



RE: Resolution #2025-22 Authorization to go out for bid to paint tower#7

Background:

This is part of the strategic plan to clean paint and update logos on water towers as identified in the fun and unique places action plan #5.

Analysis:

In the 2025 budget we allocated money in the Wells & Towers line item to paint the million-gallon composite tower located at 1355 north street. This will include cleaning and painting the exterior of the tank and applying two updated city and school logos onto this tank.

Recommendation:

Staff recommend passage of the resolution to allow us to go out for bid.

MEMO SUBMITTED BY:

Jason Stutesmun | Water quality Superintendent

jstutesmun@nixa.com | 417-725-2353

RESOLUTION NO. 2025-22

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO SOLICIT BIDS FOR PAINTING SERVICES FOR WATER TOWER NO. 7, LOCATED AT 1355 NORTH STREET.

WHEREAS 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 said provisions require the City Administrator to obtain an authorizing resolution from the City Council prior to soliciting purchases totaling \$10,000.00 or more; and

WHEREAS City staff is seeking authorization to solicit bids for painting serviced for Water Tower No. 7, which is located at 1355 North Street; and

WHEREAS the City Council desires to authorize the City Administrator 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 the provisions of Chapter 2, Article VI, of the Nixa City Code, to solicit and 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. 2025-22

ADOPTED BY THE COUNCIL THIS 22nd DAY OF APRIL 2025.

ATTEST:

PRESIDING OFFICER

CITY CLERK

APPROVED BY THE MAYOR THIS _____ DAY OF APRIL 2025.

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



RFB-018-2025/Water

Water Tower Painting

Issue Date: 4/23/2025

Questions Deadline: 4/30/2025 12:00 PM (CT)

Response Deadline: 5/7/2025 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: RFB-018-2025/Water
Title: Water Tower Painting
Type: Request for Bid
Issue Date: 4/23/2025
Question Deadline: 4/30/2025 12:00 PM (CT)
Response Deadline: 5/7/2025 10:00 AM (CT)

Notes: The City of Nixa is issuing a Request for Bid for the cleaning and repainting of the exterior surface of an existing water tower located at 1355 North Street, Nixa, MO. (Tower 7) The tower is a 1,000,000-gallon composite tank built in 2012 by Chicago bridge & Iron.

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.

The Response Deadline is the date and time public unsealing of bid responses will be held.

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: Jason Stutesmun
Address: Water
Water Quality
1010 Eaglecrest
PO Box 395
Nixa, MO 65714
Phone: 1 (417) 725-2353
Email: jstutesmun@nixa.com

Billing Information

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

Bid Attachments

Affidavit of Business Entity.pdf

E-Verify

[View Online](#)

OSHA 10 AFFIDAVIT.pdf

[View Online](#)

OSHA Affidavit

Wage Order 31.pdf

[View Online](#)

Wage Order 31

Terms_and_Conditions-Formal.pdf

[View Online](#)

Terms and Conditions

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.

OSHA Affidavit

(Attachment required)

Please download the "OSHA Affidavit", 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.

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>Bid 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 Scope of Work

Download the Scope of Work, located on the "Attachments" tab. Thoroughly review and indicate below.

☐ I understand and agree to comply.

(Required: Check if applicable)

6 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)

7 OSHA Affidavit

Download the OSHA Affidavit, located on the "Attachments" tab. Thoroughly review and indicate below.

☐ I understand and agree to comply.

(Required: Check if applicable)

8 Prevailing Wage

Download the Prevailing Wage Order located on the "Attachments" tab. Thoroughly review and indicate below you understand agree to comply with the most recent Prevailing Wage Order for Christian County, MO.

☐ I understand and agree to comply.

(Required: Check if applicable)

9 Bid Bond and Information

Below is the information for Bid bonds. Please review and upload your bid bond on the "Response Attachments" tab.

Requirement for Bid Security: Bid Security shall be required for construction Bids, requiring City Council approval, as set forth in the City of Nixa's Purchasing Policy, for the purchase of Capital Improvement items, and City projects entailing engineering or construction. Bid security shall be a bond provided by a surety company authorized to do business in the State of Missouri, or the equivalent in cash, or otherwise supplied in a form satisfactory to the City of Nixa in an amount equal to 5% of the total amount of the bid. Failure to provide security, as set forth shall result in the City's rejection of bid.

Withdrawal of Bids: After the bids are opened, they shall be irrevocable for the period of up to sixty (60) days from bid opening date. If a bidder is permitted to withdraw its bid before the opening of bids, no action shall be taken against the bidder or the bid security.

Correction or Withdrawal of Bids: Correction or withdrawal of inadvertently erroneous bids after bid opening, or cancellations of awards or contracts based on such bid mistakes shall not be permitted and shall mandate forfeiture of Bid Performance Security to the City of Nixa.

The City shall hold the security bid bond of the awarded bidder until Capital Improvement Project is delivered to the City of Nixa or a 100% percent performance bond is issued to the City for awarded contractual services or project construction.

☐ I understand and agree to comply.

(Required: Check if applicable)

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Contract for Services

The City has certain insurance requirements (sovereign immunity) which must be met for this project. Please read thru the contract document and ensure you are able to meet the requirements to fulfill the contract terms.

By marking the checkbox, I acknowledge I have downloaded, read, and understand my company will be asked to sign the Contract as stated as it applies to the response submitted.

Any variances to the contract must be uploaded in the "Additional Documents" upload for review by the City. This does not guarantee changes or differences will be accepted.

☐ I understand and agree to comply.

(Required: Check if applicable)

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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)

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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**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)

1
4**Vendor Verification**

The City of Nixa has utilized Payment Works for vendor verification. If awarded the bid, you will receive an email to register with Payment Works and upload your vendor information. By acknowledging this item, you agree to follow thru and register thru Payment Works to be a vendor with the City, as requested.

☐ I acknowledge.

(Required: Check if applicable)

Bid Lines

1

CLEANING AND PAINTING OF WATER TOWER 7

Please enter the total cost of service to complete the project for painting Tower 7, located at 1355 North Street, Nixa, MO.

(Response required)

UOM: EA

Price: \$

Total: \$

Supplier Notes: _____

☐ No bid

☐ Additional notes
(Attach separate sheet)

Ship To Information

Contact: Jason Stutesmun

Address: Water

Water Quality

1010 Eaglecrest

PO Box 395

Nixa, MO 65714-7510

Phone: 1 (417) 725-2353

Email: jstutuesmun@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

Item Attributes**1. Completion Timeframe**

Please state the estimated timeframe for completion.

(Required: Maximum 50 characters allowed)

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 RFB 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 this project is for the cleaning and repainting of the exterior surface of the water tower located at 1355 North Street. (Tower 7)

Tower 7 is a 1,000,000-gallon composite tank built in 2012 by Chicago bridge & Iron. The following specifications shall be adhered to and made a part of the Bid for the project.

- Tower shall be power washed with a 15% bleach solution at 3500 psi.
- Tower shall be repainted with Tnemec series 700 hydroFlon fluoropolymer polyurethane at 2.0-3.0 mils light gray
- Two logos, represented below, shall be added. The placement of the logos will be determine by city staff.
- All work shall be completed no later than Oct 1, 2025.

Tower 7 is located behind a secure fence.

Site visits are available upon request. Please contact the Purchasing Manager at 417-449-0555 to schedule visit and for additional requested. information



EFFECTIVE DATE: _____

TERMINATION DATE: _____

CONTRACT NUMBER: _____

CONSTRUCTION CONTRACT FOR WATER TOWER 7 CLEANING AND PAINTING

THIS CONSTRUCTION CONTRACT FOR WATER TOWER 7 CLEANING AND PAINTING ("Contract") is made and entered into upon its execution by the City of Nixa, Missouri, a Constitutional Charter City organized under the laws of the State of Missouri ("City") and _____, a _____ ("Contractor").

WHEREAS the City, after conducting a Request for Bid solicitation process, referenced as RFB-018-2025/Water desires to engage Contractor to perform cleaning and painting services to Water Tower 7; and

WHEREAS Contractor submitted one of the selected bids; and

WHEREAS the City desires to engage Contractor to perform such work under the terms and conditions of this Contract; and

WHEREAS the Contractor desires to perform such work 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. Manner and Time for Completion. The Contractor agrees to perform and undertake the work described herein. The Contractor shall perform said work in accordance with the standard of care, skill, and expertise ordinarily used by members of the Contractor's profession in the performance of similar work. The work is described in Exhibit A, which is attached hereto and incorporated herein by this reference ("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 within [] calendar days from the date Contractor is ordered to proceed, which order shall be issued by the City, within 30 days after the date of execution of this Contract. If such order is not issued within 30 days after execution of this Contract, then this Contract shall terminate.

2. Addition to Services. The City may add to the 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. Payment.

3.1. Progress Payments. Provided that Contractor performs the Services in the manner set forth herein, the City shall pay the Contractor in accordance with the provisions set forth in Exhibit B, which shall constitute full and complete compensation for the Contractor's work. 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 the work provided by the Contractor for the period covered by the requisition. Such requisition shall include an acknowledgement signed by both the City and the Contractor that the Contractor has fully performed the work to be paid for in

such progress payments in conformance with the Contract. If applicable, the City shall provide notice to the Contractor of any payment amount withheld and the reason for such withheld payment. The acceptance of any payment under this Contract expressly constitutes a release of the City by the Contractor and its subcontractors from any and all claims which were made or could have been made by the Contractor and its subcontractors against the City which may arise out of or are related to this Contract prior to the date of payment by City.

3.2. Retainage. City shall withhold 5% from each progress payment as retainage to ensure performance and completion of the Contract. Retainage amounts shall be paid as part of City's Final Payment to Contractor.

3.3. Payment Conditioned on Acceptable Performance. No payment shall be made by City unless the Contractor's performance for work which it seeks payment was completed in compliance with the provisions of this Contract. No partial payment to the Contractor shall operate as approval of acceptance of all work completed by Contractor prior to the date of payment.

3.4. Total compensation not to exceed. It is expressly understood that in no event shall the total compensation and reimbursement to be paid to the Contractor under the terms of this Contract exceed the sum of [INSERT AMOUNT] unless specifically and mutually agreed to in writing by both the City and the Contractor.

3.5. Final Completion and Final Payment.

3.5.1. Final Completion is the point at which all work under this Contract has been completed by the Contractor in strict compliance with the terms of this Contract and the Contractor is ready to receive its Final Payment. Final Completion will only occur when all of the following conditions, unless waived in writing by the City, have been satisfied:

3.5.1.1. All work is complete and in compliance with this Contract.

3.5.1.2. Contractor has submitted to the City a Final Payment Application for all funds remaining due under the Contract.

3.5.1.3. Contractor has completed all of its obligations under this Contract, including, without limitation, provided all manufacturer's warranties or any other warranties which are part of the project, provided any manuals for the operation and maintenance of equipment and systems which are part of the project, provided any as-builts or other drawings, any documentation transferring to City ownership of all equipment and materials which are part of the project, and any other close-out requirements reasonably required by the City.

3.5.1.4. Contractor has delivered to the City a final claim statement setting forth in detail all claims of any kind pending against the City or any indemnitee connected with or arising out of this Contract that are pending but not yet resolved. Any claim not specified by the Contractor, whether on behalf of itself or its subcontractors, shall be deemed waived.

3.5.2. The Contractor shall notify the City, in writing, when it considers Final Completion has been achieved. After receiving such notice, the City shall, within a reasonable time thereafter, schedule an inspection of the work to determine if Final Completion has been

achieved. If the City determines that Final Completion has not been achieved, the City shall promptly provide the Contractor with a list of items to be completed or corrected to enable City to certify that Final Completion has been achieved. The Contractor shall promptly perform such work and notify the City upon completion so another inspection can be scheduled. If the City determines that Final Completion has been achieved, the City shall promptly notify the Contractor that all requirements have been met.

3.5.3. The acceptance of Final Payment under this Contract expressly constitutes a release of the City by the Contractor and its subcontractors from any and all claims which were made or could have been made by the Contractor and its subcontractors against the City which may arise out of or are related to this Contract.

3.6. Liquidated Damages. The parties mutually and expressly agree that time of completion of work by the Contractor is of the essence due to the fact that _____. Should Contractor, or in the case of default, the surety, fail to substantially complete the work within the time specified in this Contract, or within such extra time as may be allowed, Contractor (or surety) shall be liable to the City in the amount of \$500 per day for each and every calendar day that the performance of this Contract remains uncompleted after the time allowed for substantial completion, as liquidated damages, and not as a penalty, it being stipulated that actual damages to the City and the public arising from Contractor's failure to timely complete the work would be difficult, if not impossible, to ascertain. The amount assessed as liquidated damages may be withheld from any funds otherwise due to Contractor from the City. The Services are not considered complete until final acceptance by the City.

4. Exchange of Data and Cooperation. 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 reasonably cooperate with each other in every possible way in the carrying out of the Services.

5. Personnel. The Contractor represents that Contractor shall secure at Contractor's own expense all personnel required to perform the Services. 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 Services covered by this contract shall be subcontracted without the prior written approval of the City.

6. Term. This Contract shall commence upon its full execution by the Parties and shall continue until the completion and acceptance by the City of the Services, unless sooner terminated pursuant to Paragraph 7.

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. The City 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 event final payment to the Service Provider shall be limited to services provided by the Service Provider 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.

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. The provisions of this Paragraph shall survive the termination or expiration of this Contract.

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 or the provisions of Nixa City Charter Section 13.1.

11. Assignment. Neither party may assign, transfer, or delegate any or all of its rights or obligations under this Contract, including by operation of law, change of control, or merger, without the prior written consent of the other party. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

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 discrimination 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. 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.

14. Insurance Requirements.

14.1. Without limiting any of the other obligations or liabilities of the Contractor, Contractor shall at all times during the Term of this Contract, and for a period of three years thereafter, unless waived in writing by the City, at Contractor's sole cost and expense, have at least the following types and amounts of insurance:

14.1.1. Commercial General Liability Insurance with limits no less than \$517,306.00 per occurrence and \$ 3,448,710.00 in the aggregate, including bodily injury and property damage, which policy shall include contractual liability coverage insuring the activities of Contractor under this Contract;

14.1.2. Worker's Compensation Insurance with statutory coverage as provided for in RSMo. 287.010 et seq.;

14.1.3. Employers Liability Insurance with limits no less than \$517,306.00 per occurrence and \$ 3,448,710.00 in the aggregate;

14.1.4. Commercial Automobile Liability with limits no less than \$517,306.00 per occurrence and \$3,448,710.00 in the aggregate; and

14.1.5. 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 \$3,448,710.00 for all claims arising out of a single accident or occurrence and at least \$517,306.00 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:

14.1.5.1. Be a separate policy with the named insured being: The City of Nixa, Missouri; and

14.1.5.2. Be with the same insurance company with which the Contractor carries its Commercial General Liability Insurance and Automotive Liability Insurance; and

14.1.5.3. 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.

14.2. All insurance policies required pursuant to Paragraph 14 shall:

14.2.1. Be issued by insurance companies reasonably accepted by the City, able to transact business within the State of Missouri, and with an A.M. Best Rating of no less than a B+ Rating;

14.2.2. Provide that such insurance carriers give the City at least 30 days' prior written notice of cancellation or non-renewal of policy coverage; provided that, prior to such cancellation, the Contractor shall have new insurance policies in place that meet the requirements of this Paragraph 14;

14.2.3. Waive any right of subrogation of the insurers against the City or any of its officials, employees, or agents;

14.2.4. Provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of the City shall be excess and non-contributory;

14.2.5. Name the City and its officials, employees, and agents, as additional insured;

14.2.6. Not be met by the use of a single limit policy.

14.3. Contractor shall provide the City with copies of the certificates of insurance and policy endorsements for all insurance coverage required by this Paragraph 14 at the time of execution of this Contract and shall not do anything to invalidate such insurance.

14.4. Failure of the Contractor to maintain the coverages set out in this Paragraph 14 shall not relieve it of any contractual responsibility or obligation or liability in general or under this Contract.

14.5. This Paragraph 14 shall not be construed in any manner as waiving, restricting, or limiting the liability of the Contractor for any obligations imposed under this Contract (including but not limited to, any provisions requiring a party hereto to indemnify, defend, and hold harmless under this Contract).

14.6. Subcontracts. In case any or all the performance of this Contract is sublet, the Contractor shall require the subcontractor to procure and maintain all insurance required in this Paragraph 14. Contractor shall provide evidence of such insurance from said subcontractor.

14.7. Changes in policy limits. 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 or in the event that the Sovereign Immunity limits for a given calendar year, as published annually on the Missouri Register by the Missouri Department of Insurance are increased during the term of this Contract, 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 exposure as the result of increase. 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.

14.8. Survival. The provisions of this Paragraph shall survive the termination or expiration of this Contract.

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. 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.

17.1. 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.

17.2. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

17.3. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due to 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.

17.4. 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.

17.5. 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.

17.6. 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.

17.7. 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.

17.8. The provisions of this Paragraph shall survive the termination or expiration of this Contract.

18. Contract Documents.

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

18.1.1. This Contract; and

18.1.2. Scope of Work (Exhibit A); and

18.1.3. Rate Sheet (Exhibit B).

18.2. The above listed documents are attached hereto and incorporated by their reference herein as though fully set forth herein.

18.3. 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.

18.4. In the event of a conflict between terms, the terms of this Contract, exclusive of its Exhibits, Attachments, or Schedules, shall control over the terms of any Exhibit, Attachment, or Schedule.

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

19.1. 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.

19.2. 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.

20. Notices.

20.1. 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

below:

To City:

Name: City of Nixa, Missouri
Address: 715 W. Mt. Vernon St., PO Box 395, Nixa MO 65714
Phone: 417.725.3785
Email: jstutesmun@nixa.com
Attn: Jason Stutesmun
Dept: Water

To Contractor:

Name:
Address:
Phone:
Email:
Attn:

20.2. 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.

20.3. Notice of information may be updated by the respective party upon reasonable notice of such change to the other 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 work/product for a period of three (3) years after final payment. The provisions of this Paragraph shall survive the termination or expiration of this Contract.

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. No Third-Party Beneficiaries. This Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Contract.

25. Jurisdiction. This Contract and every question arising hereunder shall be construed or

determined according to the laws of the State of Missouri, without giving effect to any choice or conflict of law provision or rule which would cause the application of the laws of any jurisdiction other than those of the State of Missouri. Should any part of this Contract be litigated, venue shall be proper only in the Courts of Christian County, Missouri. The provisions of this Paragraph shall survive the termination or expiration of this Contract.

26. Waiver of Jury Trial. Each party irrevocably and unconditional waives any right it may have to a trial by a jury in respect to any legal action arising out of or relating to this Contract or the transaction contemplated thereby. The provisions of this Paragraph shall survive the termination or expiration of this Contract.

27. No Waiver of Governmental Immunity. No provision of this Contract is intended, or shall be construed, to be a waiver for any purpose by the City of any applicable state law on municipal liability or governmental immunity. No indemnification provision contained in this Contract under which Customer indemnifies the City shall be construed in any way to limit any other indemnification provision contained in this Contract.

28. Severability. If any term or provision of this Contract is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision.

29. Headings. The headings in this Contract are for reference only and shall not affect the interpretation of this Contract.

30. Interpretation. This Contract shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

31. Payment for Labor and Materials. The Contractor shall pay for all labor and materials used in the provision of the Services.

32. Performance and Payment Bonds.

32.1. The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the City and on forms approved by the City. Each bond shall be in the amount of \$INSERT CONTRACT AMOUNT (full amount of contract) conditioned upon the full and faithful performance of all terms and conditions of this Contract and payment of all labor and material suppliers.

32.2. It is further mutually agreed between the parties that if at any time after the execution of this Contract the City deems the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within 5 days after the receipt of notice from the City to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Contractor shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the City.

32.3. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds \$25,000.00 must be listed in United States Treasury

33. Prevailing Wage. In compliance with sections 290.210 through 290.340 RSMo, all workers performing work under this Contract shall be paid a wage of no less than the "prevailing hourly rate of wages" for work of a similar character in this locality or the public works contracting minimum wage, whichever is applicable, as set out in the Wage Order. If at any time the Contractor is found to not have paid prevailing wages, the Contractor shall forfeit as a penalty to the City \$100.00 for each calendar day or portion of a calendar day for each worker paid less than the stipulated required rates for any work done under this Contract by the Contractor or by any subcontractor under the Contractor. Notwithstanding the foregoing, if the engineer's estimate of the total project cost or the bid accepted by the City is \$75,000.00 or less, then all labor utilized in the construction of the improvements shall not be required to pay the "prevailing rate of wages" or the public works minimum wage. However, if the project becomes subject to a change order that increases the total project cost to more than \$75,000.00, a "prevailing hourly rate of wages" or the public works contracting minimum wage, whichever is applicable, shall be paid for all labor utilized in the construction of the improvements but only for that portion of the project which exceeds \$75,000.00.

34. Safety Training. Pursuant to Missouri Revised Statute Section 292.675, Contractors and subcontractors who sign a contract to work on public works projects must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within sixty (60) days of beginning work on the construction project. The Contractor shall provide an acceptable notarized affidavit stating that Contractor has verified the completion of a 10-hour construction safety program with respect to the employees working in connection with the contracted services. Contractors and subcontractors in violation of this provision will forfeit to the public body \$2,500.00 plus \$100 a day for each employee who is employed without training. Public bodies and contractors may withhold assessed penalties from the payment due to those Contractors and subcontractors. The penalties shall not begin to accrue until the time periods in the statute have elapsed (60 days after notice to proceed and 20 days to produce documentation for employees found in violation).

35. 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.

36. 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, by executing this Contract, certifies that the Contractor 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. Signatures follow on next page.]

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

CITY

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

Authorized Signer

Date: _____

Printed Name

Title

CONTRACTOR VERIFICATION