

RE: Funding Agreement with Nixa Landholdings, LLC

Background:

The City of Nixa has been contacted by a developer, Nixa Landholdings, LLC, regarding a proposed mixed-use development. The developer has indicated its intent to apply for the necessary permits and approvals and has expressed interest in seeking City assistance through a potential public-private partnership or the use of economic incentive tools.

To assist the City in evaluating this request, the City has retained Gilmore & Bell, P.C. as legal counsel and Baker Tilly as municipal financial advisors. At this time, the City does not have a designated funding source to cover additional costs associated with the review and evaluation of this project. As a result, staff has requested that the developer enter into the attached funding agreement with the City of Nixa, which requires reimbursement of actual out-of-pocket expenses incurred by the City in carrying out the obligations outlined in the agreement.

Analysis:

The funding agreement outlines the services to be provided by the City, which include:

1. Prepare or consult with the Developer on the review and analysis of the Incentive for the Project;
2. Give all notices, make all publications, and hold hearings as may be required by applicable laws in order to consider an Incentive for the Project;
3. Evaluate, negotiate, and present the requested Incentive to the City Council and prepare and present required ordinances and other documents to the City Council for the Project; and
4. If the Developer's requested Incentive is approved, provide staff with the necessary third-party legal, financial, and planning assistance to prepare and negotiate a definitive agreement between the Developer and the City for the implementation of the Project, which may also include related contracts for other approved public funding sources

The agreement requires the developer to deposit \$20,000 with the City. These funds will be used to reimburse the City for eligible expenses as outlined in the agreement. If the deposit balance falls below \$10,000, the developer will be required to replenish the account within 30 days of notice from the City.

Recommendation:

Staff recommends that City Council approve the resolution authorizing the City Administrator to execute the funding agreement with Nixa Land Holdings, LLC.

MEMO PREPARED BY:

Jimmy Liles | City Administrator

Jliles@nixa.com | 417-725-3785

RESOLUTION NO. 2026-06

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A FUNDING AGREEMENT WITH NIXA LAND HOLDINGS, LLC.

WHEREAS the City is authorized to provide various tools and incentives to promote economic development; and

WHEREAS Nixa Land Holdings, LLC (“Developer”) has stated its intent to apply for necessary permits and approvals to construct a mixed-use project (“Project”); and

WHEREAS the City will need to prepare or consult on the preparation of documents necessary to review the Project and evaluate potential economic development incentives, including the engagement of third-party legal, financial, and planning consultants; and

WHEREAS the City does not have a source of funds to pay the costs incurred for such third-party services and direct out-of-pocket expenses resulting from the review and evaluation of the Project; and

WHEREAS the Developer has agreed to reimburse the City for its actual out-of-pocket expenses and to provide an initial deposit of \$20,000.00 to cover said costs; and

WHEREAS City staff recommends approval of the Funding Agreement to ensure the City has the necessary resources to evaluate the Project without incurring unbudgeted costs.

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

SECTION 1: The City Council hereby authorizes the City Administrator, or designee, to execute a “Funding Agreement” with Nixa Land Holdings, LLC. Said Agreement shall be in substantially similar form as “Resolution Exhibit A,” which is attached hereto and incorporated herein by this reference as though fully set out herein.

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 the next page.]

RESOLUTION NO. 2026-06

ADOPTED BY THE COUNCIL THIS _____ DAY OF _____ 2026.

ATTEST:

PRESIDING OFFICER

CITY CLERK

APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2026.

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EFFECTIVE DATE: _____

TERMINATION DATE: _____

CONTRACT NUMBER: _____

FUNDING AGREEMENT FOR THE PROJECT PENGUIN PROJECT

THIS FUNDING AGREEMENT FOR THE PROJECT PENGUIN PROJECT (“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 **NIXA LAND HOLDINGS, LLC**, a Missouri limited liability company (“Developer”).

WHEREAS the City is authorized, pursuant to the Missouri Constitution, the laws of the State of Missouri, and by the City’s Charter (the “Authority”) to provide various tools and incentives to promote economic development; and

WHEREAS the City is a Missouri constitutional charter city incorporated and exercising governmental functions and powers pursuant to the Missouri Constitution, the laws of the State of Missouri, and the City’s Charter, with the City’s legislative power residing in the City Council; and

WHEREAS the Developer is duly organized Missouri limited liability company with full authority to conduct business in the State of Missouri; and

WHEREAS the Developer has stated to the City that the Developer intends to apply for necessary permits and approvals to construct a mixed-use project (the “Project”) in the City (the “Application”); and

WHEREAS the City does not have a source of funds to finance costs incurred for additional legal, financial, other consultation, direct out-of-pocket expenses, and other costs resulting from services rendered to review, evaluate, consider, and process the Project or the Application; and

WHEREAS it is the City’s policy that any Developer who desires assistance from the City in a public-private partnership or through the use of economic incentive tools shall demonstrate the financial ability to allow for the full and fair evaluation by the City of all development proposals and requests for economic incentives from the City; and

WHEREAS the City will need to prepare or consult on the preparation of documents necessary to provide economic development incentives (the “Incentive”) for a project within the City, and to consider the project in accordance with the Authority and, if such Incentive is approved by the City, to provide such other services and assistance as may be required to implement and administer the Incentive through its completion. Such incentive may result in significant financial benefit to the Developer; and

WHEREAS the City does not have a source of funds to pay costs incurred by the City, in the form of necessary third-party legal fees (Bond Counsel, Special Counsel, and any non-staffed City Attorney), fiscal and planning consultants (including, but not limited to, third party firms engaged to provide a but-for analysis); direct out-of-pocket expenses and other costs resulting from, services rendered to review, evaluate, process and consider a request for the Incentive pursuant to the Authority.

NOW, THEREFORE, for the considerations herein expressed, it is mutually agreed by and

between the City and the Developer as follows:

1. Services to be Performed by the City. The City shall perform or cause to be performed the following:

- 1.1.** Prepare or consult with the Developer on the review and analysis of the Incentive for the Project;
- 1.2.** Give all notices, make all publications, and hold hearings as may be required by applicable laws in order to consider an Incentive for the Project;
- 1.3.** Evaluate, negotiate, and present the requested Incentive to the City Council and prepare and present required ordinances and other documents to the City Council for the Project; and
- 1.4.** If the Developer's requested Incentive is approved, provide staff with the necessary third-party legal, financial, and planning assistance to prepare and negotiate a definitive agreement between the Developer and the City for the implementation of the Project, which may also include related contracts for other approved public funding sources.

2. Initial Deposit and Additional Funding.

- 2.1.** The City and the Developer agree that the Developer shall reimburse the City for its actual out-of-pocket expenses to perform the City's obligations hereunder, including costs of the City's third-party consultants (the "Expenses").
- 2.2.** Within ten (10) days of City Council approval of this Contract, Developer will deposit twenty thousand dollars (\$20,000) (the "Deposit") with the City. The Deposit shall be treated as a deposit with the City pursuant to the terms and conditions of this Contract.
- 2.3.** The City shall disburse the Deposit as set forth in Paragraph 4 of this Contract and shall provide invoices periodically (but no less frequently than quarterly) reflecting the amounts of the Deposit utilized by the City for reimbursement and, if necessary, to re-establish the Deposit once the amounts available total less than ten thousand dollars (\$10,000) (the "Minimum Available Deposit"). The Developer shall pay the City the amounts necessary to re-establish the deposit ("Additional Funds") within thirty (30) days of receipt of a request therefor and only after the Minimum Available Deposit is not available. If such funds are not so received, the unpaid balance shall accrue interest at the rate of two percent (2%) per month until paid, but in no event shall such interest exceed ten percent (10%) per annum, and City shall be relieved of any and all obligations hereunder until paid or may terminate this Contract pursuant to Paragraph 6 of this Contract.
- 2.4.** Before a vote by the City Council for approval or disapproval of the Incentive, approval of this Contract with the Developer, or approval of any other measure associated with the Application or the Project, the Developer shall deposit with the City, sufficient Additional Funds to establish or replenish the Deposit once the Minimum Available Deposit is not available.
- 2.5.** Payment to Developer shall be by check or electronic funds transfer, at the sole discretion of the City, and payment shall be provided to the Developer at the address or account number provided by Developer. Developer shall as a condition precedent to any payment made

as part of this Contract, sign up and comply with the requirements of the City's payment verification vendor, currently PaymentWorks. The Developer agrees to reasonably cooperate with the City's payment verification vendor's requests for information at no additional cost to Developer.

3. City Consultants.

3.1. The City and Developer agree that the City shall retain Gilmore & Bell, P.C. and Baker Tilly Municipal Advisors to assist the City in duties under this Contract.

3.2. The City shall advise the Developer in writing if the City intends to utilize the services of any other consultant to perform obligations under the terms of this Contract. Such written notice shall include the name of the consultant, the service to be performed and an estimate of the expected cost.

3.3. If the Developer, in writing, within five (5) business days from receipt of the City's notice, objects to either the consultant named or the service to be performed, the City and Developer shall negotiate in good faith to resolve the Developer's objections. If the City and Developer cannot agree on the consultant to be used or the service to be performed, the City shall have no obligation to perform that service or any other service under the terms of this Contract and the Developer shall have no obligation to pay for such service under the terms of this Contract and this Contract shall terminate and the City will have no further obligation to consider the Incentive.

4. Disbursement of Funds. The City shall disburse the Deposit and Additional Funds within thirty (30) days of a request to pay Expenses. The City shall send to the Developer a copy of the record for each disbursement made pursuant to this Contract within five (5) business days of such disbursement along with documents evidencing such Expenses.

5. Project Administration. In addition to the services set forth in Paragraph 1 of this Contract, the City may be required to provide services from time to time for the continuing administration of the Incentive and any contracts entered into in furtherance of the Application and the Project. Upon appropriate itemization, the City shall be reimbursed by the Developer for reasonable third-party expenses that are necessary to the general operations of the City and its consultants with respect to administration of the Incentive, and any contracts entered into in furtherance of the Application or the Project. The provisions of this Paragraph shall apply until such time as the City and the Developer execute an agreement which provides for the termination of this Contract and the terms and conditions under which the City's ongoing services shall be funded. It is anticipated that, if approved, any such agreement will include provisions necessary for reimbursement of such funds to the Developer.

6. Termination.

6.1. Termination by the City. In the event the Developer fails to perform any of its obligations herein, the City may terminate this Contract, and any other agreement between the parties, at its sole discretion if the Developer fails to cure the default within ten (10) days after written notice to the Developer of the default. Termination by the City for any reason provided in this Contract shall also terminate any duties and obligations of the City with respect to this Contract, including, but not limited to, the City's processing of Developer's Application. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in

Paragraph 6.3.

6.2. Termination by the Developer. The parties hereto acknowledge that the Developer may determine to abandon the Application. Upon written notice of abandonment by the Developer, this Contract shall terminate, and the City may terminate any other agreement between the parties. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in Paragraph 6.3.

6.3. Wrap-Up After Early Termination. Upon termination pursuant to Paragraphs 6.1 and 6.2, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all Expenses incurred under this Contract to the date of termination and any monies due and owing to the City pursuant to any other agreement with the Developer. Upon such termination, in the event the Deposit and Additional Funds are insufficient to reimburse the City for the outstanding Expenses of the City payable hereunder, the Developer shall reimburse the City for such Expenses. After termination of this Contract pursuant to Paragraphs 6.1 and 6.2, any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by the City, or reimbursed to the City, shall be returned to the Developer.

6.4. Termination by Consolidation into Incentive Agreement. Unless otherwise terminated as provided in Paragraphs 6.1 and 6.2, this Contract shall stay in full force and effect until it is specifically terminated as set forth in an agreement between the City and the Developer, and thereafter the terms and conditions of the agreement shall provide for the continued funding arrangements by Developer with respect to the Application and the Project.

7. Notice.

7.1. Any notice, approval, request, or consent required by or asked to be given under this Contract shall be deemed to be given if in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

City of Nixa, Missouri
715 W. Mt. Vernon St., PO Box 395, Nixa MO 65714
Jimmy Liles, City Administrator

With a copy to:

Sarah Granath
Gilmore & Bell, P.C., Suite 1100
2405 Grand Blvd.
Kansas City, Missouri 64108

To the Developer:

Brad King
Nixa Land Holdings, LLC
P.O. Box 14909
Springfield, MO 65814

With a copy to:

Curtis Petersen
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

7.2. Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

8. City Requirements and Prior Approval.

8.1. The Developer agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's zoning ordinances, subdivision regulations and all planning or infrastructure requirements related to the development of Developer's property.

8.2. The City and Developer agree that the execution of this Contract in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which the Developer must comply and does not in any way constitute prior approval of any future proposal for Project. The City and Developer each acknowledge, understand, and agree that the City may not lawfully contract away its police powers or legislative powers and that approval of the Application and any zoning, subdivision and similar development projects cannot be contractually guaranteed.

8.3. This Contract does not alter or diminish the City's ability to exercise its legislative discretion to consider the Application and the Project and approvals for the Application in accordance with all applicable laws any other projects with respect to development of the redevelopment area and Developer's property.

9. Legal Representation. The Developer understands and acknowledges that this arrangement is an accommodation to the Developer in which the City's legal counsel is not providing legal representation to the Developer and that no attorney-client relationship between the Developer and the City's legal counsel shall exist by any reason including, but not limited to, the Developer's payment of the City's expenses under this Contract. Developer further understands that legal counsel paid pursuant to this Contract is legal counsel for the City and acknowledges the duties of confidentiality and loyalty to the City.

10. Assignment. This Contract may not be assigned by any party without the prior written consent of the other party. No assignment, unless specifically provided for in such consent, shall relieve the assigning party of any liability pursuant to this Contract. This Contract shall be binding upon the parties and their successors and permitted assigns.

11. Federal Work Authorization. Simultaneously with the execution of this Contract, the Developer shall, pursuant to the provisions of Sections 285.525 through 285.555 of the Revised Statutes of Missouri, as amended, by sworn affidavit in substantially the form attached hereto as Exhibit A and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to its employees and state that it does not knowingly employ any person who is an unauthorized alien.

12. Anti-Discrimination Against Israel Act.

12.1. The State of Missouri has adopted the “Anti-discrimination Against Israel Act,” Section 34.600, Revised Statutes of Missouri (“Section 34.600”), which provides that “[a] public entity shall not enter into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company 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; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.” Section 34.600 provides that any contract that fails to comply with Section 34.600’s provisions shall be void as against public policy.

12.2. The Developer hereby certifies and agrees that, to the extent Section 34.600 is applicable to this Contract, the Developer is not currently engaged in and shall not, for the duration of this Contract, engage in a boycott of goods or services from the State of Israel, companies doing business in or with Israel or authorized by, licensed by or organized under the laws of the State of Israel or persons or entities doing business with the State of Israel, in all respects within the meaning of Section 34.600.

12.3. The foregoing certification shall not be deemed an admission or agreement that Section 34.600 is applicable to this Contract but the foregoing certification is provided if Section 34.600 is applicable. If Section 34.600 is initially deemed or treated as applicable to this Contract, but it is subsequently determined not to apply to this Contract for any reason including by reason of applicable federal law, including without limitation, 50 U.S.C. Section 4607, the repeal or amendment of Section 34.600 or any ruling of a court of competent jurisdiction as to the unenforceability or invalidity of Section 34.600, then the foregoing certification shall cease and not exist.

[SIGNATURE PAGE TO FOLLOW]

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. I further certify that for the current fiscal year ending December 31, 2026, there is an unencumbered balance to the credit of such appropriation sufficient to pay the City's obligation for the current fiscal year, and that the appropriate accounting entries have been made. The City's obligations in subsequent fiscal years are subject to appropriation by the City Council.

Jennifer Evans, Director of Finance

DEVELOPER

Authorized Signer

Date: _____

Printed Name

Title

EXHIBIT A

AFFIDAVIT OF COMPLIANCE WITH SECTION 285.525 R.S.MO., ET SEQ.

STATE OF _____)
) SS.
COUNTY OF _____)

Before me, the undersigned Notary Public, in and for the County of _____ State of _____, personally appeared _____, who is _____ of **NIXA LAND HOLDINGS, LLC**, a Missouri limited liability company, and after being duly sworn did depose and say:

- (1) that said company is completing this affidavit in relation to the conduct of its business in Nixa, Missouri;
- (2) that said company is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services; and
- (2) that said company does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

The terms used in this affidavit shall have the meaning set forth in Section 285.525 R.S.Mo., et seq.

Documentation of participation in a federal work authorization program is attached to this affidavit. (An example of acceptable documentation is the E-Verify Memorandum of Understanding (MOU) - a valid, completed copy of the first page identifying the employer and a valid copy of the signature page completed and signed by the employer, the Social Security Administration and the Department of Homeland Security.)

By: _____
Print Name: _____
Title: _____

Date: _____

Subscribed and sworn to before me this _____ day _____, _____.

Notary Public
Print Name: _____

My commission expires: