



Memo to City Council

Date: June 24th, 2024

Submitted by: Cindy Robbins
Assistant City Administrator

RE: Contract With the Nixa Chamber of Commerce for the Nixa Sky High Fireworks Celebration

Background:

Nixa Chamber is having a Sky-High Fireworks Celebration on June 29th, 2024. This event will take place at the Eagles Stadium from 7pm to 10 pm and will provide a family event for the community and other attendees. The Chamber is seeking sponsorship from the City for \$10,000.00 to assist in the expense of the fireworks.

Analysis:

If you remember, the City recently entered into a contract with the Nixa Chamber of Commerce. In this contract under Section 1.2.4 the contract states the Chamber will coordinate and promote local events in order to emphasize the quality of place and community pride. The contract indicates the Chamber will promote Nixa's businesses and community by promoting community events to encourage attendance and participation. The contract further states the Chamber will engage in collaborative efforts to market the Nixa area as a destination.

The contract being presented to Council tonight proposes a collaboration between the City of Nixa and the Nixa Chamber for this event. In return for the \$10,000.00 sponsorship, the City will receive: a high level of recognition in print material, a booth, and recognition in pre and post publicity. Encore Pyrotechnics will be providing the show and all insurance requirements have been met by the Chamber. Please note this \$10,000.00 was included in the 2024 budget.

Recommendation:

Staff recommends approval of this resolution.

MEMO SUBMITTED BY:

Cindy Robbins | Assistant City Administrator

crobbins@nixa.com | 417-725-3785

RESOLUTION NO. 2024-38

1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**
2 **ADMINISTRATOR TO EXECUTE A CONTRACT WITH THE NIXA AREA CHAMBER**
3 **OF COMMERCE IN THE AMOUNT OF \$10,000.00 FOR THE CITY'S SPONSORSHIP**
4 **OF THE SKY-HIGH FIREWORKS CELEBRATION 2024.**

5 _____
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7 **WHEREAS** the Nixa Area Chamber of Commerce (the "Chamber") has announced
8 that they will be conducting a Sky-High Fireworks Celebration on June 29, 2024; and
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10 **WHEREAS** the City and the Chamber desire to partner together to promote the
11 Sky-High Fireworks Celebration and provide an opportunity for community engagement;
12 and
13

14 **WHEREAS** the City Council desires to authorize the City Administrator to execute
15 the Contract attached hereto as "Resolution Exhibit A".
16

17 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**
18 **NIXA, AS FOLLOWS, THAT:**
19

20 **SECTION 1:** The City Council hereby authorizes the City Administrator, or
21 designee, to enter into a "CONTRACT FOR SERVICES – 2024 SKY-HIGH FIREWORKS
22 CELEBRATION SPONSORSHIP" with the Chamber. Said Contract to be in substantially
23 similar form as the document attached hereto, and incorporated herein by this reference,
24 as "Resolution Exhibit A."
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26 **SECTION 2:** The City Administrator and the officers of the City are hereby
27 authorized to do all things necessary or convenient to carry out the terms and intent of
28 this Resolution.
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30 **SECTION 3:** This Resolution shall be in full force and effect from and after its final
31 passage by the City Council and after its approval by the Mayor, subject to the provisions
32 of section 3.11(g) of the City Charter.
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35 **[Remainder of page left intentionally blank. Signatures follow on the next page.]**
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RESOLUTION NO. 2024-38

47 **ADOPTED BY THE COUNCIL THIS 24th DAY OF June, 2024.**

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ATTEST:

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PRESIDING OFFICER

CITY CLERK

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

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ATTEST:

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MAYOR

CITY CLERK

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63 APPROVED AS TO FORM:

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CITY ATTORNEY

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RESOLUTION EXHIBIT A

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 Email: jliles@nixa.com Attn: Jimmy Liles Dept: Administration		Name: Nixa Area Chamber of Commerce Address: 902 W. Mt. Vernon, Nixa, MO 65714 Phone: 417.725.1545 Email: whitney@nixachamber.com Attn: Whitney Guison

CONTRACT FOR SERVICES – 2024 SKY-HIGH FIREWORKS CELEBRATION SPONSORSHIP

THIS CONTRACT FOR SERVICES – 2024 SKY-HIGH FIREWORKS CELEBRATION SPONSORSHIP (“Contract”) is made and entered into upon its execution by the parties identified above.

WHEREAS the City and Contractor desire to partner together to promote Nixa and provide an opportunity for community engagement; and

WHEREAS the Contractor intends to hold an event known as the “2024 Sky-High Fireworks Celebration” on June 29, 2024; and

WHEREAS the Contractor desires to partner with the City to obtain a sponsorship from the City for the event; and

WHEREAS the City and Contractor have agreed to certain terms and conditions set forth herein; and

WHEREAS City desires to engage the services of the Contractor for the purposes specified herein.

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. 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.

The Services are described as follows:

- 1.1** Contractor shall provide City a high level of recognition in all printed and promotional materials (whether printed or digital) produced by or on behalf of Contractor including, but not limited to, maps, schedules and flyers, for the 2024 Sky-High Fireworks Celebration;

1.1.1 It is expressly understood that use of the City's logo and the wording "City of Nixa" is limited to the terms of this Contract and this Contract authorizes or condones no other use thereof.

1.2 Contractor shall provide recognition to City in all pre- and post-event publicity commensurate to the level of sponsorship provided herein for 2024 Sky-High Fireworks Celebration.

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 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. Term. This Contract shall terminate thirty (30) days after the last post-event publicity use of the City's logo, or July 10, 2024, whichever comes later.

6. Payment.

6.1 Conditioned on acceptable performance. Provided that Contractor performs the services in the manner set forth herein, the City shall pay the Contractor **\$10,000.00** 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.

6.2 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 **\$10,000.00** unless specifically and mutually agreed to in writing by both the City and the Contractor.

7 Termination.

7.1 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.

7.2 Termination for Convenience. Either party shall have the right at any time upon 15 days written notice to the other to terminate and cancel this Contract, without cause, for convenience. In such event final payment to the Contractor shall be limited to services provided by the Contractor as of the effective date of said termination.

7.3 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.

7.4 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.

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.

12.1 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.

12.2 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.

13 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 or the 2024 Sky-High Fireworks Celebration. 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 provide 30 days written notice prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to the address for the City listed at the top of this Contract.

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

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

13.2 Commercial General Liability Insurance, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and blasting if blasting is required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Two Million and no/100 Dollars (\$2,000,000.00) for all claims arising out of a single accident or occurrence and at least Five Hundred Five Thousand Five Hundred Twenty and no/100 Dollars (\$505,520.00) 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.

13.3 Automobile Liability Insurance covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at Two Million no/100 Dollars (\$2,000,000.00) for all claims arising out of a single accident or occurrence and at least Five Hundred Five Thousand Five Hundred Twenty and no/100 Dollars (\$505,520.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

13.4 Subcontracts. In case any or all of the performance of this Contract is sublet, the Contractor shall require the subcontractor to procure and maintain all insurance required herein 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.

13.5 Notice. The Contractor and/or subcontractor shall furnish to the City prior to beginning the work contemplated by this Contract, the policy as specified herein, 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.

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

14 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.

15 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.

16 Liability and Indemnity.

16.1 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.

16.2 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 even if the cause of damages or injuries are alleged to be the fault or caused by the negligence or carelessness, whether sole or concurrent, on the part of the City, its officials, agents and employees

16.3 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.

16.4 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.

16.5 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.

16.6 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.

16.7 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.

17 Contract Documents. 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.

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

18.1 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.

18.2 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.

19 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.

20 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.

21 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.

22 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.

23 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.

24 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. 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.

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

THE CITY OF NIXA, MISSOURI

Jimmy Liles, City Administrator

Date: _____

ATTEST:

Rebekka Coffey, City Clerk

Approved as to form:

Nick Woodman, City Attorney

Director of Finance Certification:

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

Jennifer Evans, Director of Finance

CONTRACTOR



Whitney Guison
Printed Name

President | CEO NACC
Title

Date: 6/20/2024

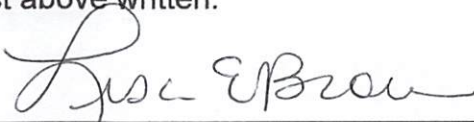
CONTRACTOR VERIFICATION

STATE OF MISSOURI)
) ss
COUNTY OF CHRISTIAN)

On this 20 day of June, 2024, before me personally appeared Whitney Guison, for Nixa Area Chamber of Commerce, 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.

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: 7/18/2026