W-9/ACH

If you are new to the City of Nixa, or have not done business with the City within the last year, please upload the Vendor Application and W-9 forms here.

Bid Attributes

1	<p>Introduction</p> <p>There are attributes, including this one, associated with this proposal. Some are notes and require no response, but most have a required response. **Please select each page on the right-hand side of the blue bar below (at the bottom of this list of attributes) in order to view the next page of Bid Attributes, if necessary.**</p>
2	<p>Attachments Required</p> <p>Be sure to upload all required documents and forms to the "Response Attachments" Tab.</p>
3	<p>Proposal Opening</p> <p>The City of Nixa prefers responses to be submitted online via our electronic system. Submissions may be submitted manually. Manual submissions must be delivered to the Purchasing Department, in a sealed envelope by the date and time stated. No fax or email submissions will be accepted.</p> <p>Any bid received later than the specified time shall be disqualified.</p> <p>Questions pertaining to the bid should be addressed in the Questions Tab or directly to the Purchasing Department at 417.449.0555.</p> <p>If the City of Nixa office where bids/proposals are to be submitted is closed due to inclement weather, natural disaster, or for any other cause including if the electronic bid system is unavailable on the due date, the deadline for submission shall be extended until the next City calendar business day, unless the bidder is otherwise notified. The time of day for submission shall remain the same.</p>
4	<p>Section 2</p> <p>PROPOSAL REQUIREMENTS</p> <p>The following items require an answer</p>
5	<p>Scope of Work</p> <p>Download the Scope of Work, located on the "Attachments" tab. Thoroughly review and indicate below.</p> <p><input type="checkbox"/> I have downloaded, read and agree.</p> <p><i>(Required: Check if applicable)</i></p>

6 General Terms and Conditions

Download the General Terms and Conditions, located on the "Attachments" tab. Thoroughly review and indicate below.

I have downloaded, read and agree.

(Required: Check if applicable)

7 Evaluation of Proposals

Designated City of Nixa staff will evaluate all proposals submitted and compare them to the evaluation factors to determine professional qualification(s) to fulfill the needs of the City of Nixa. Proposals will be scored according to the scoring legend below.

Proposal evaluation factors to be considered are:

Knowledge of the City of Nixa and their utility services-15 points

Scope of services offered- 20 points

Cost of services- 30 points

Relevant experience with services for public sector and/or large commercial clients- 25 points

References- 10 points

Total: 100 points

The City of Nixa reserves the right to reject any or all proposals or any part thereof and to accept in whole, or in part, such proposals as may be deemed in the best interest of the City. City staff will recommend City Council award a contract to the bank which best fits the needs of the City.

I acknowledge

(Required: Check if applicable)

8 Contract Terms/Information

Download the Contract for Services, located on the "Attachments" tab. If there are any changes you would like to be made or addressed, please let us know at this time. Thoroughly review, upload any changes to the "Response Attachments-Additional Documentation". Indicate below you have read and understand the Contract will be used unless other terms have been agreed to prior to Bid Award.

Contract Term

The City of Nixa's contract award of a Professional Consulting Service shall be for a period of three (3) years. The agreement may be extended for two (2) additional years on an annual basis. Upon expiration, the City shall re-solicit the stump grinding services bid.

For the duration of the contract, there will be a yearly escalation/de-escalation in the renewable terms for the pricing schedule. At no such time shall the yearly escalation terms for pricing exceed a 5% increase.

I agree.

(Required: Check if applicable)

9 Bid Award

The City of Nixa reserves the right to award Bids by line item, group of items, all or none, or a combination thereof; to reject any and all Bids or waive any minor irregularity or technicality in Bids received. Awards will be made to the Vendor whose Bid best serves the City's best interest.

I acknowledge.

(Required: Check if applicable)

1
0 **Anti-Collusion Statement**

By offering a submission to this Bid, the bidder certifies the bidder has not divulged, discussed, or compared the Bid with other bidders and has not colluded with any other bidder or parties whatsoever. The bidder also certifies, and in the case of a joint Bid, each party thereto certifies as to their own organization, that in connection with this Bid:

Any prices and/or cost data submitted have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices and/or cost data, with any other bidder or with any competitor.

Any prices and/or cost data for this Bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the scheduled opening directly or indirectly to any other bidder or to any competitor.

No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.

The only person or persons interested in this Bid, principal or principals are named therein and that no person other than therein mentioned has any interest in this Bid or in the contract to be entered into.

No person or agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee exempting bona fide employees or established commercial agencies maintained by the Purchaser for the purpose of doing business.

I affirm that I am duly authorized to execute this contract; that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other Bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid.

I agree.

(Required: Check if applicable)

1
1 **No Deviations or Exceptions**

I certify that there are NO deviations or exceptions from the attached specific terms, conditions, and specifications.

[Please select] Agree - No Deviations Do Not Agree - Please see below

(Required: Check only one)

1
2 **Deviations and Exceptions**

If your company intends to deviate from the Specifications listed in the attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The City will consider any deviations or exceptions in its bid award decisions. The City reserves the right to accept or reject any proposals based upon any deviations indicated below. If none, please enter N/A (Not Applicable).

(Required: Maximum 4000 characters allowed)

1
3 **Vendor Application/W-9**

If you have never done business with the City of Nixa, or if it has been over a year since conducting business with the City, please download the Vendor Application Form and the W-9 Form located on the "Attachments" tab, complete and upload in the "Response Attachments" tab.

I acknowledge.
(Optional: Check if applicable)

Bid Lines

1 6.1" - 12" diameter

(Response required)

UOM: Per Stump Price: \$ Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing stump removal, dirt fill and level, debris removal/haul off and herbicide applications.

No bid
 Additional notes
(Attach separate sheet)

Supplier Notes: _____

Ship To Information

Contact: Tim Hammer
Address: Electric
Public Works
1111 W Kathryn St
Nixa, MO 65714-7510
Phone: (417) 725-2353
Email: thammer@nixa.com

Bill To Information

Contact: Accounts Payable
Address: Finance
City Hall
715 W. Mt. Vernon St.
PO Box 395
Nixa, MO 65714
Phone: (417) 725-3785
Email: accountspayable@nixa.com

2 12.1" - 18" diameter

(Response required)

UOM: Per Stump Price: \$ Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing stump removal, dirt fill and level, debris removal/haul off and herbicide applications.

No bid
 Additional notes
(Attach separate sheet)

Supplier Notes: _____

Ship To Information

Contact: Tim Hammer
Address: Electric
Public Works
1111 W Kathryn St
Nixa, MO 65714-7510
Phone: (417) 725-2353
Email: thammer@nixa.com

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Phone: (417) 725-3785
Email: accountspayable@nixa.com

3 18.1" - 24" diameter
(Response required)

UOM: Per Stump Price: \$ Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing stump removal, dirt fill and level, debris removal/haul off and herbicide applications.

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

Ship To Information	Bill To Information
Contact: Tim Hammer Address: Electric Public Works 1111 W Kathryn St Nixa, MO 65714-7510 Phone: (417) 725-2353 Email: thammer@nixa.com	Contact: Accounts Payable Address: Finance City Hall 715 W. Mt. Vernon St. PO Box 395 Nixa, MO 65714 Phone: (417) 725-3785 Email: accountspayable@nixa.com

4 24.1" - 30" diameter
(Response required)

UOM: Per Stump Price: \$ Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing stump removal, dirt fill and level, debris removal/haul off and herbicide applications.

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

Ship To Information	Bill To Information
Contact: Tim Hammer Address: Electric Public Works 1111 W Kathryn St Nixa, MO 65714-7510 Phone: (417) 725-2353 Email: thammer@nixa.com	Contact: Accounts Payable Address: Finance City Hall 715 W. Mt. Vernon St. PO Box 395 Nixa, MO 65714 Phone: (417) 725-3785 Email: accountspayable@nixa.com

5 30.1" - 34.9" diameter
(Response required)

UOM: Per Stump Price: \$ Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing stump removal, dirt fill and level, debris removal/haul off and herbicide applications.

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

Ship To Information	Bill To Information
Contact: Tim Hammer Address: Electric Public Works 1111 W Kathryn St Nixa, MO 65714-7510 Phone: (417) 725-2353 Email: thammer@nixa.com	Contact: Accounts Payable Address: Finance City Hall 715 W. Mt. Vernon St. PO Box 395 Nixa, MO 65714 Phone: (417) 725-3785 Email: accountspayable@nixa.com

6 35" to 40" diameter
(Response required)

UOM: Per Stump Price: \$ Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing stump removal, dirt fill and level, debris removal/haul off and herbicide applications.

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

Ship To Information	Bill To Information
Contact: Tim Hammer Address: Electric Public Works 1111 W Kathryn St Nixa, MO 65714-7510 Phone: (417) 725-2353 Email: thammer@nixa.com	Contact: Accounts Payable Address: Finance City Hall 715 W. Mt. Vernon St. PO Box 395 Nixa, MO 65714 Phone: (417) 725-3785 Email: accountspayable@nixa.com

7 Excessive Buttress root chasing.
(Response required)

UOM: Per Stump

Price: \$

Total: \$

Item Notes: Prices shall include all necessary tools, material and equipment for completing stump removal, dirt fill and level, debris removal/haul off and herbicide applications.

No bid
 Additional notes
(Attach separate sheet)

Supplier Notes: _____

Ship To Information

Contact: Tim Hammer
Address: Electric
Public Works
1111 W Kathryn St
Nixa, MO 65714-7510
Phone: (417) 725-2353
Email: thammer@nixa.com

Bill To Information

Contact: Accounts Payable
Address: Finance
City Hall
715 W. Mt. Vernon St.
PO Box 395
Nixa, MO 65714
Phone: (417) 725-3785
Email: accountspayable@nixa.com

Supplier Information

Company Name: _____

Contact Name: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Supplier Notes

By signing below, the bidder shall hereby declare understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions. The bidder shall further agree that the language of this RFP shall govern in the event of a conflict with his/her bid. In addition, the bidder shall further agree that upon receipt of an authorized purchase order from the City of Nixa or when a Contract Resolution is signed and issued by an authorized official of the City of Nixa, a binding contract shall exist between the bidder and the City of Nixa.

Print Name

Signature

SCOPE OF WORK

The Scope of Work for the Stump Grinding Services shall consist of all labor, equipment, transportation, and other means necessary to perform vegetation pruning and removal services in support of the safe and reliable operation of City of Nixa Utilities.

Work is located in areas that are within the City of Nixa's service territory and is to be performed in accordance with the specifications contained herein. Work may be located along/within rights-of-way, easements, or private property and may be located in areas that are not readily accessible. Work under this contract will primarily support the City of Nixa's Electric Utility, but work will also occur on other City of Nixa owned properties or in support of other utility systems.

Vegetation pruning and removal services may include, but are not limited to, the following:

1. Detailed knowledge of proper pruning techniques, removals, and basal treatment.
2. Property owner notification and coordination.
3. Reporting on completed work to City of Nixa personnel.
4. Correction of inspected work to ensure specifications have been met.
5. Treating stumps of removed trees and brush to prevent re-sprouting.
6. Complete electrical vegetation management work assigned by Nixa Utilities Electric Superintendent or designee.
7. **Working Day Schedule**-The awarded vendor will agree to work the scheduled hours, same as City of Nixa staff.
 - Monday - Friday
 - Holidays off (as scheduled by the City)
 - Summer hours (7:00AM - 3:30PM)
 - Winter hours (7:30AM - 4:00PM)
8. **Safety**-Personnel safety is a top priority for Nixa Utilities. All applicable OSHA, ANSI and American Public Power Association (APPA) Section 508 standards shall be followed while performing contract work on behalf of Nixa Utilities. Contractor shall follow Minimum Approach Distance regulations.
9. **PPE**- At all times while on jobsite:
 - Work boots
 - Hard hat
 - Safety glasses
 - Chaps required when using chainsaw on ground
 - Ear protection required when using chainsaw or chipper or other loud equipment
 - High Visibility wear when working on or near roadways
 - FR clothing shall be utilized when applicable.
10. **Communication and Reporting**-Crew Supervisor shall make oneself available to meet weekly to review progress of work projects and crew performance. Crew Leader shall report details of work progress and completion of work projects to Nixa Utilities Contractor Supervisor or designee. Completed work orders shall be turned in daily to Nixa Utilities office reception located at 1111 W. Kathryn. Contractor shall make available phone numbers for Crew Supervisor and Crew Leader. Phone numbers shall have the ability to make and receive voice calls and send/receive text messages.
11. **Workmanship**-Contractor shall employ only workers who are competent to perform the work assigned to them and who are adequately trained and experienced. ANSI Z-133 Pruning standard shall be followed as stated to: Provide clearance, such as to: Ensure safe and reliable utility services.
12. **Contractor caused outages**-In the event Contractor causes a power outage, work shall be stopped, and Nixa Utilities Superintendent or his designee shall be notified immediately. In the event of property damage or personal injury, a detailed written report shall be submitted to Nixa Utilities within 24 hours. The written report should include a description of the incident,

names and contact information of all individuals involved and photographs of the area and resulting damage.

13. **Conduct**-Conduct listed below shall be followed at all times:

The Contractor and its employees are representing the City of Nixa and shall conduct themselves to the highest ethical standards at all times.

No smoking or vaping on customer's private property.

No coarse talk, vulgar speech or similar gestures are allowed.

Respectful behavior towards all public and property.

Professional and courteous behavior shall be demonstrated when conversing with public.

14. **Attire**-Attire listed below shall be followed at all times:

No sleeveless or "cut off" shirts or tank tops shall be worn.

No shorts or "cut off" pants or pants with large holes or tears shall be worn.

No clothing that is vulgar, political, or otherwise objectionable shall be worn.

Contractor provided company uniforms and/or Hi-Viz Safety Vest or Safety Green short sleeve, or long sleeve shirts are appropriate work wear.

15. **Job site setup**-Contractor Crew shall set up safe work zones that notify the public of work being performed and keep Contractor and public safe during work being performed.

16. **Property damage**-Contractor shall be responsible for any and all property damage caused by contractor and its employees including but not limited to yard, home, outbuildings, fence, adjacent trees, etc. If property damage occurs of any kind, nature or value, contact shall be made immediately with the property owner and the Nixa Utilities Contractor Supervisor or designee.

17. **Finished product**-All stumps are to be ground 2-3 inches below surface. Stump filings are to be removed, site to be leveled with dirt. Grass seed replacement is the homeowner's responsibility.

All stumps are to be treated with chemicals by a properly trained and licensed applicator or properly trained worker under supervision of a licensed herbicide applicator. Stump treatment, basal bark treatment and foliar treatment chemicals are provided by Nixa Utilities. Quality applications shall be made as to achieve a minimum 95% kill rate.

Customer properties shall be left in the same or better than condition when work is completed. This includes but is not limited to landscape features, bird feeders, other trees and plants on property or adjacent properties, turf, fence, structures, sheds, outbuildings, vehicles, recreational equipment, etc.

All stump grinding shall follow the ANSI Standard Z-133.

The City of Nixa does not guarantee any amount of work will be awarded to any bidder. City of Nixa staff and the awarded vendor will work together to determine the appropriate number of crews that should be assigned to projects based on the projected workload and annual spending.

WORK PERFORMED UNDER THIS CONTRACT WILL BE BILLED USING UNIT PRICES WITH INVOICES SUBMITTED AFTER THE COMPLETION OF ASSIGNED WORK.

The Contract for the service is for three (3) years with possibly two (2) - (1) year extensions, for a total of five years.

ROUTE ORDER: Contractor signs, route to City Clerk, City Admin signs two originals, Clerk adds date, City Attorney signs, return one original by mail to Organization and City Clerk retains one original.		
EFFECTIVE DATE:	TERMINATION DATE:	CONTRACT NUMBER:
(X) NEW CONTRACT () ADDENDUM NO. __		
CITY		CONTRACTOR
Name: City of Nixa, Missouri Address: 715 W. Mt. Vernon St., PO Box 395 Nixa, MO 65714 Phone: 417.725.3785 Attn: Brian Denney Dept: Electric Email: bdenney@nixa.com		Name: Address: Phone: Attn: Email:

CONTRACT FOR STUMP GRINDING SERVICES

THIS CONTRACT FOR STUMP GRINDING SERVICES (“Contract”) is made and entered into upon its execution by the parties identified above.

WHEREAS the City, after conducting a Request for Proposal solicitation process, referenced as RFP-001-2024/E desires to engage Contractor to perform certain services; and

WHEREAS the City desires to engage Contractor to perform such services under the terms and conditions 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. Services. The City agrees to engage the services of the Contractor and the Contractor agrees to perform said Services in accordance with the standard of care, skill, and expertise ordinarily used by other members of Contractor’s profession in performing similar services. The Services are described in Exhibit A, which is attached hereto and incorporated herein by this reference. Contractor shall furnish all supervision, labor, tools, equipment, materials, and supplies necessary to perform the Services at Contractor's own expense in accordance with the contract documents, any applicable City ordinances, and any applicable state or federal laws.

2. Addition to Services. 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. 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 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 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. Term. This Contract is for a period of three (3) years and shall terminate on [REDACTED].

a. Renewals The term of this Contract may be extended two times by the City, at the City's sole option, beyond the original term, for a fixed term of no more than one year per extension, provided that:

1. The terms of the extension are in writing;
2. The extension is executed by the Contractor and City; and City funds are appropriated for such purpose.

6. Payment.

a. Conditioned on acceptable performance. Provided that Contractor performs the services in the manner set forth herein, the City shall pay the Contractor in accordance with the rate set forth in Exhibit B, which shall constitute full and complete compensation for the Contractor's work provided. No partial payment to the Contractor shall operate as approval of acceptance of work done. Such compensation shall be paid in progress payments, as established by the City, subject to receipt of a requisition for payment and a statement of work provided by the Contractor and Contract 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.

b. Total compensation not to exceed. It is expressly understood that in no event shall the total compensation or reimbursement to be paid to the Contractor under the terms of this Contract exceed the sum of **\$0000.00 for the three-year contract term.**

7. Termination.

a. 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.

b. 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.

c. **Non-appropriation.** This Contract shall be terminated upon the failure of the City Council of City to appropriate funds for this Contract in any year during the term of this Contract.

d. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

a. 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.

b. 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.

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

14. Insurance Requirements. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City against all hazards or risks of loss as hereunder specified or which may arise out of the performance of this Contract. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City. Regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times during the term of this Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under this Contract. The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the City within 10 days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. All insurance policies shall require that the insurance company in question provides 30 days written notice prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to the address for the City listed at the top of this Contract. As of January 1, 2022, the minimum coverage for the insurance referred to herein shall be as set out below:

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

a. **Commercial General Liability Insurance**, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and blasting if blasting is required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Three Million Sixty-Five Thousand Nine Hundred Fifty-Two and no/100 Dollars (\$3,065,952.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Fifty-Nine Thousand Eight Hundred Ninety-Three and no/100 Dollars (\$459,893.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least \$1,000,000 for all claims to property arising out of a single occurrence and at least \$100,000 to any one owner with respect to damages to property. Contractor agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorney's fees of Contractor, its employees, officers or agents. Contractor agrees to cause its insurer to name City as an additional

insured on such insurance policy, including the City as an additional insured for coverage under its products- completed operations hazard, and said policy shall be primary and noncontributory.

b. Automobile Liability Insurance covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at Three Million Two Hundred Fifty-Eight Thousand Three Hundred Sixty-Eight and no/100 Dollars (\$3,258,368.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Eighty-Eight Thousand Seven Hundred Fifty-Five and no/100 Dollars (\$488,755.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

c. Owner's and Contractor's Protective Liability Insurance. To protect the City, its agents, servants, and employees from claims which may arise from the performance of this Contract, with limits of at least Three Million Two Hundred Fifty-Eight Thousand Three Hundred Sixty-Eight and no/100 Dollars (\$3,258,368.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Eighty-Eight Thousand Seven Hundred Fifty-Five and no/100 Dollars (\$488,755.00) with respect to injuries and/or death of any one person in a single accident or occurrence. The Owner's and Contractor's Protective Liability Insurance must:

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

d. 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.

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

f. 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.

15. 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.

16. 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.

17. Liability and Indemnity.

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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.

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

- a. This Contract
- b. Scope of Work (Exhibit A)
- c. Fee Schedule (Exhibit B)
- d. Prevailing Wage Order (Exhibit C)

The above listed documents are attached hereto and incorporated by their reference herein as though fully set forth herein. No modification, amendment, or waiver of any of the provisions of this Contract shall be effective unless in writing specifically referring hereto and signed by both parties. This Contract shall also include any Exhibits incorporated by reference in the above-described documents. When any provisions of the Contract Documents conflict, the provisions contained in the Contract shall control followed by Exhibit A, then Exhibit B, then Exhibit C.

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

- a. 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.
- b. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

Remainder of page intentionally left blank. Signature Page follows.

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

THE CITY OF NIXA, MISSOURI

CONTRACTOR

Jimmy Liles, City Administrator

Date: _____

Printed Name

ATTEST:

Title

Rebekka Coffey, City Clerk

Date: _____

Approved as to form:

ATTEST:

Nick Woodman, City Attorney

Director of Finance Certification:

Printed Name

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.

Title

Jennifer Evans, Director of Finance