

CITY ATTORNEY

REQUEST FOR PROPOSAL (RFP)

The City of Nixa, MO (City) is seeking a law firm or individual attorney to provide City Attorney services on a contract basis. Law firms and attorneys are invited to submit qualifications and proposals for the provision of these services. In order to be considered, proposals must address each of the concerns requested in this document, including rates and fee(s).

DEADLINE SUBMISSION: All proposals must be received no later than 2:00 PM on November 10, 2016.

INTRODUCTION:

The City has a population of approximate 21,500 persons, it is a Home Rule Charter City (2010), and provides a full-range of municipal services, including street maintenance, public parks, public works (electric, water, sewer and streets), community development, police, municipal court, human resources and finance.

SCOPE OF SERVICES:

The City Attorney will act as the City's prosecuting attorney, provide general municipal counsel, basic legal services, and give advice on special projects. The City requests one attorney be designated as the point of contact or lead attorney. Accessibility to and a timely response from the attorney is essential to the position.

Minimum qualifications include a Juris Doctorate from an accredited law school, a license to practice in the State of Missouri, membership in good standing of the Missouri Bar and (5) years of experience as a practicing attorney in the state of Missouri. Experience with Missouri municipalities and knowledge of Municipal Law, Sunshine Law and Contract Law are preferred.

The City prosecutor shall prosecute cases before the Nixa Municipal Court and any appeals therefrom. Basic service includes all preparation for court appearances including conferences with defendants, defense attorney, the municipal judge, city staff (including police and code enforcement officers), and all legal research necessary for the prosecution of cases to be tried in municipal court. Court is typically held twice a month on Thursday; although, every other Thursday the prosecutor is here from 10:15 to 12:00 p.m. to see defendants who wish to speak with him/her.

Duties as general municipal counsel include but are not limited to: (1) having charge of all litigation in which the City is a party; (2) representing the City in all legal matters and proceedings in which the City is a party or interested, or in which any of its officers are parties in their official capacity; (3) advising the Mayor and City Council or any committee or member thereof, and the heads of all departments, and all other officers and agencies of the City as to all legal questions affecting the City's interest; (4) approving as to form all ordinances, contracts, deeds, bonds and any other documents to be signed in the name of the, or with, the City; (5) advising the Mayor, City Council, committee members and City staff on zoning matters; (6) answer Officers legal questions (24 hour availability needed).

Basic legal services include: (1) reviewing or drafting ordinances, resolutions, contracts, agreements, deeds and easements; (2) providing advice regarding government operations, elections, open meetings, open records, City ordinances, State law, routine matters, personnel matters (COBRA, FMLA, HIPAA,

annual notice requirements, payroll requirements, policies, State and Federal regulation updates, terminations and wage and hour laws), property matters including real estate acquisition and sale, annexation, zoning and condemnation; (3) reviewing agendas and materials for Council meetings, anticipating and preparing legal advice on items to be addressed at Council's monthly meetings; and (4) providing legal opinions upon request from the Mayor or City Administrator.

The City may request the completion of special projects requiring 20 or more hours or more, such as an extensive drafting or revising of ordinances or code sections, research concerning an in-depth issue, etc.

Generally, the City Attorney may anticipate the job requiring 40-60 hours per month depending on the work load. This includes serving as the City's prosecutor on each Thursday of the month. City staff may work in-house to produce initial drafts, such as City ordinances and resolutions, prior to the Attorney's review. The City may also seek outside specialized counsel as necessary.

The City Attorney will be required to provide a detailed, itemized billing on a monthly basis, in order to avoid misunderstanding, a standing request exists for legal review of contracts, ordinances and resolutions presented to City Council for consideration at its regular meeting in addition to anticipating and preparing legal advice on issues up for consideration, as well as attendance at the regular City Council meetings, which are held twice a month. Further a request for legal services exists upon phone or written request of the City Administrator prior to commencement of service is required. City Attorney will be required to generally familiarize himself/herself with general municipal law and keep abreast of legislation affecting cities outside the scope of billable services.

REQUESTED INFORMATION

If you or your firm is interested in the opportunity to work with the City, please provide the following information:

1. Firm or individual name and contact information, including e-mail and website addresses and year organized.
2. Summary of qualifications, specializations, experience (including municipal), professional affiliation, special training, availability, Missouri Bar license numbers, and contact information for key personnel and proposed lead and back-up attorneys for the City.
3. Information on any previous experience or services provided, including municipal experience, such as general City Attorney services, city-related court cases, condemnation, eminent domain, zoning, litigation experience, list of past or present municipal clients, etc.
4. List of clients you currently represent that could constitute a conflict of interest with your responsibilities as City Attorney. Describe how you would be willing to resolve these or any future conflicts of interest.
5. If your firm or you have filed any litigation in the past five-years in which the City or one of its employees was named as a party, please describe the case(s).
6. Other factors or special considerations you feel would influence your selection.
7. List of references and contact information.
8. Proposed hourly rates for each attorney assigned to the City or any alternative fee structure you propose.

PROPOSAL AND EVALUATION

A. Instructions to Applicants:

1. The response to this RFP should be delivered as follows: Five (5) hard copies shall be submitted to the address below in a sealed package clearly marked to the attention of Mary Tronnes, Purchasing Manager and must be received at the address below by 2:00 p.m. central time on (Thursday, November 10, 2016).

City of Nixa, MO
Mary Tronnes, RFQ: Attorney
715 W. Mt. Vernon
P.O. Box 395
Nixa, MO 65714

2. Any proposals received after the specified date and time will be rejected and returned unopened. Proposals may not be modified or withdrawn after the submittal deadline. However, a respondent may withdraw one's proposal from the selection process at any time prior to the submittal deadline. The City reserves the right to extend the time for submittals.
3. Additional promotional materials/brochures may be included in addition to the proposal but may not substitute for any of the content requirements of the proposal itself. This additional material need not be submitted in an electronic format.
4. Communication (other than through the process herein described) with the City, the selection committee, or the general public relative to this RFP prior to the announcement of a selection is strictly prohibited.
5. The City reserves the right to waive any irregularities and/or reject any and all submittals. The City is under no obligation to award a contract to any firm submitting a proposal.
6. The City shall not be responsible for any costs incurred in the preparation, submittal and presentation of the proposal.
7. All materials submitted shall become the property of the City and shall be subject to the laws and regulations relating to the disclosure of public information. No guarantee of privacy or confidentiality is offered or implied.

B. Proposal Requirements and Evaluation Criteria

The following are the content that all proposal must include. The following categories and criteria will be major considerations in the evaluation and determination of the most qualified and capable individual and/or firm. Note: The sequence of the listing is not intended to reflect relative weight of each category:

1. Interest and Relevant Experience: A statement of interest for the scope of services (not to exceed two pages) including a narrative describing the respondent's capabilities, relevant experience, and interest in the position.
2. Availability: A statement on the availability and commitment of the respondent to undertake the scope of services. The statement should demonstrate how back-up services will be provided in the vent of prosecutor absences.

3. Background and Training: Proposal shall include resumes for personnel who may perform services, including the lead contract who will act as the primary city prosecutor. Resumes should list all relevant educational background/training and experience.
4. References: The name, address and telephone number of at least three (3) references, preferably clients who can attest to the respondent's ability to perform the services. Proposal shall include a description of the relationship between each reference and the respondent.
5. Disclosure: Proposal will disclose any professional or personal financial interest which could be a possible conflict of interest in contracting with the City.
6. Fee: Proposal shall include a total fee for the scope of services and shall separate fees associated with the basic services and additional services. Proposal shall, if applicable, itemize the methodology for billing reimbursable expenses such as travel, production of documents, subscriptions, etc. The City reserves the right to negotiate a final fee and scope of services as part of contract negotiations following the selection process.
7. Adherence to Contract: The City's standard professional services agreement is included as Attachment 1. Respondent shall thoroughly review the agreement and state an ability to comply with its terms and/or state any terms for which it will request re-negotiation.

PROPOSED PROCESS AND TIMELINE (subject to change)

- October 19, 2016: RFP issued and posted on the City of Nixa's website.
- November 10, 2016: Receipt of proposals due by 2:00 p.m. central time.
- November 21, 2016: A selection committee comprised of city officials will evaluate the proposals and select a preferred respondent to begin contract negotiations. If multiple firms have exceptional proposals, the selection committee will select a short-listed group of finalists for interviews.
- November 22, 2016: Preferred firm and/or person is notified of selection and contract negotiations.
- December 1, 2016: Deadline to complete contract negotiations.
- December 7, 2016: City Council takes action on recommended contract.
- January 2, 2018: Start date.

By submitting a proposal in response to this RFP, the respondent expresses its intent to comply with the established timeline. In addition, the respondent accepts the evaluation process and methodology, as well as acknowledges and accepts that the determination of the most qualified and capable firm(s) or person will require subjective judgements by the selection committee and the City.

ATTACHMENT 1

PROSECUTING ATTORNEY AND OTHER LEGAL PROFESSIONAL SERVICES AGREEMENT

THIS SERVICE AGREEMENT, entered into on this _____ day of _____, 2016 by and between the CITY OF NIXA, MISSOURI (CITY) and _____ (SERVICE PROVIDER).

WHEREAS, the CITY requires a city prosecutor to fulfill the duties outlined in Section 2:112-117 the Nixa Municipal Code, and other legal professional duties; and,

WHEREAS, SERVICE PROVIDER was chosen through a qualifications and fee based selection process and has demonstrated the necessary expertise, experience, and personnel to perform the Services.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants and agreements set forth herein, the parties mutually agree as follows:

- I. SCOPE OF SERVICES:
 - A. The term "SERVICES" when used in this Agreement shall mean any and all city prosecutor services provided by the Service Provider in accordance with this Agreement.
 - B. The City agrees to retain Service Provider and Service Provider agrees to perform and complete the Services described in the Exhibit A—Scope of Services, attached hereto and incorporated by reference.
 - C. The City reserves the right to direct revision of the Services at the City's discretion. Service Provider shall advise the City of additional costs and time delays, if any, in performing the revision, before Service Provider performs the revised services.
 - D. Service Provider shall provide Additional Legal Profession Services under this Agreement only upon written request of the City and only to the extent defined and required by the City. Any additional professional legal services or materials provided by the Service Provider without the City's prior written consent shall be at the Service Provider's own risk, cost and expense and Service Provider shall not make a claim for compensation form the City for such work.
- II. STANDARD OF CARE
 - A. Service Provider shall exercise the same degree of care, skill and diligence in the performance of all Services to the City that is ordinarily possessed and exercised by reasonable, prudent and experienced professionals under similar circumstances.
 - B. Service Provider represents it has all necessary licenses, permit, knowledge and certifications required to perform the Services described herein.
- III. COMPENSATION
 - A. As consideration for providing the Services, the City shall pay Service Provider as follows:
 - a. Services will be billed <to be determined>.
 - b. Service Provider is not eligible for reimbursement for miscellaneous expenses including travel, transportation, postage, etc. for the day-to-day costs associated with delivery of the Services.
 - c. Subject to annual appropriations, the City will pay costs for one attorney to annually attend the Missouri Municipal and Associate Circuit Judges Association conference for legal education. Allowable expenses for both advance payment and reimbursement will be determined and paid in accordance with section 6, 6.2 of the City of Nixa Personnel Manual regarding Employee Meal and Travel Allowance, as may be amended from time to time.

- B. Service Provider shall submit an itemized invoice to the City on the first day of each month that details the Services that were provided in the month immediately prior, as well as any other charges or reimbursements to which the Service Provider is entitled by this Agreement. The City agrees to pay the balance of an approved invoice, or undisputed portions of a disputed invoice, within 30 days of the date of receipt by the City. In the event of a dispute, and prior to the invoice's due date, City shall pay the undisputed portion of the invoice and notify Service Provider of the nature of the dispute regarding the balance.
- C. Service Provider shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed necessary by the City to assure property accounting for all funds. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for three years after the expiration of this Agreement unless permission to destroy them is granted by the City.

IV. SCHEDULE

- A. Unless otherwise directed by the City, Service Provider shall commence performance of the Services upon execution of this Agreement.
- B. Service Provider will be prepared for and make appearance on the City's behalf on all scheduled municipal court dates.
- C. Neither the City nor the Service Provider shall be in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party.

V. LIABILITY AND INDEMNIFICATION

- A. Service Provider shall indemnify, defend and hold harmless the City and its Departments, elected officials, officers, employees and agents, from and against all liability, suites, actions, proceedings, judgments, claims, losses, damages, and injuries (including attorney's fees and other expenses of litigation, arbitration, mediation or appeal), which in whole or in part arise out of or have been connected with Service Provider's negligence, error, omission, recklessness, or wrongful or criminal conduct in the performance of Services, including performance by Service Provider's employees and agents; or arising from any claim for libel, slander, defamation, copyright infringement, invasion of privacy and/or plagiarism related to any materials related to materials Service Provider creates or supplies to the City, except to the extent that such claims arise from materials created or supplied by the City.
- B. Service Provider's obligation to indemnify and hold harmless shall remain in effect and shall be binding on Service Provider whether such injury shall accrue, or may be discovered, before or after termination of this Agreement.

VI. INSURANCE

The Service Provider shall secure and maintain, at its expense, and through the duration of this Agreement, professional liability insurance on an occurrence basis with minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate coverage. Service Provider shall also secure and maintain Worker's Compensation and Employer's Liability Insurance, when applicable, at the limits required by state and/or federal law.

VII. ASSIGNMENT OF AN RESPONSIBILITY FOR PERSONNEL

- A. Service Provider's assignment of personnel to perform the Services shall be subject to the City's oversight and general guidance. The City reserves the right to request qualifications and/or reject service from any and all employees of the Service Provider.

- B. While upon City premises, the Service Provider's employees and agents shall be subject to the City's rules and regulations respecting its property and the conduct of employees thereon.

VIII. OWNERSHIP OF WORK PRODUCT

Service Provider agrees that any documents, materials and work products produced in whole or in part through it under this Agreement, any intellectual property rights of Service Provider therein (collectively the "Works") are intended to be owned by the City. Accordingly, Service Provider hereby assigns to the City all of its right title and interest in and to such "Works."

IX. REATIONSHIP OF THE PARTIES

- A. Service Provider represents that it has, or will secure at Service Provider's own expense, all personnel required in performing the Services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.
- B. All of the services required hereunder will be performed by the Service Provider or under Services Provider's supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
- C. None of the Services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

X. NOTICES

- A. All notices required by this Agreement shall be in writing, and unless otherwise directed by this Agreement, shall be sent to the addresses as set forth in this Section:
- B. Notices sent by Service Provide shall be sent to:
City of Nixa
Attn: City Administrator
P.O. Box 395
Nixa, MO 65714
- C. Notices sent by the City shall be sent to:
<to be determined>

XI. TERM AND TERMINATION

- A. The effective date of this Agreement shall be the date of execution, when the Agreement is signed by both parties.
- B. The term of this Agreement shall be until <to be determined>. The Agreement shall automatically renew each anniversary date for an additional one (1) year term unless notice is given by either party to the other party at least sixty (60) days in advance of the renewal date of intention to terminate or re-negotiate the terms of the Agreement.
- C. Notwithstanding Article XI, Paragraph B, the City reserves the right and may elect to terminate this Agreement at any time, with or without cause, by giving at least ten (10) days written notice to the Service Provider. The City shall compensate Service Provider for the Services that have been completed to the City's satisfaction as of the date of termination. Service Provider shall perform no activities other than reasonable wrap up activities after receipt of termination notice.

XII. MISCELLANEOUS PROVISIONS

- A. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Missouri.
- B. Assignability. Service Provider shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or invitation), without the prior

written consent of the City thereto. Provided, however, that the claims for money by Service Provider from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

- C. Media Announcements. Service Provider shall not be authorized to make statements to the media or otherwise on behalf of the City without express direction and consent of the City.
- D. Compliance with Local Laws. Service Provider shall comply with all applicable laws, ordinances, and codes of the State and local governments, and shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
- E. Equal Employment Opportunity. During the performance of this Agreement, Service Provider agrees as follows:
 - i. Service Provider will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, religion, or sex. Service Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, religion, or sex. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
 - ii. Service Provider will, in all solicitation or advertisements for employees placed by or on behalf of Professional, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, religion, or sex.
 - iii. Service Provider will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- F. Authorized Employees. Service Provider acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Service Provider therefore covenants that it will not knowingly be in violation of subsection of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform Services related to this Agreement, and that its employee are lawfully to work in the United States.
- G. Interest of Members of a City. No member of the governing body of the City and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of this Agreement, shall have any personal financial interest, direct or indirect, in this Agreement, and Service Provider shall take appropriate steps to assure compliance.
- H. Interest of Service Provider and Employees. Service Provider covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the Services associated with this Agreement or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. Service Provider further covenants that in the performance of this Agreement, no person having any such interest shall be employed.
- I. Severability. If any part, term or provision of this Agreement, or any attachments or amendments hereto, is declared invalid, void, or enforceable, all remaining parts, terms and provisions shall remain in full force and effect.
- J. Entire Agreement. This Agreement represents the entire Agreement and understanding between the parties, and this Agreement supersedes any prior negotiations, proposals, or

agreements. Unless otherwise provided in this Agreement, any amendment to this Agreement shall be in writing and shall be signed by the City and Service Provider.

- K. Waiver. The failure of either party to require performance of this Agreement shall not affect such party's right to enforce the same. A waiver by either party of any provision of breach of this Agreement shall be in writing. A written wavier shall not affect the waiving party's rights with respect to any other provision or breach.
- L. Third Parties. The Services to be performed by the Service Provider are intended solely for the benefit for the City. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any person or entity not a signatory to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

CITY OF NIXA, MISSOURI

Brian Steele, Mayor

ATTEST:

Cindy Robbins, City Clerk

<TO BE DETERMINED>

By:

CERTIFICATE OF FINANCIAL OFFICER

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.

Donna Swatzell, Finance Director