

CITY COUNCIL AGENDA

**Monday, July 1, 2024
City Council Meeting 6:00 PM**

**Hall of Waters Council Chambers, 201 E Broadway, Ex. Springs,
MO**



NOTICE OF OPEN MEETING

Public Notice is hereby given that the City Council of the City of Excelsior Springs will conduct a **Council Meeting at 6:00 PM, July 1, 2024** to consider and act upon the matters on the following agenda and such other matters as may be presented at the meeting and determined to be appropriate for discussion at the time.

**Hall of Waters Council Chambers, 201 E Broadway, Ex. Springs,
MO**

AMENDED AGENDA

The tentative agenda of this meeting is as follows.

City Council
City of Excelsior Springs

AGENDA

City Council Meeting, 6:00 PM
Monday, July 1, 2024

Hall of Waters Council Chambers, 201 E Broadway, Ex. Springs, MO

AMENDED AGENDA

Call to Order

Opening

Pledge of Allegiance

Roll Call

Visitors

Visitors - This time is reserved for public comment addressed to the City Council. Each speaker is limited to 5 minutes. Any agenda item which has a Public Hearing should be reserved until the Public Hearing is opened and comments on such item will be taken at that time.

Minutes of the Regular City Council Meeting of June 17, 2024

Consideration of Agenda

1. Consideration of Special Use Permit for 406 E Broadway - Ordinance No. 24-07-01
2. Consideration of Board Appointments - Resolution No. 1516
3. Consideration of Park Naming Policy - Resolution No. 1517
4. Consideration of Hall of Waters Boiler Replacement - Resolution No. 1518
5. Consideration of MOU with ESSD for School Resource Officers - Resolution No. 1519
6. Remarks - City Manager
7. Remarks - City Council
8. Remarks - Mayor
9. Adjourn

Representatives of the news media may obtain copies of this notice by contacting the City Manager's office, 201 East Broadway. Phone (816) 630-0752.

If any accommodations are required in order to attend this meeting (i.e. qualified interpreter, large print, reader, hearing assistance), please notify the City Manager's office no later than 48 hours prior to the beginning of the meeting.

Date and Time of Posting: AMENDED Friday, June 28, 2024 at 6:45pm



City Council Meetings
Council Meeting 7/1/2024

To: Mayor and City Council

From:

Date

RE: Minutes of the Regular City Council Meeting of June 17, 2024

ATTACHMENTS:

Description	Type	Upload Date
6-17-24 Regular City Council Meeting Minutes	Cover Memo	6/21/2024

REGULAR CITY COUNCIL MEETING
CITY OF EXCELSIOR SPRINGS
EXCELSIOR SPRINGS, MISSOURI
June 17, 2024

The City Council of the City of Excelsior Springs, Missouri met in a Regular City Council Meeting at 6:00 pm on Monday, June 17, 2024 in the Council Chambers of the Hall of Waters Building. The meeting was also available virtually. The meeting was called to order by Mayor Spohn.

The opening was led by Pastor Shannon Greene of the First United Methodist Church.

The Pledge of Allegiance was led by Mayor Spohn.

Roll Call of Members: Present: Mayor Mark Spohn, Mayor Pro-Tem Stephen Spear, Councilman Gary Renne, Councilman Reggie St. John, and Councilman John McGovern.

Absent: None.

VISITORS: Vernon Hendricks of 212 Woods Street addressed the Council. I hope one day we recognize the McGovern's for everything they have done for this City. For Juneteenth, I would like to ask the Council to recognize June 6th to July 4th as Freedom Month in Excelsior Springs and think the local businesses should leave their flags out during that time. Also, for Juneteenth, I believe, and it is my hope, that fireworks should be allowed to be sold and shot off for the night of June 19th and then go back to the original schedule.

MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JUNE 10, 2024:

Councilman McGovern made a motion to approve the minutes of the Regular City Council Meeting of June 10, 2024. Motion was seconded by Councilman Renne. All in favor; say aye.

All in Favor: motion carried.

Minutes of the Regular City Council Meeting of June 10, 2024 passed and approved June 17, 2024.

CONSIDERATION OF AGENDA:

Councilman St. John made a motion to approve the agenda as presented. Motion was seconded by Mayor Pro-Tem Spear.

Roll Call of Votes: Ayes: Renne, McGovern, St. John, Spear, Spohn

Nays: None, motion carried.

The agenda as presented passed and approved June 17, 2024.

PRESENTATION – COMMUNITY DEVELOPMENT ANNUAL REPORT:

Melinda Mehaffy, Community and Economic Development Director presented the 2023 Annual Report for the Community Development Department. The presentation included an introduction of the

Community Development Team and organizational chart, an overview of the various areas the department assists, as well as figures on permits, inspections, planning and zoning cases, vacant property registration cases, neighbor assistance, and code cases. This also included permit values of the investments taking place throughout the community. The Community Development Team also assists with 353 abatement projects, historic preservation, zoning text amendments and code changes, residential and commercial redevelopment, and certificates of appropriateness in the downtown historic district. The Community Development Team has been involved in various projects throughout the year, including the Save America's Treasures grant, EIARA grant, the Flats at Coach Crossing, Lewis Elementary and Quick Trip. Director Melinda Mehaffy hopes to bring the Connecting Entrepreneurial Communities Conference to Excelsior Springs in 2025 and is excited for community participation in the update to the Comprehensive Plan.

RESOLUTION NO. 1515, CONSIDERATION OF INSURANCE COVERAGE RENEWAL:

Mayor Spohn read by title Resolution No. 1515.

Molly McGovern, City Manager briefed the Council of the Resolution.

Mayor Pro-Tem Spear made a motion to approve Resolution No. 1515 approving the purchase of Workers' Compensation, Property, and Liability Insurance. Motion was seconded by Councilman Renne.

Roll Call of Votes: Ayes: St. John, Renne, McGovern, Spear, Spohn

Nays: None, motion carried.

Resolution No. 1515 passed and approved June 17, 2024.

MAY 2024 REVENUE REPORT AND FINANCIALS FOR REVIEW:

Mayor Spohn read by title the consideration.

Vonda Floyd, Finance Director briefed the Council of the consideration.

The expenditure lists and payroll from May 2024 and the May revenue report were made available for review.

REMARKS – CITY MANAGER AND CITY COUNCIL:

City Manager, Molly McGovern:

1. I want to share that Melinda Mehaffy just completed her KU Emerging Leaders course; I am pretty excited about that. Melinda's favorite quote from the class was, "Build a team so strong you don't know who the leader is."

Councilman Renne:

1. Looking forward to Waterfest and excited about the Comprehensive Plan survey to take place.
2. I think Freedom Month is a very good idea.

Councilman McGovern:

1. I like Freedom Month and fireworks also.
2. Melinda has done a fantastic job in that department, especially in comparison to the way it was before she took it over; the difference is night and day.

Councilman St. John:

1. Community Development is a department that handles many different things; it can be quite daunting. I appreciate all you do.

Mayor Spohn:

1. I will echo that compliment from Councilman St. John. Melinda, I appreciate you and your team. I appreciate that they keep refining the process.
2. I echo everyone's comments about Waterfest. It is going to be an exciting time.

Mayor Pro-Tem Spear:

1. Having just returned from Italy, my wife and I visited a 15th century farm, which reminded us of Van Till Winery. We sometimes take for granted all the cool things that we have right here in our community.

MOTION TO CLOSE THE MEETING PURSUANT TO SECTIONS 610.021.1, 610.021.2, & 610.021.9, RSMO.:

With no further business at hand, Councilman McGovern motioned to close the Regular City Council Meeting of June 17, 2024 and go into CLOSED SESSION Immediately Following Pursuant to Sections 610.021.1, 610.021.2, and 610.021.9, RSMo. Mayor Pro-Tem Spear seconded. No discussion was held by City Council Members.

Roll Call of Votes: Ayes: Renne, St. John, McGovern, Spear, Spohn

Nays: None, motion carried.

The Regular City Council Meeting of June 17, 2024 adjourned at 6:48 pm.

MARK D. SPOHN, MAYOR

ATTEST:

SHANNON STROUD, CITY CLERK



**Community Development
Council Meeting 7/1/2024**

To: Mayor and City Council
From: Melinda Mehaffy, Economic Development Director
Date: 6/26/2024
RE: Consideration of Special Use Permit for 406 E Broadway - Ordinance No. 24-07-01

To: Chairman and Commissioners
Planning & Zoning Commission

Re: Staff Report for Case Number SUP-24-003- Application by William and Cinthia Molini for a Special Use Permit for the operation of a short-term rental in the R-3 Cluster, Townhouse or Garden Apartment District at 406 E. Broadway. (*Public Hearing*)

Applicant: William and Cinthia Molini, owner

Meeting Date: June 24, 2024

General Information:

Address: 406 E Broadway, Excelsior Springs
Current Zoning: R-3 Single-Family Residential District
Current Land Use: R-1 Single-Family Residential District (new construction)

Surrounding Zoning & Land Use:

North: R-3; Cluster, Townhouse or Garden Apartment District
East: R-3; Cluster, Townhouse or Garden Apartment District
South: R-3; Cluster, Townhouse or Garden Apartment District
West: R-3; Cluster, Townhouse or Garden Apartment District

Background:

The applicant is requesting to operate this single-family residence as a short-term rental to allow the renting out for defined periods of time to visitors and vacationers, commonly known as an 'Airbnb' or 'VRBO.'

Staff Analysis:

The Zoning Regulations recognize that there are special land uses and circumstances which, because of their unique character, cannot be appropriately classified in any particular zoning district(s) without special consideration in each case of the impact of those uses upon the

neighboring property. These cases can be reviewed individually for their appropriateness and authorized through a Special Use Permit.

The property located at 406 E. Broadway has been used previously as a single-family residence. The applicant is requesting to use the property as a short-term rental. In January 2024, the City Council approved Ordinance 24-01-02 which provides definition and standards for Short Term Rentals.

A Short-Term Rental within the Downtown Tourist Area may be permitted outright when the property can meet the defined site standards. Those site standards include sufficient off-street parking, a minimum of two onsite off-street parking spaces for up to three bedrooms and a City rental license.

The property at 406 E. Broadway has no off-street parking. In December 2012 the City vacated the alleyway which eliminates parking at the rear of the property. There is no access off of Broadway onto the property for parking nor is there enough space to provide off-street parking from Broadway. Residences on E. Broadway have typically parked along E. Broadway if there was not an option for parking off-street. The street allows parking on both sides of the street.

The property at 406 E. Broadway is a two-bedroom home that will house no more than four individuals. This would imply that no more than two vehicles would be necessary to park at the residence during stays, certainly no more than four.

Staff finds that the proposed special use can be compatible with the surrounding properties and can be operated in an appropriate manner so as not to cause concern for the public health and safety and adjacent land uses.

Staff has shared this application with the Historic Preservation Commission at the June 12 meeting and did not receive any comments.

Being a new special use permit, staff would suggest an initial time limit to allow for appropriate review after it has been in operation for a couple of years.

Staff Recommendation/Action Requested:

City staff recommends approval of the Special Use Permit for a two (2) year time period.

Respectfully Submitted,
Melinda Mehaffy
Economic Development Director

Attachments:

Exhibit A – Vicinity Map

Melinda Mehaffy, Economic Development Director

ATTACHMENTS:

Description	Type	Upload Date
Ordinance	Ordinance	6/27/2024
Meeting Summary Excerpt	Cover Memo	6/26/2024
Vicinity Map	Exhibit	6/27/2024

ORDINANCE NO. _____

AN ORDINANCE APPROVING A SPECIAL USE PERMIT FOR THE OPERATION OF A SHORT-TERM RENTAL IN DISTRICT “R-3”, CLUSTER, TOWNHOUSE OR GARDEN APARTMENT DISTRICT AT 406 E. BROADWAY, CITY OF EXCELSIOR SPRINGS, CLAY COUNTY, MISSOURI

WHEREAS, the Planning and Zoning Commission of Excelsior Springs, Missouri (the “Commission”) considered the application by William and Cinthia Molini (the “Applicant”) for a Special Use Permit for the operation of a Short-Term Rental in District “R-3”, Cluster, Townhouse or Garden Apartment District at 406 E. Broadway, Excelsior Springs, Missouri; and

WHEREAS, the Commission held a public hearing on the application on June 24, 2024, and recommended approval of the Special Use Permit for a two-year time period; and

WHEREAS, proper public notice of the public hearing was published one (1) time in the official newspaper of the City.

NOW THEREFORE, be it ordained by the City Council of the City of Excelsior Springs, Missouri, as follows:

Section 1. Subject to the conditions and restrictions herein set forth, the Applicant’s request for a special use permit for the operation of a Short-Term Rental in District “R-3”, Cluster, Townhouse or Garden Apartment District at 406 E. Broadway, Excelsior Springs, Missouri is hereby approved.

Section 2. The Special Use Permit shall be granted for a period of two (2) years. Prior to expiration of the Special Use Permit, the applicant may apply for extension/renewal.

Section 3. The Applicant shall comply with all other Municipal Code requirements.

Section 4. The Mayor, the City Manager, the City Clerk and other appropriate City officials are hereby authorized to take any and all actions as may be deemed necessary or convenient to carry out and comply with the intent of this Ordinance and to execute and deliver for and on behalf of the City all certificates, instruments, agreements and other documents, as may be necessary or convenient to perform all matters herein authorized.

Section 5. This Ordinance shall be in full force and effect from and after its passage and approval.

INTRODUCED IN WRITING, read by title two times, passed and approved the _____ day of _____, 2024.

Mark D.Spohn, Mayor

ATTEST:

Shannon Stroud, City Clerk

REVIEWED BY:

Molly McGovern, City Manager

PLANNING AND ZONING COMMISSION

MEETING SUMMARY EXCERPT

June 24, 2024

1. **SUP-24-003 – An application by William and Cinthia Molini for a Special Use Permit for the operation of a short-term rental in the R-3 Cluster, townhouse or Garden Apartment District at 406 E. Broadway. (Public Hearing)**

Chairman Simmons asked for the staff report.

Ms. Mehaffy presented the information in the staff report.

Chairman Simmons asked the commission if they had any questions.

Hearing no questions, Chairman Simmons opened the public hearing at 6:05.

William Molini, 24217 NE 136th Terr., Excelsior Springs, MO (applicant) said he didn't foresee a problem with parking, it's only a two (2) bedroom house. He cannot predict the future but doesn't think there will be an issue with using it as a short-term rental and they are not trying to cause any problems.

Chairman Simmons asked if anyone else would like to speak.

Kristi Shewell who resides at 407 E. Broadway across the street, said she likes what the Molini's did with the property, however she has a concern when she purchased her home, the neighborhood was supposed to be a revitalization project. With this property being a short-term rental instead of a single-family residence the apartment building across from it and the white one down the road a little way has been deemed unsafe I'm trying to figure out where the revitalization is. She doesn't want to stop the Molini's from doing their project, but wants it on record that it was a revitalization project in the Boarding House District. She wants neighbors that's why she moved there. Also is the property going to be left vacant during the winter months other than the winter holiday parade? With it being vacant for a long period of time what will happen to the property?

Chairman Simmons asked if anyone else wanted to speak, hearing none. Chairman Simmons closed the public hearing at 6:09.

Ms. Mehaffy: to address Ms. Shewell's concerns 408 and 418 E. Broadway, the three (3) story building and the white building have been deemed dangerous and structurally unsound by a structural engineer we have under contract. We are pursuing an option that would allow us to do lead-based paint and asbestos abatements at those two (2) properties, then tear those properties down to make way for potentially new homes there.

The Molini's did offer to buy the lot on the west side of 406 E. Broadway to build a garage however that would not be consistent for a Historic District and the City Code does not allow for a vacant lot to have just a garage on it even it was combine that is not what that neighborhood looks like. We are hopeful we will see more development here.

Chairman Simmons said that the revitalization grants take a lot of paper work, time, and a lot of red tape. Funds might be available and maybe not. These are good plans for our downtown. Another program is the 353-tax abatement. Both of these programs move at a slower pace then what we as a community would like to see.

Chairman Simmons asked for commission discussion on the application. Hearing none, he called for a motion.

Commissioner Gerdes made the motion to approve SUP-24-003 with the stipulation of a two (2) year term.

Commissioner Goldstein second the motion
Motion Carried.

Vote: Motion passed 5-0-0

Yes: Commissioners Simmons, Gerdes, Griffey, Goldstein and Van Till.

No: Commissioner: None

Abstain: None

###



City Council Meetings
Council Meeting 7/1/2024

To: Mayor and City Council
From: Molly McGovern, City Manager
Date: 6/26/2024
RE: Consideration of Board Appointments - Resolution No. 1516

Regarding the appointment of Board and Commission members, Mayor Spohn plans to make the following appointments by Resolution at the Regular City Council Meeting on Monday, July 1, 2024 at six o'clock in the Council Chambers. Appointments are subject to Council approval:

NAME: Ms. Cindy Spellman
BOARD: Board of Zoning Adjustment
HISTORY: Member appointed until 9/30/25 (to fill opening after John McGovern was elected to council)

NAME: Mr. Brandon Block
BOARD: Parks & Recreation Board
HISTORY: Member appointed until 5/31/27 (to fill vacancy left by Jessica Meyers)

NAME: Ms. Christy Marker
BOARD: Planning & Zoning Commission
HISTORY: Member appointed until 9/30/25 (to fill vacancy left by Sandy Barnes)

NAME: Mr. Don Kelly
BOARD: Planning & Zoning Commission
HISTORY: Member appointed until 9/30/26 (to replace Bill Griffey)

A motion and vote is necessary to approve the appointments.

Respectfully submitted,

Molly McGovern, City Manager

ATTACHMENTS:

Description	Type	Upload Date
Resolution	Resolution Letter	7/1/2024

RESOLUTION NO. _____

A RESOLUTION APPROVING THE BOARD APPOINTMENTS OF CINDY SPELLMAN TO BOARD OF ZONING ADJUSTMENT, BRANDON BLOCK TO PARKS & RECREATION BOARD, AND CHRISTY MARKER AND DON KELLY TO PLANNING & ZONING COMMISSION.

WHEREAS, on July 1, 2024, the City Council of the City of Excelsior Springs, Missouri (the “City”) appoints Board and Commission Representative Cindy Spellman to the Board of Zoning Adjustment, Brandon Block to the Parks & Recreation Board, and Christy Marker and Don Kelly to the Planning & Zoning Commission.

BE IT RESOLVED, that after July 1, 2024, the Mayor and members of the Excelsior Springs City Council will observe the appointments of Cindy Spellman to the Board of Zoning Adjustment, Brandon Block to the Parks & Recreation Board, and Christy Marker and Don Kelly to the Planning & Zoning Commission.

THIS RESOLUTION PASSED AND APPROVED THIS ____ DAY OF _____, 2024.

APPROVED:

Mark D. Spohn, Mayor

ATTEST:

Shannon Stroud, City Clerk

REVIEWED BY:

Molly McGovern, City Manager



**Parks and Recreation
Council Meeting 7/1/2024**

To: Mayor and City Council
From: Nate Williams, Director of Parks, Recreation, & Community Center
Date: 6/26/2024
RE: Consideration of Park Naming Policy - Resolution No. 1517

Nate Williams, Director of Parks, Recreation, & Community Center

ATTACHMENTS:

Description	Type	Upload Date
Resolution	Resolution Letter	6/26/2024
Facility Naming Policy	Exhibit	6/26/2024

RESOLUTION NO. _____

A RESOLUTION APPROVING A PARK NAMING POLICY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EXCELSIOR SPRINGS, MISSOURI, AS FOLLOWS:

Section 1. The City Council hereby approves the Park Naming Policy, a copy of which is attached hereto and incorporated herein.

Section 2. The City shall, and the officials, agents, and employees of the City are hereby authorized and directed to, take such further action, and execute such documents, certificates, and instruments as may be necessary to carry out and comply with the intent of this Resolution.

Section 3. This Resolution shall be in full force and effect from and after its passage and approval.

THIS RESOLUTION PASSED AND APPROVED THIS ____ DAY OF _____, 2024.

ATTEST:

Mark D. Spohn, Mayor

Shannon Stroud, City Clerk

REVIEWED BY:

Molly McGovern, City Manager



Excelsior Springs Parks & Recreation Department Park Naming Policy

Purpose:

The purpose of this policy is to establish a standardized procedure for the naming or renaming of parks within Excelsior Springs Parks and Recreation Department, ensuring names reflect the community's values, heritage, and environmental features, while excluding the use of individual or family names.

Scope:

This policy applies to all municipal parks and recreational areas.

Guiding Principles:

- 1. Community Values and Heritage:** Park names should reflect the cultural, historical, and social values of the community.
- 2. Geographical Significance:** Names may highlight geographical features such as rivers, hills, and other natural landmarks.
- 3. Ecological Features:** Consideration should be given to the local flora, fauna, and natural environment.
- 4. Public Input:** Community involvement and feedback are essential in the naming process.
- 5. Avoiding Personal Names:** To maintain inclusivity and neutrality, names of individuals or families will not be used.

Policy:

1. Initiation of Naming/Renaming Process:

- The Parks & Recreation Department (P&R) may initiate the naming or renaming process.
- Community members may also submit a petition to P&R with at least 100 signatures from residents.

2. Submission Guidelines:

- Proposals must be submitted in writing to P&R.
- Each submission should include:
 - Suggested name and rationale.
 - Explanation of how the name aligns with the guiding principles.
 - Supporting materials, if applicable (maps, historical references, ecological data).

3. Evaluation Criteria:

- Names will be evaluated based on relevance to community values, geographical significance, ecological features, and overall suitability.
- Names should be unique to avoid confusion with existing parks or facilities.
- Consideration of potential cultural sensitivities and inclusiveness.

4. Public Engagement:

- P&R may host public meetings and forums to gather community input.
- An online platform may be available for residents to submit feedback and suggestions.
- A 30-day public comment period will be held for any proposed names.

5. Selection Process:

- A Park Naming Committee (PNC) will be formed, comprising P&R staff, P&R Administrative Board members, and also may include community representatives.
- The PNC will review all submissions and public feedback.
- The PNC will shortlist up to five names and present them to the P&R Administrative Board.

6. Approval and Implementation:

- The P&R Administrative Board will make the final decision based on the PNC's recommendations and community input.
- Once approved, the name will be officially adopted, and signage will be updated accordingly.

7. Renaming Existing Parks:

- Renaming will be considered only in exceptional circumstances, such as significant changes in the park's character or community values.
- The process will follow the same steps outlined for naming new parks.

8. Documentation and Record-Keeping:

- All proposals, public comments, and final decisions will be documented and archived by P&R.

Policy Review:

This policy will be reviewed periodically by the P&R Administrative Board to ensure it remains relevant and effective in reflecting the community's evolving values and needs.

Effective Date:

This policy is effective as of [Effective Date].

Approval:

This policy has been approved by the Parks & Recreation Board on [Approval Date].

This policy ensures a fair and inclusive process for naming or renaming parks, promoting community involvement while preserving the cultural, geographical, and ecological identity of the municipality.



Public Works
Council Meeting 7/1/2024

To: Mayor and City Council
From: Chad Birdsong, Public Works Director
Date: 6/26/2024
RE: Consideration of Hall of Waters Boiler Replacement - Resolution No. 1518

Chad Birdsong, Public Works Director

ATTACHMENTS:

Description	Type	Upload Date
Cover letter	Cover Memo	6/26/2024
Resolution	Resolution Letter	6/27/2024
Agreement with American Boiler & Mechanical	Cover Memo	6/26/2024
Bid Tab	Cover Memo	6/26/2024
North Point Proposal	Cover Memo	6/26/2024
American Boiler & Mechanical Proposal	Cover Memo	6/26/2024



Director of Public Works
201 E Broadway
Excelsior Springs, MO 64024

Phone:(816) 630-0755
Fax: (816) 630-9528

July 1st, 2024

To: Mayor and City Council
From: Chad Birdsong, Public Works Director
Re: Hall of Waters Boiler Replacement Project

Due to the age and condition of the existing gas fired boiler at the Hall of Waters, we have been working with North Point Boiler and American Boiler & Mechanical to prepare a scope of work and submit bids for the replacement of it. We also looked into the option of going with an electric boiler with the assistance of Ameren, but due to the required cost of the 3-phase electrical up grades that the building would need, makes that option not feasible. Both North Point and American Boiler submitted bids for this project and the bid tab is attached along with both of the proposals. Capital Improvements discussed and allocated the funding for this needed improvement to the Hall of Waters.

At this time, we would recommend awarding the project to American Boiler & Mechanical in the amount of \$154,305.00 for the replacement of the boiler and the required plumbing and electrical connections as outlined in the scope of work. This also includes the removal of the existing two old boilers.

An agreement is attached for this work with American Boiler and Mechanical and a resolution has been prepared and is attached for your consideration and approval of this project.

Please feel free to call me if you have any questions regarding this item.

Chad Birdsong,
Public Works Department

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT WITH AMERICAN BOILER SERVICES,
INC. FOR THE BOILER REPLACEMENT PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EXCELSIOR SPRINGS,
MISSOURI, AS FOLLOWS:

Section 1. The City Council approves the Agreement, in substantially the form attached hereto, by and between the City and American Boiler Services, Inc. for the Boiler Replacement Project. The Mayor is authorized to execute the agreement on the City's behalf.

Section 2. The officers, agents and employees of the City are hereby authorized to execute all documents and take such steps as they deem necessary and advisable to carry out and perform the purpose of this Resolution.

Section 3. This Resolution shall be in full force and effect from and after the date of its passage.

THIS RESOLUTION PASSED AND APPROVED THIS ____ DAY OF _____, 2024.

Mark D. Spohn, Mayor

ATTEST:

Shannon Stroud, City Clerk

REVIEWED BY:

Molly McGovern, City Manager

**AGREEMENT BETWEEN
CITY OF EXCELSIOR SPRINGS AND**

American Boiler Services, Inc.

FOR

Boiler Replacement Project

CONTRACTOR: American Boiler Services, Inc.

CONTRACT PRICE: \$ 154,305.00

AGREEMENT BETWEEN CITY OF EXCELSIOR SPRINGS AND CONTRACTOR

BOILER REPLACEMENT PROJECT

THIS AGREEMENT, made and entered into as of the _____ day of _____, 2024, by and between the City of Excelsior Springs, Missouri (“City”), and American Boiler Services, Inc. (Contractor) shall govern all Work to be provided by Contractor for City on the Project.

In consideration of the mutual covenants and consideration herein contained, City and Contractor AGREE as follows:

**ARTICLE I
THE PROJECT AND THE WORK**

- A. Contractor shall provide and pay for all Work for the Project.
- B. “Project,” as used in this Agreement and the other Contract Documents, means the building, facility, and/or other improvements for which Contractor is to provide Work under this Agreement. It may also include construction by City or others.
- C. “Work,” as used in this Agreement and the other Contract Documents, means all labor, services, materials, supplies, tools, equipment, supervision, management, and anything else necessary to accomplish the results and objectives described in Exhibit A (Scope of Work) and Exhibit B (Specifications and Drawings) to this Agreement and the other Contract Documents, in full compliance with all requirements set forth in the Contract Documents, subject to additions, deletions, and other changes as provided for in this Agreement. The Work may refer to the whole Project, or only a part of the Project if work on the Project also is being performed by City or others. Contractor represents that it has evaluated and satisfied itself as to all conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, condition, layout, and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) labor supply and costs, and (4) availability and cost of materials, tools, and equipment. City shall not be required to make any adjustment in either the Contract Amount or the time for performance of the Work because of Contractor’s failure to do so.

**ARTICLE II
CONTRACT AMOUNT**

- A. Provided Contractor performs all Work in accordance with the Contract Documents and complies fully with each and every obligation of Contractor under the Contract Documents, City shall pay Contractor the sum of **\$154,305.00**. This amount shall include all costs, permit fees, profit, overhead, expenses, taxes, and compensation of every kind related to the Work, and shall be referred to as the “Contract Amount.”
- B. Payment shall be full compensation for all labor, services, materials, supplies, tools, equipment, supervision, management, and anything else necessary to complete the respective items in place, in full compliance with all requirements set forth in the Contract

Documents. All costs, permit fees, profit, overhead, expenses, taxes, and compensation of every kind related to the Work are included in Contract Amount. No labor, services, materials, supplies, tools, equipment, supervision, management, or anything else required by the Contract Documents for the proper and successful completion of the Work shall be paid.

- C. City represents that it is exempt from Missouri state sales and use taxes on material and equipment to be incorporated into the Work. City shall provide Contractor a Project Exemption Certificate that complies with Missouri law.

**ARTICLE III
PROGRESS OF WORK /SUBMITTALS**

- A. Contractor shall commence performance of the Work on the date indicated in a written notice (“Notice to Proceed”) that shall be given by City to Contractor.
- B. Contractor shall complete all Work not later than [REDACTED] as indicated in the Notice to Proceed for commencement of performance of the Work. If Contractor fails to complete all Work by this date, Contractor shall pay City \$00.00, as liquidated damages and not as a penalty, for each day after this date until completion of all the Work is achieved.
- C. Recovery of liquidated damages is not the City’s exclusive remedy for Contractor’s failure to achieve substantial or final completion in accordance with this Agreement.
- D. Time is of the essence in the performance of the Work and any other Contractor obligations under the Contract Documents. Contractor shall upon commencement of construction work daily to complete the Work except for Saturdays, Sundays, holidays, and days of inclement weather. This Paragraph does not preclude Contractor from working Saturdays, Sundays, holidays, or days of inclement weather. Contractor shall give City at least 48 hours’ notice if intending to work on Saturday, Sunday, holidays or days of impending inclement weather.
- E. Promptly after the execution of this Agreement, and in any event before commencing performance of the Work, Contractor shall submit to City for approval a construction schedule that specifies the dates on which Contractor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from City. Upon City’s written approval of the schedule, Contractor shall comply with it unless directed by City to do otherwise. Contractor shall update the schedule on a monthly basis or at more frequent appropriate intervals if required by the conditions of the Work and the Project. With each application for payment under Article V of this Agreement, Contractor shall submit an updated, current schedule. Neither the original schedule nor any update shall exceed time limits current under the Contract Documents.
- F. If City determines that performance of the Work is not progressing as required by the Contract Documents or that the Work is being unnecessarily delayed or will not be finished within the prescribed time, City may, in City’s sole discretion and in addition to

any other right or remedy City may have, require Contractor, at Contractor's sole cost, to accelerate Contractor's progress. Such acceleration shall continue until the progress of the Work complies with the Contract Documents and clearly indicates that all Work will be completed within the prescribed time.

- G. Contractor shall submit to City for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Contractor shall be responsible to City for the accuracy and conformity of its submittals to the Contract Documents. Contractor shall prepare and deliver its submittals to City in a manner consistent with the construction schedule and in such time and sequence so as not to delay performance of the Work. Review and approval of any Contractor submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of the Contract Documents unless express written approval is obtained from City specifically authorizing such deviation, substitution, or change. If the Contract Documents do not contain submittal requirements pertaining to the Work, Contractor agrees upon request to submit in a timely fashion to City for review and approval by City any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be requested by City. Contractor shall perform all Work strictly in accordance with approved submittals. City's approval does not relieve Contractor from responsibility for defective work resulting from errors or omissions of any kind on the approved submittals.
- H. As used throughout the Contract Documents, "day" means calendar day, unless it is specifically and expressly defined otherwise.

**ARTICLE IV
CONTRACT DOCUMENTS**

- A. The following documents, and any other documents that are attached to, incorporated by reference into, or otherwise included in them, and all Change Order, form the entire agreement between City and Contractor, and are the Contract Documents:
 - 1. This AGREEMENT BETWEEN CITY OF EXCELSIOR SPRINGS AND CONTRACTOR.
 - 2. SCOPE OF WORK (Exhibit A to this Agreement).
 - 3. The SPECIFICATIONS and DRAWINGS (Exhibit B to this Agreement).
 - 4. PERFORMANCE BOND (Exhibit C to this Agreement).
 - 5. PAYMENT BOND (Exhibit D to this Agreement).
 - 6. PREVAILING WAGE RATES (Exhibit E to this Agreement).
- B. Contractor represents that it has examined and become familiar with the Contract Documents in their entirety, that all ambiguities, inconsistencies, and conflicts observed by Contractor have been called to City's attention in writing and have been resolved in writing to Contractor's satisfaction. Except for actual conflict between provisions in the Contract Documents, making it impossible for Contractor to comply with all provisions of the Contract Documents, the Contract Documents shall be cumulative, and

Contractor shall comply with all provisions of all Contract Documents. In case of actual conflict, Contractor shall notify City of the conflict in writing and then shall comply with such provisions of the Contract Documents as City directs.

ARTICLE V PAYMENTS

- A. Before submitting its first application for payment, Contractor shall provide City with a schedule of values dividing the Work, and the Contract Amount, into workable categories in a form acceptable to City. Each application for payment shall be based upon the percentage of actual completion of each category, multiplied by the dollar value of such category.
- B. On or about the first day of Contractor's monthly accounting period, Contractor shall submit an application for payment, in form acceptable to City, to the City representative designated in Article XII. In addition to the amount of payment requested in the application for payment, each application shall list the original Contract Amount, the amount Contractor has invoiced City to date, the amount Contractor has received to date, total additions to and deletions from the Contract Amount pursuant to approved Change Orders, and an itemization of any further additions to or deletions from the Contract Amount that Contractor claims. Contractor shall identify each subcontractor and supplier whom Contractor intends to pay from the requested payment and shall state the amount Contractor intends to pay each such subcontractor and supplier. An application shall not include a request for payment for any portion of the Work that was performed or furnished by a subcontractor or supplier if Contractor does not intend to pay such subcontractor or supplier from such payment. Contractor shall include with each application all supporting documentation that City may require. City shall pay Contractor within 30 days of delivery of Contractor's application and all supporting documentation to City's designated representative, provided all Work and documentation are acceptable to City. Within 15 days of its receipt of payment from City, Contractor shall pay all subcontractors and suppliers to whom payment is owed from the amount paid to Contractor.
- C. All payments under this Agreement shall be made only upon the approval of Public Works Director ("PW Director"). The PW Director shall review each application for payment and certify for payment such amounts as he determines are due Contractor. From the total amount certified, the PW Director shall withhold 0.0 percent as retainage until Substantial Completion of all the Work, as defined in Paragraph F below. The Finance Director, upon presentation of such certificate, shall prepare a check for the sum certified to be due (exclusive of retainage), payable out of the funds available for Contractor.
- D. Neither PW Director's certificate nor payment made to Contractor shall constitute acceptance of any part of the Work. Contractor shall remain obligated to perform all Work in accordance with the Contract Documents.
- E. With each application, Contractor shall submit a signed certificate of receipt of prior

payments and release of claims and rights in connection with prior payments, in a form approved by City. City may, at its option, also require a similar receipt and release of claims and rights from each subcontractor or supplier performing any Work, before making any payment to Contractor. The subcontractors' and suppliers' receipts and releases shall be in a form approved by City and shall indicate that (except for retainage) all debts for work performed or materials supplied included on any previous payment application to City from Contractor have been satisfied and that the subcontractor or supplier waives and releases any and all claims or rights in connection therewith.

- F. Contractor's retainage shall not be released until Contractor notifies City's designated representative in writing, and PW Director certifies, that all the Work is substantially complete. The Work shall not be deemed substantially complete until all specific requirements stated in the Contract Documents for achievement of substantial completion of all the Work have been satisfied and PW Director determines that all the Work is sufficiently complete in accordance with the Contract Documents so that City can occupy and utilize all the Work for its intended use. Retainage shall be paid to Contractor within 30 days of PW Director's certification that all the Work is substantially complete. If there are minor items remaining to be completed after substantial completion, an amount equal to 150% of the value of each item, as determined by PW Director, shall be withheld until such items are completed.
- G. Contractor shall not be entitled to final payment for the Work until Contractor submits an application for final payment, all requirements of the Contract Documents are complied with, and PW Director issues his or her certificate to that effect. City, within 30 days after the delivery of PW Director's certificate, shall pay Contractor all remaining funds that Contractor is due under this Agreement.
- H. Acceptance of final payment by Contractor shall release City from all further obligations to Contractor, except as to such amounts, if any, Contractor has identified in its application for final payment as claimed by Contractor. All claims not identified in the application for final payment are waived.
- I. City may withhold final or any other payment to Contractor on any reasonable basis, including but not limited to the following:
 - 1. Unsatisfactory job progress,
 - 2. Defective Work not remedied,
 - 3. Failure to make payments to subcontractors or suppliers,
 - 4. Reasonable evidence that all Work cannot be completed for the unpaid balance of the Contract Amount,
 - 5. Uncured damage by Contractor or subcontractors or suppliers to property of City or others,
 - 6. Contractor's uncured breach of this Agreement or other Contract Documents, or
 - 7. Contractor's failure to provide requested documentation.
- J. If Contractor does not pay subcontractors or suppliers for labor and/or material properly provided, City may, but shall not be required to, pay subcontractors and suppliers directly. Any payments made to subcontractors and suppliers shall be charged against

the Contract Amount. This provision shall not confer any right upon any subcontractor or supplier to seek payment directly from City.

**ARTICLE VI
CHANGES/CLAIMS**

- A. PW Director, without invalidating this Agreement, may at any time and without notice to any surety, order additions to, deletions from, or other changes to the Work. Upon receipt of such an order, in writing, Contractor shall proceed as and when directed in the order. Contractor shall not proceed with any addition, deletion, or other change without a written order from PW Director. No oral direction or order, and no written order from anyone other than PW Director, shall constitute authority for Contractor to proceed with any addition, deletion, or other change. If Contractor undertakes any addition, deletion, or other change without a written order from PW Director, Contractor shall not be entitled to any increase in the Contract Amount or the time for performance of the Work, and Contractor shall be solely and completely responsible for the acceptability to City of the addition, deletion, or other change.
- B. If a change to the Work causes a net increase or decrease in the cost of Contractor's performance, the Contract Amount shall be increased or decreased as follows:
1. If the Work involved is covered by unit prices, by application of such unit prices to the quantities of the items involved; or
 2. If the Work involved is not covered by unit prices, by a lump sum as to which Contractor and City mutually agree prior to the commencement of performance of the change; or
 3. If the Work involved is not covered by unit and agreement to a lump sum is not reached, the change shall be performed on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of a net increase in the cost of Contractor's performance, a reasonable allowance on the net increase for overhead and profit, subject to the following:

Contractor shall keep and present, in such form as City may prescribe, an itemized accounting of expenditures and savings together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs shall be limited to the following: costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; costs of materials, supplies, and equipment, including cost of transportation; rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others; costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and additional costs of supervision and field office personnel directly attributable to the change.
- C. If a change to the Work causes an increase or decrease in the time required for Contractor's performance, an equitable adjustment to the time for performance shall be made.

- D. A change in the Contract Amount or the time for performance of the Work shall be accomplished only by written Change Order, which shall state the increase or decrease, if any, in the Contract Amount or the time for performance. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that City has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any such enrichment, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in the time for performance of the Work.
- E. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including but not limited to all direct and indirect costs associated with such change and any and all adjustments to the Contract Amount and time for performance of the Work.
- F. If Contractor is delayed or interfered with at any time in the commencement or prosecution of the Work by an act or neglect of City, an employee, officer, or agent of City, or an architect or engineer or separate contractor engaged by or on behalf of City, or by changes ordered in the Work, an act of God, fire, unavoidable casualty, or other similar cause over which Contractor has no control and that Contractor could not reasonably anticipate, the time for performance of the Work shall be equitably extended, provided that Contractor gives notice as provided for in Paragraph G below.
- G. Any claim by Contractor for additional time or money for the performance of the Work, including but not limited to any claim based on or arising out of an addition to, deletion from, or other change to the Work and/or delay to or interference with commencement or prosecution of any of the Work, shall be submitted to City's designated representative within seven days of the beginning of the event for which the claim is made or on which it is based. If any claim is not submitted within the seven-day period, it shall be deemed waived.
- H. No change or claim, nor any delay or dispute concerning the determination of any increase or decrease in the amount of time and money for the performance of the Work, shall excuse Contractor from proceeding with prosecution of the Work, including any Work as changed.

**ARTICLE VII
INSURANCE**

- A. Contractor shall, at all times during the performance of any of the Work, maintain not less than the following insurance coverages and amounts:
 - 1. **COMMERCIAL GENERAL LIABILITY** - Contractor shall provide coverage for Contractor, City, its employees, officers, and agents, and any architects, engineers, or other design professionals engaged by or on behalf of City against claims for damage to property and/or illness of, injury to, or death of any person or persons related to or arising out of the Work. Such coverage shall have not less than the following limits:

- a. Each occurrence \$2,000,000.00
- b. Personal/advertising injury \$2,000,000.00
- c. General aggregate \$2,000,000.00
- d. Products/completed operations aggregate \$2,000,000.00
- e. The following coverage shall be included:
 - Blanket contractual liability
 - Products/completed operations
 - Personal/advertising injury
 - Broad form property damage
 - Independent contractors
 - Explosion, Collapse, and Underground Damage

2. AUTOMOBILE LIABILITY - Contractor shall provide coverage for Contractor, City, its employees, officers, and agents, and any architects, engineers, or other design professionals engaged by or on behalf of City against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired, and/or non-owned vehicle and shall include protection for any auto, or all owned autos, hired autos, and non-owned autos. The coverage shall have not less than a combined single limit of \$2,000,000.00 for each accident.

3. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY - This insurance shall protect Contractor against all claims under applicable state workers' compensation laws. Contractor also shall be protected through employer's liability coverage against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workers' compensation law. The limits shall not be less than the following:

- a. Workers' Compensation: Statutory
- b. Employer's Liability:
 - Each accident \$1,000,000.00
 - Disease – each employee \$500,000.00
 - Disease – policy limit \$1,000,000.00

B. All insurance shall be written by an insurer or insurers acceptable to City and with a minimum financial rating not lower than "B+XI" in Best's Insurance Guide, latest edition. All insurance shall be written on an occurrence basis, and all aggregate limits shall apply in total to the Work only. Each policy providing general liability coverage or automobile liability coverage (including any umbrella or excess policy that provides any required general or automobile liability coverage) shall provide contractual liability coverage for all indemnity obligations of Contractor under the Contract Documents. Each policy providing general liability or automobile liability coverage (including any umbrella or excess policy that provides any required general or automobile liability coverage) shall, in form satisfactory to City, (1) name as additional insureds City, its employees, officers, and agents, and any architects, engineers, or other design professionals engaged by or on behalf of City, and (2) provide that it is primary to any other insurance maintained by any additional insured, which other insurance shall be excess or contingent. The insurance provided to the additional insureds shall apply, without limitation, to injury or

damage caused by work included in the products/completed operations hazard.

- C. All policies and certificates of insurance shall provide no less than 30 days' prior written notice to City in the event of cancellation, expiration, non-renewal, alteration, or reduction (including but not limited to reduction by paid claims) of coverage or limits contained in the policy or evidenced by the certificate of insurance. Contractor shall furnish City a certificate or certificates and copies of policies, all satisfactory to City, evidencing that Contractor has all the required insurance and is in compliance with this Article VII. The certificate or certificates and copies of policies shall be delivered to City's designated representative not less than seven days before Contractor first performs any of the Work. All policies except Workers' Compensation and Employer's Liability shall contain a waiver of subrogation in favor of City, its employees, officers, and agents, and architects, engineers, or other design professionals engaged by or on behalf of City.
- D. Contractor also shall maintain any additional insurance coverages and any higher limits provided for elsewhere in the Contract Documents and shall furnish City any additional insurance documentation provided for elsewhere in the Contract Documents.
- E. If any part of the Work is subcontracted, each subcontractor, or Contractor on behalf of the subcontractor, shall maintain liability and worker's compensation insurance coverages and amounts satisfying all the requirements of this Article VII. Certificates and copies of policies, satisfactory to City, evidencing the required insurance and compliance with this Article VII shall be delivered to City's designated representative not less than seven days before the subcontractor first performs any of the Work.

**ARTICLE VIII
INDEMNITY**

- A. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless City, its employees, officers, and agents, and any architects, engineers, or other design professionals engaged by or on behalf of City, from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that such claim, damage, loss, or expenses is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused or allegedly caused by the negligent acts or omissions of Contractor, a subcontractor or supplier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. This obligation is not intended to, and shall not, negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Paragraph.
- B. In claims against any person or entity indemnified under the preceding Paragraph A by an employee of Contractor, a subcontractor or supplier, or anyone directly or indirectly employed by them or for whose acts they may be liable, the indemnification obligation under Paragraph A shall not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or a subcontractor or supplier

under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**ARTICLE IX
PATENT LIABILITY**

Contractor shall pay all royalties and license fees. Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold City, its officers, employees, and agents harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in the Drawings, Specifications, or other documents prepared by City or anyone acting under City's direction. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to City.

**ARTICLE X
COVENANT AGAINST UNDUE INFLUENCE**

- A. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, City shall have the right to void this Agreement without liability and, in its discretion, to deduct from the Contract Amount, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- B. Contractor warrants that no payments have been or shall be made, directly or indirectly, by or on behalf of Contractor to or for the benefit of any officer, employee, or agent of City who may reasonably be expected to influence the decision to requisition, issue or take any action with respect to this Agreement. Contractor shall allow a certified public accounting firm to examine, at City's expense, such of Contractor's books and records as may be necessary, in the accountant's reasonable opinion, to verify Contractor's compliance with this Article X.

**ARTICLE XI
RECORDS REGARDING PAYMENT**

For at least two (2) years after final payment to Contractor, Contractor shall maintain, in accordance with generally accepted accounting principles, such records as are necessary to substantiate that all applications for payment hereunder were valid and properly chargeable to City. For lump sum contract Work, the records shall demonstrate that City was billed at appropriate times for proper percentages of completion and for payments to subcontractors and suppliers. For any Work, including extra Work, not charged on a lump sum basis, the records to be maintained hereunder include but are not limited to all contracts, subcontracts, material bills, correspondence, accounting records, time sheets, payroll records, canceled checks, orders, and invoices pertaining to City's account. City or its representative shall, upon

reasonable prior notice to Contractor, be given the opportunity to audit these records at any time during normal business hours to verify the accuracy of Contractor's invoices and charges.

**ARTICLE XII
NOTICES**

- A. The following persons are designated by the respective parties to act on behalf of such party and to receive all written notices and Payment Applications:

<u>For City:</u>	<u>For Contractor:</u>
Molly McGovern, City Manager	Gregg Sledd, Project Manager and Estimator
City of Excelsior Springs, MO	American Boiler & Mechanical
201 E. Broadway	411 E. 10 th Street
Excelsior Springs, MO 64024	Kansas City Mo. 64116

Any notice required by the Contract Documents to be given in writing or that either City or Contractor wishes to give to the other in writing shall be signed by or on behalf of the party giving notice. The notice shall be deemed to have been given when it is received at the address stated above for the addressee or at such other address as the addressee may furnish the other party.

- B. Contractor's designated representative shall be available to meet with City at any time during the performance of the Work and shall have full authority to act on Contractor's behalf on any matter related to this Agreement and/or the Work.

**ARTICLE XIII
DEFAULT**

- A. If Contractor fails to comply, becomes unable to comply, or with reasonable probability (as determined solely by City) will become unable to comply with any of Contractor's obligations under the Contract Documents, including but not limited to (1) failure at any time to furnish sufficient labor or supervision, sufficient materials or services (including but not limited to insurance and bonds) complying with the Contract Documents, or sufficient or properly operating tools, equipment, or other items necessary for the performance of the Work, (2) failure in any respect to prosecute the Work with promptness and diligence, (3) causing any stoppage of, delay in, or interference with any work of City or any others on the Project, or (4) abandonment by Contractor of all or any part of the Work, Contractor shall be in default, and if the default is not corrected to City's satisfaction within 72 hours of Contractor's receipt of written notice to correct from City, City may, in addition to any other right or remedy City may have, furnish any necessary labor, supervision, materials, tools, equipment, services, or other items through City or others, to correct the default, at Contractor's expense, or terminate Contractor's right to proceed with performance of any part or all of the Work and take over and complete the performance of such Work, through City or others, at Contractor's expense.
- B. If City exercises its right to take over and complete any part or all of the Work, City and

its designees shall have access to and may take possession of Contractor's materials, tools, equipment, and other items at the Project site, enroute to the site, or in storage or being manufactured or fabricated for the Project away from the site, as may be necessary to prosecute the Work taken over by City, and may employ Contractor's employees or former employees, all without any liability to Contractor.

- C. Contractor shall be liable for and shall pay to City all costs and expenses of whatsoever nature incurred by City as a result of any default by Contractor, including but not limited to the cost of labor, supervision, materials, tools, equipment, services, overhead, travel, and legal and accounting fees. Contractor also shall be liable for and shall pay to City all charges, liabilities, fines, penalties, losses, damages, and claims sustained by or assessed against City as a result of any delay or disruption resulting from any default by Contractor. The total amount of such costs, expenses, charges, liabilities, fines, penalties, losses, damages, and claims may be deducted by City from the amount, if any, otherwise due Contractor, and Contractor shall pay City the full amount of any excess of such total over the amount otherwise due Contractor.
- D. No right or remedy conferred upon or reserved to City by the Contract Documents is exclusive of any other right or remedy provided or permitted in the Contract Documents or by law or equity, but each right or remedy is cumulative of every other right or remedy, and every right or remedy may be enforced concurrently or from time to time. No exercise by City of any right or remedy shall relieve Contractor from full and absolute responsibility for all of Contractor's obligations under the Contract Documents.
- E. No failure or delay of City to give notice to correct any default of Contractor or to exercise any of City's rights or remedies shall waive or excuse the default, and City shall remain free to pursue all rights and remedies. No failure of City to insist, in any one or more instances, upon the performance of any of Contractor's obligations under the Contract Documents shall be deemed or construed as a waiver or relinquishment of City's right to insist upon strict performance of the obligation in any future instance.

ARTICLE XIV TERMINATION FOR CITY'S CONVENIENCE

City may, at any time, for any reason, and without Contractor's being in default, terminate Contractor's performance of any part or all of the Work for City's own convenience by giving written notice to Contractor. Upon receipt of notice of termination for City's convenience, Contractor shall, to the extent directed by City, stop work and turn over to City or City's designee materials and equipment purchased for the Work. City shall pay Contractor, in accordance with the Contract Documents, for only so much of the Work as is actually performed as of the termination for convenience. City shall not be obligated to Contractor for any further payment, including but not limited to prospective overhead or profit on unperformed work. If a termination by City of Contractor's right to proceed on the ground of default by Contractor is determined later to have been improper, the termination automatically shall be converted to a termination for City's convenience, and City's obligation to Contractor shall be limited to payment to Contractor as provided in this Article XIV.

ARTICLE XV
COMPLIANCE WITH LAWS

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. Contractor hereby certifies that, pursuant to Section 34.600, RSMo, it has not engaged in a boycott of: Goods or services from the State of Israel; Companies doing business in, or with, Israel; Companies 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.
- B. Contractor shall comply with all federal, state, and local laws, ordinances, rules, regulations, orders, and the like applicable to the Work. Specifically, but without limitation:
1. Not less than the prevailing hourly rate of wages, as set out in Exhibit E to this Agreement, shall be paid to all workers performing any of the Work.
 2. Contractor shall forfeit a penalty to City of \$100 per day (or portion of a day) for each worker who is paid less than the prevailing rate for performing any of the Work by Contractor or any subcontractor.
 3. With each application for payment submitted by Contractor to City, Contractor shall include (a) a signed statement, in form acceptable to City, showing, for each weekly payroll period that ended during the period covered by the application for payment, the name, address, social security number, occupation, and craft of each worker employed by Contractor in connection with the Work and, for each such worker, the number of hours worked each day, the total hours worked during the payroll period, the gross amount earned, an itemization of all deductions, and the net wages paid and (b) a corresponding statement from each subcontractor of any tier that employed any workers in connection with the Work during the period covered by the application for payment.
 4. Final payment to Contractor shall not be made until Contractor and each subcontractor have submitted to City an affidavit, in form acceptable to City, stating that Contractor or subcontractor has fully complied with the provisions and requirements of the Missouri prevailing wage law, Sections 290.210 through 290.340, RSMo.
 5. Contractor and each subcontractor shall require each on-site employee to complete the ten-hour safety program required under Section 292.675, RSMo, within 60 days of beginning any of the Work on the Project, if he or she has not previously completed the program or does not have documentation of having done so. Contractor shall forfeit a penalty to City of \$2,500 plus \$150 for each on-site employee employed by Contractor or a subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training.
- C. Contractor shall secure all permits from public and private sources necessary for the fulfillment of Contractor's obligations under the Contract Documents.

ARTICLE XVI
SUBCONTRACTS, ASSIGNMENT, OR TRANSFER

- A. Except with the prior written consent of City, Contractor shall not assign this Agreement or any money due or to become due Contractor or issue a subcontract or purchase order for more than \$15,000.00 to any person or entity for any or all of the Work. Contractor shall notify PW Director in writing of each proposed subcontract and purchase order for more than \$15,000.00. If City does not notify Contractor in writing within 96 hours after City's receipt of notice of a proposed subcontract or purchase order that City does not consent or needs more time or information in order to consider the proposed subcontract or purchase order, City will be deemed to consent. If City consents or is deemed to consent to a subcontract or purchase order, Contractor shall not later issue a subcontract or purchase order to a different subcontractor or supplier for some or all of the Work covered by the original subcontract or purchase order without obtaining City's further prior written consent. City's consent to any assignment, subcontract, or purchase order shall not relieve Contractor from any obligation under the Contract Documents, nor shall it create any obligation from City to any assignee, subcontractor, or vendor.
- B. Each subcontract or purchase order issued by Contractor for any of the Work shall be in writing and shall provide that City is an intended third-party beneficiary of the subcontract or purchase order.
- C. Each subcontract or purchase order issued by Contractor for any of the Work shall provide that it is freely assignable by Contractor to City and is further assignable by City to another contractor or other entity. Contractor hereby assigns to City all its interest in any present or future subcontract or purchase order issued by Contractor for any or all of the Work. This assignment shall be effective upon acceptance by City in writing and only as to the specific subcontract(s) and/or purchase order(s) that City designates in the writing. This assignment may be accepted by City at any time, whether before or after final payment to Contractor, and may not be withdrawn by Contractor without City's written consent.

ARTICLE XVII
ACCESS TO SITE/CLEANING UP

- A. Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, around the site of the Work and all adjacent areas.
- B. Representatives of City may inspect or review any Work performed by Contractor, and consult with Contractor, at any time. City's inspections or reviews shall not constitute acceptance or approval of Work unless specifically stated in writing. Contractor shall meet with City at the request of City. Contractor shall remain solely responsible for the performance of the Work as required by the Contract Documents, notwithstanding any suggestions or observations made by City or another person or entity with respect to the Work.

- C. Contractor shall at all times during performance of the Work keep the Project site clean and free from debris resulting from the Work. Before discontinuing Work in an area, Contractor shall clean the area and remove all rubbish and equipment, tools, machinery, waste, and surplus materials. Contractor shall make provisions to minimize and confine dust and debris resulting from construction activities. If Contractor fails to comply with cleanup duties within 24 hours after written notification from City of non-compliance, City may implement cleanup measures without further notice and deduct the cost from any amounts due or to become due Contractor.

**ARTICLE XVIII
CONTRACTOR QUALIFICATIONS**

Contractor warrants that it maintains all necessary licenses, registration, competence, and experience to perform all the Work.

**ARTICLE XIX
CONTRACTOR PERFORMANCE/WARRANTY**

- A. Contractor shall exercise high professional skill, care, and diligence in the performance of the Work, and shall carry out its responsibilities in accordance with customarily accepted good professional practices.
- B. Contractor warrants that the Work will conform to the requirements of the Contract Documents and be free from defects.
- C. In addition to Contractor's obligations under Paragraph B above, if, within one year after final completion of all of the Work, any Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from City to do so.
- D. Nothing in Paragraph C above establishes a period of limitations applicable to other obligations of Contractor under the Contract Documents, including but not limited to Contractor's obligations under Paragraph B above. The one-year period referred to in Paragraph C above applies only to the specific obligation to correct the Work stated in Paragraph C.

**ARTICLE XX
STORAGE OF MATERIALS AND EQUIPMENT**

Only materials and equipment that are to be used directly in the Work shall be brought to and stored at the Project site by Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, and all other casualty or damage is solely the responsibility of Contractor.

**ARTICLE XXI
SAFETY**

- A. Contractor shall be responsible for initiating, maintaining, and supervising all safety

precautions and programs in connection with performance of the Work and shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to (1) employees and other persons at the Project site or who may be affected by the Work, (2) materials and equipment stored at on- site or off-site locations for use in performance of the Work, and (3) other property at the Project site or in its vicinity, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

- B. Contractor shall give notices required by and comply strictly with applicable laws, ordinances, rules, regulations, orders, and the like bearing on safety of persons or property or their protection from damage, injury, or loss.
- C. If City deems any part of the Work or the Project site unsafe, City, without assuming responsibility for Contractor's safety program, may require Contractor to stop performance of the Work or take corrective measures satisfactory to City, or both, at Contractor's sole cost. If Contractor does not adopt corrective measures, City may perform them or have them performed and deduct their cost from the Contract Amount.

**ARTICLE XXII
INDEPENDENT CONTRACTOR**

Contractor is an independent contractor, and neither Contractor nor any subcontractors, suppliers, employees, or agents shall be deemed an employee or agent of City for any purpose.

**ARTICLE XXIII
CONFLICT**

Contractor shall promptly upon discovery notify City of any conflict, ambiguity or inconsistency in the Contract Documents, or between any Contract Document and actual field conditions, and City shall resolve such conflict, ambiguity or inconsistency in its sole discretion.

**ARTICLE XXIV
BONDS**

Before commencing any Work, Contractor shall obtain from a recognized surety acceptable to the City, a performance bond and a payment bond, in the forms at Exhibits C and D to this Agreement. The surety must appear on the U.S. Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Missouri. Each such bond shall be for the full Contract Amount. The premium for these bonds is included in the Contract Amount.

**ARTICLE XXV
SEVERABILITY**

If any provision of this Agreement is held to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not). If an unenforceable provision is modified or disregarded in accordance with this Article XXV, the rest of the Agreement is to remain in effect

as written, and the unenforceable provision is to remain in effect as written in any circumstances other than those in which the provision is held to be unenforceable.

**ARTICLE XXVII
DISPUTES/ATTORNEY FEES**

- A. If a dispute arises out of or relates to this Agreement or other Contract Documents, or the breach thereof, and if the dispute cannot be resolved through negotiation, City and Contractor shall first try in good faith to resolve the dispute by mediation before resorting to litigation.
- B. In the event of litigation between Contractor and City concerning the Project or this Agreement or other Contract Documents, the prevailing party shall be entitled to recover from the other party its reasonable attorney fees, costs, and expenses arising from such litigation.

**ARTICLE XXVIII
TITLES**

The titles given to the Articles in this Agreement are for ease of reference only and do not define or limit any of the provisions of any of the Articles.

**ARTICLE XXIX
ENTIRE AGREEMENT**

This Agreement and the other Contract Documents constitute the entire agreement between the parties with respect to their subject matter. Any prior agreements, understandings, or other matters, whether oral or written, are of no further force or effect. Subject to Article VI of this Agreement, this Agreement and any other Contract Document may be amended, changed, or supplemented only by written agreement executed by both of the parties.

THIS AGREEMENT shall be binding on the parties only after it has been duly executed by City and Contractor.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives.

CITY OF EXCELSIOR SPRINGS, MISSOURI:

By: _____

Mark Spohn, Mayor

Dated: _____

Attest:

Shannon Stroud, City Clerk

AMERICAN BOILER SERVICES, INC.:

BY: _____

Name: _____

Title: _____

Dated: _____

**EXHIBIT A
SCOPE OF WORK**

Contractor shall perform the following Work:

The Project consists of

- Remove two 100hp steam boilers and condensate/feed water tank and dispose of offsite.
- Install one new Hurst 100hp steam boiler and one Fabtek condensate/feed water tank.
- Run new water piping from existing water softener to new feed tank.
- Run new feed water piping from new tank to new boiler.
- Run new 8" steam piping from boiler to lower-level steam system.
- Insulate all new piping as needed.
- Install new wiring for new boiler and feed tank.
- Get state of Missouri boiler inspection for certification.
- Blow down separator not included due to low pressure steam system.

EXHIBIT B
SPECIFICATIONS AND DRAWINGS

The following Specifications and Drawings govern the Contractor's performance of the Work:

Not Applicable.

EXHIBIT C – PERFORMANCE BOND

FOR THE FAITHFUL PERFORMANCE of each of the terms and stipulations of the AGREEMENT BETWEEN CITY OF EXCELSIOR SPRINGS, MISSOURI, AND CONTRACTOR, dated, _____ 2024, **American Boiler Services, Inc.**, as Principal, and _____, as Surety, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns, unto the CITY OF EXCELSIOR SPRINGS, in the penal sum of \$ _____ lawful money of the United States, conditioned that in the event Principal shall faithfully and properly complete the Work required by the Contract Documents described in the Agreement and perform all of its obligations and duties pursuant to the terms of the Contract Documents, including, without limitation, all warranty obligations and duties and including those under which Principal agrees to pay the prevailing hourly rate of wages for each craft or type of worker required to execute the Work in the locality as determined by the Department of Labor and Industrial Relations of Missouri or by final judicial determination pursuant to the provisions of Sections 290.210 to 290.340 and 290.550 through 290.580, inclusive, of the Revised Statutes of Missouri, then this obligation to be void, otherwise to remain in full force and effect. No change, extension of time, alteration or addition to the terms of the Contract Documents or to the Work to be performed thereunder shall in any way affect Surety’s obligation on this Bond, and Surety waives notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Work.

PRINCIPAL

By: _____
(Signature)

Printed Name: _____

Title: _____

Date: _____

SURETY

By: _____
(Signature)

Printed Name: _____

SURETY POWER OF ATTORNEY MUST BE ATTACHED

EXHIBIT D – PAYMENT BOND

American Boiler Services, Inc. and the CITY OF EXCELSIOR SPRINGS, MISSOURI, have entered into an Agreement dated _____, 2024.

American Boiler Services, Inc., as Principal, and _____, as Surety, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns, unto the City of Excelsior Springs, in the penal sum of \$ _____ lawful money of the United States, conditioned that in the event Principal shall pay the prevailing hourly rate of wages for each craft or type of worker required to execute the Work required by the Contract Documents described in the Agreement in the locality as determined by the Department of Labor and Industrial Relations of Missouri or by final judicial determination pursuant to the provisions of Sections 290.010 to 290.340 and 290.550 through 290.580, inclusive, of the Revised Statutes of Missouri, and shall timely pay to the proper parties all amounts due for material, machinery, equipment and tools, consumed or used in connection with the construction of such Work, all premiums for insurance required by the Contract Documents, and all labor performed in such Work, whether by Principal, subcontractor, or otherwise, then this obligation to be void, otherwise to remain in full force and effect, and the same may be sued on at the instance of any subcontractor, material supplier, laborer, mechanic, or other interested party, in the name of the City of Excelsior Springs, to the use of such parties, for any breach of the considerations hereof. No change, extension of time, alteration or addition to the terms of the Contract Documents or to the Work to be performed thereunder shall in any wise affect Surety's obligation on this Bond, and Surety waives notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Work.

PRINCIPAL

By: _____
(Signature)

Printed Name: _____

Title: _____

Date: _____

SURETY

By: _____
(Signature)

Printed Name: _____

SURETY POWER OF ATTORNEY MUST BE ATTACHED.

EXHIBIT E
PREVAILING WAGE RATES

For all contracts over \$75,000 the Contractor shall perform the Work using the following Missouri prevailing wage requirements:

Clay County Annual Wage Order No. 31.

**Bid Tab for:
 2024 Hall of Waters Boiler Replacement
 City of Excelsior Springs**

Item/Description	American Boiler & Mechanical	North Point Boiler and Combustion				
100 hp Steam boiler with condensate & feed water tank with complete install (plumbing connection and electrical) and removal of existing 2 old boilers	\$154,305.00	\$225,900.00				
Total	\$154,305.00	\$225,900.00				



Boiler and Combustion

24 Hour Service

Code Stamp Certification

PROPOSAL

The City of Excelsior Springs- Hall of Waters

201 E Broadway

Excelsior Springs, MO 64024

Attention: Chad & Shannon

Ref: **Boiler system improvement plan *TURNKEY PROJECT***

North Point Boiler & Combustion is pleased to offer the following budgetary proposal for the lump sum amount of:

\$ 231,520.00

Missouri Gas & Energy rebate pricing: **\$ 225,900.00**

Scope of Work:

- Provide subcontractor guidance to remove a section of block wall & install shoring supports on the east side of the existing boiler room, this can be supplemented with a rolling steel door or left open (for cost benefit)
- Demo (2) existing Pacific National firetube boilers, dispose of offsite.
- Alter housekeeping pads to accommodate to new boiler.
- Clean up/remove all existing piping that will not be integrated into the new system.
- Supply & install (1) 100 HP Scotch Marine steam boiler, new high efficiency natural gas burner along with feedwater tank & condensate receiver tank.
- Make piping tie-ins for steam, water & gas connections.
- Run all new electrical to boiler/burner controls (remote operation) & safeties/limits.
- Perform equipment startup & train owners on new operating procedure.
**will use original building exhaust stack if it meets code inspection*

Equipment Breakdown:

- (1) Powermaster 100 HP- 15# wet back 3-pass Scotch Marine boiler w/ stainless steel jacketing
- (1) Oilon GP 90 Burner (Siemens Controls) Parallel Positioning and 8 to 1 turndown
- Atmospheric feedwater tank w/ x2 vertical centrifugal pumps
- Blowdown separator tank- ASME stamped
- Condensate receiver tank w/ duplex pumps
- All piping, valves & fittings for water, gas & steam connections

Exclusions:

- Stack inspection cost
- Abatement
- Wall demo/door install
- Overtime work
- Applicable taxes

Justin E. Lee

Project Coordinator

jlee@northpointboiler.com

(816) 831-5898

ACCEPTANCE

This proposal is not an agreement of contractor to provide equipment, material or services, but once signed by Purchaser at the place indicated below, it becomes Purchaser's offer to buy the equipment and services described herein, at the prices and on the terms and conditions indicated in this Proposal upon credit approval. Upon purchase order or signing of contract, one-third of the total amount will be billed, unless other payment arrangements are negotiated.

PURCHASER:

The undersigned offers to purchase the equipment and service described above at the prices and on the terms and conditions indicated in this proposal.

Signature: _____ Date: _____

Name: _____ Title: _____

SELLER'S ACCEPTANCE:

You are hereby notified that the undersigned hereby accepts your offer based on this proposal this _____ day of _____ 20 ____.

Signature: _____

Name: _____

Title: _____

TERMS AND CONDITIONS OF PROPOSAL

1. NO MODIFICATIONS

The contract arising by acceptance of your offer pursuant to this proposal shall not be amended, modified or rescinded except by written agreement signed by an authorized official of each party, expressly referring to this contract. The Purchaser understands that no sales person or other representative of the Seller has the authority to make any agreement, contract, warranty, term, promise, condition or understanding, express or implied, which is not expressed herein or in a written modification of this contract signed by authorized officials of each party.

2. REMEDIES OF SELLER

Prior to the installation of the equipment and materials to be furnished and sold pursuant to this contract, title to said equipment and materials shall remain with the Seller, and, in the case of non-payment, Seller shall be entitled to any and all remedies of an unpaid seller under the Missouri Uniform Commercial Code, including the right of the seller to repossess said equipment and materials with or without legal process. After any or all of said equipment and materials have been installed pursuant to this contract, then as to that part of said equipment and materials which have been installed, and the labor and service related thereto, the Seller shall have the right to place a mechanic's lien against the premises where said equipment and material have been installed pursuant to the applicable statutes and law relating to mechanic's liens for the furnishing of labor and materials. Any payment due Seller under this contract is payable on receipt of Seller's invoice. A late payment charge of 1½% per month (annual percentage rate of 18%) shall be added to the unpaid past due balance after 30 days and Purchaser agrees to bear any legal expense incurred including cost of correction.

3. WARRANTIES

The Seller, unless equipment is sold without service, shall furnish and install, free of charge, such part or parts of the machinery and apparatus sold hereunder that may become defective in workmanship or material within one year from the date of delivery or installation. The Seller's obligation shall be merely to furnish and install duplicate parts as provided herein, and the Seller shall not be liable for defects arising from normal wear and tear, or breakage caused by carelessness or negligence in operation, nor is Seller responsible for any alterations that may be made in the machinery and equipment without its consent. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR MERCHANTABILITY, AND FITNESS FOR ANY PARTICULAR PURPOSE.

4. LIMITS OF LIABILITY

The Seller shall in no event be held liable or accountable to the Purchaser and/or to any other party whatsoever for the actual, incidental and/ or consequential damages or losses due to, but not limited to, any one of the following: interruption in use of equipment, or stoppage of production, failure to maintain desired temperatures or humidity levels, electrical power surge or loss, high or low voltage, inadequate power, blown or burned out main or branch fuses, open circuit breaker, lack of adequate natural gas or fuel supply or pressure, inadequate or excessive water supply or pressure, inadequate or excessive hot water or steam supply or pressure, water in oil, contamination of water supply or atmosphere, accident, freezing, flooding, lightning, storms, malicious mischief, willful damage, misuse, abuse, negligence, fire, explosion, theft, clogged filters, delays in installation and/or services, time or manner of service of any equipment, failure to meet completion dates, engineering and/or design defects, improper installation, operation of equipment beyond design conditions, labor disturbances, strikes, riot, civil commotion, lockouts, commercial delays, spoilage, loss of business, asbestos, rust or corrosion, the inability to procure materials and/or parts from the usual source of supply, war conditions, Acts of God or for any contingencies that are unavoidable or beyond the control of the Seller. Seller is not responsible for conforming to any governmental codes, laws and/or regulations. Under no circumstances shall Seller be responsible or liable for any indirect, incidental or consequential damage or alleged personal injury of any kind relating to or arising out of the existence, effect, removal or treatment of an Organic Pathogen (i.e., any type of bacteria, virus, fungus, mildew, wet or dry rot, mold or mycotoxin, as well as their spores, odors and byproducts, along with any reproductive body they produce, and any material containing them). In no event, shall the Seller be liable to the Purchaser and/or to any party whatsoever for actual, incidental and/or consequential damages or losses. Seller shall not be required to identify, detect, encapsulate, or remove asbestos, or products or materials containing similarly hazardous substances. Seller shall not be liable for any losses or damages due to inability of the building structure to properly support the equipment installed. It is expressly agreed that the seller assumes no liability for negligence or failure whatsoever. All labor is to be performed during Seller's regular working hours unless so specified otherwise in writing.

5. INSTALLATION AND COMPLETION

Unless specifically enumerated in proposal as Seller's responsibility, Purchaser is responsible for: providing access (and removing structures or objects which interfere with this access) to equipment installation location; for structural supports for all equipment supplied; for local permits and codes; for providing adequate utility source (gas, electric, steam, water) adjacent to equipment. Completion dates are estimates only. No contract will be made to complete on a specified date unless in writing, signed by the Corporate President or Secretary of the Seller.

6. INSURANCE

Purchaser agrees to insure said merchandise against the hazards of fire at Purchaser's sole cost and to be responsible in any event for any loss or damage to the said machinery and equipment by fire, theft or other casualty. Purchaser agrees to assign to the Seller upon request the proceeds of any insurance paid by reason of loss from any cause whatsoever to the merchandise described herein. Seller shall apply said proceeds to the balance due by the Purchaser under this contract.

7. ASSIGNMENT

No transfer, renewal, extension or assignment of this contract or any interest hereunder or loss, injury, or destruction of said property shall release the Purchaser from his obligation hereunder. Every assignee of the Seller and/or its assigns shall be entitled to all the rights and remedies of the Seller. The term "Seller" wherever used in this contract includes Seller's successors and assigns, unless otherwise defined.

8. ACCEPTANCE

Prior to written acceptance by Seller, the Seller shall have no responsibility for any work performed or financial obligations incurred by or on behalf of the Purchaser in anticipation of Seller's acceptance.

9. CANCELLATION

After written acceptance by Purchaser, should the Purchaser decide to cancel all or any part of the work specified in this proposal, the Purchaser shall reimburse to the Seller any costs already incurred, including but not limited to restocking fees for parts and equipment affected by such cancellation.

10. PROJECT INVOICING / PAYMENT TERMS

Project shall be invoiced in three installments. 1/3 upon offer to purchase, 1/3 upon fifty percent (50%) completion, and the final 1/3 upon final completion of said project. Payment terms are Net 30 from date of invoice.

11. NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.



PROPOSAL

6/10/2024

Quote No. 24-2494

City of Excelsior Springs
Attn: Chad Birdsong

Re: Hall of Waters

Thank you for the opportunity to quote you on the following for your consideration. We propose to supply the necessary labor, material and equipment for American Boiler & Mechanical to perform the following:

- Remove two 100hp steam boilers and condensate/feed water tank and dispose of offsite.
- Install one new Hurst 100hp steam boiler and one Fabtek condensate/feed water tank.
- Run new water piping from existing water softener to new feed tank.
- Run new feed water piping from new tank to new boiler.
- Run new 8" steam piping from boiler to lower-level steam system.
- Insulate all new piping as needed.
- Install new wiring for new boiler and feed tank.
- Get state of Missouri boiler inspection for certification.
- Blow down separator not included due to low pressure steam system.

The lump sum price for this scope of work shall be:

One Hundred Fifty Four Thousand Three Hundred and Five Dollars- \$154,305.00

Excludes Applicable Sales Tax

Exclusions:

- Sales tax
- Stack inspection cost
- Wall demo/door installation
- Electrical/Control Work
- Freight
- Asbestos or lead paint abatement
- Overtime or holiday wages
- Engineering/calculations of any kind
- Work outside of this proposal.

TERMS AND CONDITIONS

American Boiler Services, Inc (and all subsidiaries, here in referred to as "the Company"). Our terms are Net 30 days, and in the event payments are late or otherwise not received by American Boiler & Mechanical when due, then Buyer shall make further payments calculated at a rate of 1.5% of the total amount due per month. In the event American Boiler & Mechanical takes any action to collect any payments due as a result of any late or non-payment, then Customer further agrees to pay any and all reasonable expenses and costs of such collection, including reasonable attorneys' fees.



4950 Bischoff Avenue
St. Louis, MO 63110
314-865-3000

411 E. 10th Avenue
Kansas City, MO 64116
816-421-0382

18724 Highway 59
Neosho, MO 64850
417-658-1130

400 N. 2nd St.
Salina, KS 67401
785-827-6829

1845 S. Sheridan
Wichita, KS 67213
316-260-5240





All credit card transactions will have a 3% processing fee added to the invoice amount.

The price quoted in this proposal shall be held firm for thirty (30) days, unless specifically stated otherwise above, after such time, the price may be subject to change. Raw material increases that hit due to delays in contracting or other trades will be passed on in an initial change order. All work performed under this agreement shall be invoiced as the job progresses. Our applicable sales tax has not been included in the quoted price. Should you choose to accept this proposal, please sign, date, and return a signed copy to our office within thirty (30) days from the date of this proposal.

The Company will not proceed with work beyond the agreed upon contract or scope of work, including design criteria, without a change order to include: the agreed upon price, permission to proceed, agreement to payment, and the extension of any completion dates (if affected).

The Company is not responsible for delays due to inclement weather. This includes safety concerns pertaining to road conditions and site conditions for outdoor work. The Company will monitor the weather forecast and communicate any concerns to the customer. If the work site is "out of town" and the forecast includes inclement weather, the Company reserves the right to delay said work, OR the customer agrees to additional charges including: Eight (8) hours of time for each individual on the project at that time as well as additional subsistence per individual.

Should inclement weather cause a change in scope for outdoor work, the project is subject to additional charges related to the scope change.

No adjustments for liquidated or consequential damages have been included in this proposal and the Company will not be liable for such.

Customer is to supply the necessary water, electricity, and sanitary facilities unless specifically addressed in the proposal or scope of work.

The Company has not included testing, handling or removal of hazardous waste unless specifically addressed in the proposal or scope of work.

The Company has not included NDE or other third-party testing unless specifically addressed in the proposal or scope of work.

Pricing is based upon the Company having an uninterrupted work schedule with unfettered and full access to the work required.

The Company assumes no responsibility for sizing or configuration of customer supplied equipment or parts or customer supplied calculations and/or sizing of systems or components.

The Company has no liability for acts, errors, omissions, and/or delays caused by the customer, independent contractors, agents employed by the customer.

No permits or bonding costs were included in this proposal unless specifically addressed in the proposal or scope of work.

~~Warranty Services performed carry a one year labor and material, from the date of installation, warranty unless otherwise stated. All manufacturer warranties are a pass-through from the Company to the customer and are subject to manufacturer warranty terms. There is no warranty on used parts and equipment.~~



4950 Bischoff Avenue
St. Louis, MO 63110
314-865-3000

411 E. 10th Avenue
Kansas City, MO 64116
816-421-0382

18724 Highway 59
Neosho, MO 64850
417-658-1130

400 N. 2nd St.
Salina, KS 67401
785-827-6829

1845 S. Sheridan
Wichita, KS 67213
316-260-5240





The customer and its representatives agree not to solicit the Company's employees or its subcontractor employees to work direct for the customer, either by change of employment direct to the customer or by "moonlighting". The Company considers its employee roster and any contact information to be confidential. Violation of this may result in legal action to collect damages from the customer in the amount equal to lost billing rates for each employee for up to 1 year along with any interest and attorneys fees necessary to collect damages.

The Company will not be responsible for field verifying any engineered or drawings provided by others.

The Customer shall indemnify and hold harmless American Boiler Services, Inc. and all of its personnel from and against any and all claims, damages, losses, and expenses (including reasonable attorney's fees) arising out of or resulting from the performance of the services, provided that any such claims, damage, loss or expense is caused in whole or in part by the negligent act or omission and/or strict liability of the Customer, anyone directly or indirectly employed by the Customer (except the Company and contractors directly or indirectly furnished by the Company) or anyone for whose acts any of them may be liable. This indemnification shall include any claim, damage, or losses due to the presence of hazardous materials.

AMERICAN BOILER SERVICES, INC. D/B/A AMERICAN BOILER & MECHANICAL ("AMERICAN BOILER & MECHANICAL") MAKES NO WARRANTIES, AND CUSTOMER HAS NOT RELIED ON ANY WARRANTIES, EXCEPT FOR THOSE EXPRESSLY PROVIDED BY AMERICAN BOILER & MECHANICAL TO THE CUSTOMER IN WRITING. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED. IN NO EVENT SHALL AMERICAN BOILER & MECHANICAL BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT AMERICAN BOILER & MECHANICAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL AMERICAN BOILER & MECHANICAL'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID TO AMERICAN BOILER & MECHANICAL PURSUANT TO THIS AGREEMENT.



4950 Bischoff Avenue
St. Louis, MO 63110
314-865-3000

411 E. 10th Avenue
Kansas City, MO 64116
816-421-0382

18724 Highway 59
Neosho, MO 64850
417-658-1130

400 N. 2nd St.
Salina, KS 67401
785-827-6829

1845 S. Sheridan
Wichita, KS 67213
316-260-5240





NOTICE TO MISSOURI OWNERS:

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC’S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

NOTICE TO KANSAS OWNERS:

IF YOU PAY THE CONTRACTOR FOR WORK OR EQUIPMENT, MATERIAL OR SUPPLIES DELIVERED WITHOUT HAVING RECEIVED, FROM THE CONTRACTOR, A WAIVER OF LIEN BY ALL SUBCONTRACTORS OR OTHER EVIDENCE OF PAYMENT TO ALL SUBCONTRACTORS, A LIEN MAY BE FILED AGAINST YOUR PROPERTY BY A SUBCONTRACTOR. YOU MAY REQUEST FROM THE CONTRACTOR A LIST OF ALL SUBCONTRACTORS. IF YOU RECEIVE NOTICE OF THE FILING OF A LIEN STATEMENT BY A SUBCONTRACTOR, YOU MAY WITHHOLD FROM YOUR CONTRACTOR, THE AMOUNT CLAIMED IN THE SUBCONTRACTOR’S STATEMENT PENDING RESOLUTION OF THE DISPUTE

Respectfully Submitted by:
American Boiler & Mechanical

Customer Acceptance by:
City of Excelsior Springs

Gregg Sledd
Gregg Sledd – Project Manager

Signature of Acceptance

June 12, 2024
Date of Proposal

Printed Name

Date of Acceptance PO #



4950 Bischoff Avenue
St. Louis, MO 63110
314-865-3000

411 E. 10th Avenue
Kansas City, MO 64116
816-421-0382

18724 Highway 59
Neosho, MO 64850
417-658-1130

400 N. 2nd St.
Salina, KS 67401
785-827-6829

1845 S. Sheridan
Wichita, KS 67213
316-260-5240





Police

Council Meeting 7/1/2024

To: Mayor and City Council
From: Gregory Dull, Chief of Police
Date: 6/26/2024
RE: Consideration of MOU with ESSD for School Resource Officers - Resolution No. 1519

Gregory Dull, Chief of Police

ATTACHMENTS:

Description	Type	Upload Date
Cover Letter	Cover Memo	7/1/2024
Resolution	Resolution Letter	6/28/2024
MOU	Exhibit	6/28/2024



GREGORY A. DULL
CHIEF OF POLICE

POLICE DEPARTMENT
301 SOUTH MAIN STREET
EXCELSIOR SPRINGS, MISSOURI 64024

816.630.2000
Fax: 816.630.4104
www.espolice.com

July 1, 2024

TO: Mayor and City Counsel
FROM: Gregory Dull, Chief of Police
SUBJECT: Consideration of School Resource Officer MOU Agreement

Based upon recommendations from the Missouri School Board Association (MSBA) and the National Association of School Resource Officers (NASRO), the City of Excelsior Springs and the Excelsior Springs School District annually adopt a written Memorandum of Understanding (MOU) agreement regarding our School Resource Officer partnership. The current MOU agreement for the 2023-2024 school year expired on June 30, 2024.

For the upcoming school year, the school district expressed an interest in continuing the partnership and establishing another MOU, which is attached for your review. The Excelsior Springs School District School Board approved the new MOU agreement at their meeting on June 25, 2024, and once again are requesting to fund three (3) SRO positions for the '24-'25 school year. The only notable change from last year's MOU agreement is an increase in the total cost limit from \$165,000 to \$175,000. This increase reflects an increase in the costs associated to the salary and benefits of the three SRO's.

The primary objective of the SRO agreement establishes that the SROs are employees of the police department, and not school district employees. This provides legal protections to both the city and the school district. The agreement also addresses expected costs and terms, and helps formalize the relationship between the school district and the police department.

Please consider the attached resolution authorizing the City Manager and the Chief of Police to execute the School Resource Officer Agreement as presented.

Respectfully Submitted,

Gregory Dull

Gregory Dull
Chief of Police

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING AND APPROVING AN AGREEMENT BETWEEN THE CITY OF EXCELSIOR SPRINGS AND THE EXCELSIOR SPRINGS SCHOOL DISTRICT FOR SCHOOL RESOURCE OFFICERS

WHEREAS, the City Council of the City of Excelsior Springs, Missouri (the “City”), recognizes the Excelsior Springs Police Department (ESPD) has a long-standing commitment to the development of trusting relationships between law enforcement and the faculty, staff and students of schools within Excelsior Springs; and

WHEREAS, the City finds it in the best interest of the City to authorize and approve the agreement to provide School Resource Officers from the Excelsior Springs Police Department to the Excelsior Springs School District for the academic year 2024-2025, under the “Agreement” attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the City Manager and the Chief of Police of the City of Excelsior Springs, Missouri are hereby authorized to approve the agreement for the academic year 2024-2025 between ESPD and the Excelsior Springs School District #40.

SO DONE this _____ day of _____, 2024.

ATTEST:

Shannon Stroud, City Clerk

APPROVED:

Mark D. Spohn, Mayor

REVIEWED BY:

Molly McGovern, City Manager

**SCHOOL RESOURCE OFFICER PROGRAM
MEMORANDUM OF UNDERSTANDING
2024-2025 ACADEMIC SCHOOL YEAR**

CITY OF EXCELSIOR SPRINGS, MISSOURI
Excelsior Springs, Missouri

EXCELSIOR SPRINGS SCHOOL DISTRICT
District #40

This Memorandum of Understanding is entered into, this ____ day of _____, 2024, by and between the City of Excelsior Springs, Missouri (hereinafter referred to as the "City" or "Police Department") and the Excelsior Springs School District #40, a school district located within both Clay and Ray County, Missouri (hereinafter referred to as the "District")

WITNESSETH:

- A. The City, by and through its Police Department, agrees to provide the School District with three (3) uniformed Excelsior Springs Police Department officers to serve in the School Resources Officer Program in one or more of the District's schools as School Resource Officers ("SROs"); and
- B. The District and the City desire for this Agreement to guide and direct the School Resource Officer Program.

NOW, THEREFORE, in consideration of the agreements and undertakings hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy therefor being hereby acknowledged, the District and the City agree as follows

II. MISSION AND GOALS:

- A. The mission of the School Resource Officer Program is to reduce incidents of delinquency in or around school by combining law enforcement with educational professionals to address drug and alcohol abuse, youth violence, truancy and other youth issues in an educational environment.
- B. The following goals are shared between the District and the City with regard to the School Resource Officer Program:
 - 1. Provide a safe and respectful school;
 - 2. Enhance the relationship between law enforcement officers and students in the District's schools; and
 - 3. Foster educational programs, which will address tobacco, alcohol, and other drug issues, violence diffusion and prevention, and other safety issues as needed.

III. EMPLOYMENT AND ASSIGNMENT OF THE SCHOOL RESOURCE OFFICERS:

- A. Collaboration of the selection of SROs shall be achieved through the School District's Safety & Security Director, in conjunction with the City. Upon agreeance

of such selection, the City shall provide one (1) SRO to the Excelsior Springs High School and Career Center, one (1) SRO to the Excelsior Springs Middle School, and one (1) SRO to be shared between Cornerstone, Lewis, and Elkhorn Elementary Schools, and the Early Childhood Center. Elkhorn Elementary School is not within the jurisdiction of the Excelsior Springs Police Department, so law enforcement action by SROs will be limited to the extent allowed by law. The Ray County Sheriff's Department will have primary law enforcement jurisdiction at Elkhorn Elementary School.

B. Regular Duty Hours of the School Resource Officers

1. The SRO shall be assigned to the school on a full-time basis during those days and hours the school is in regular session. The SRO shall be on campus from one-half hour prior to the start of classes until one-half hour after the end of the regularly scheduled school day.
2. On early release days, the SRO may be required to attend District meetings or training during the remainder of the day.
3. During the SRO's daily tour of duty, the SRO may be off campus performing such tasks that may be required by their assignments.
4. The SRO may be temporarily reassigned by the City during school holidays, vacations, school closures and/or during the periods of police emergency.
5. Regular working hours may be adjusted on situational basis with the consent of the SRO's supervisor. These adjustments should be approved prior to their being required and should be utilized to cover scheduled school-related activity requiring the presence of a law enforcement officer.

C. Extra duty hours of the School Resource Officer

The City will provide one (1) School Resource Officer for summer programs at no cost, not to exceed thirty (30) days beyond the normal academic calendar.

D. The Role of the School Resource Officers

The role of a School Resource Officer is based on a "triad" approach adopted from training developed and presented by the National Association of School Resource Officers (NASRO) and/or the Missouri School Resource Officers Association (MSROA). The triad philosophy defines a School Resource Officer as fulfilling three main roles: Educator, Counselor/Problem Solver, and Law Enforcement Officer.

1. Educator - The School Resource Officers shall provide educational information in the form of classroom presentations, parent or public presentations, or in-service school staff presentations. Formal presentations shall be made available to these groups on any topic concerning public safety, law related issues, crime prevention, drug abuse prevention, gang prevention, or other topics as appropriate. The School

Resource Officers will act as instructors, or arrange for another SRO or certified public safety instructor, for these respective presentations when invited to do so by the principal or member of the faculty. These presentations shall be conducted in a professional manner and shall be pre-approved by the District's Director of Safety & Security with input from the respective school administrator.

2. Counselor/Problem Solver - The School Resource Officers are not a substitute for school counselors. The SROs may give advice or guidance to students and the education staff within the context of the officer's knowledge, training and experience. The SROs counsel students on a variety of issues, which may range from dealing with anger, personal conflicts, drug and alcohol issues, abuse and neglect, and other issues related to public safety or the law.

The School Resource Officers shall work closely with the District's Director of Safety & Security, school administrators and counselors, social workers, juvenile officers, and other organizations, which service youth in order to provide support to students in need.

3. Law Enforcement Officer - The School Resource Officers shall conduct criminal investigations and make arrests utilizing the same criteria as any other certified law enforcement officer of the City. However, SROs will often work with the District's Director of Safety & Security, school administrators, parents, social service agencies, and perhaps the Clay or Ray County Juvenile Office to explore effective ways to hold juvenile offenders accountable for their actions.

The School Resource Officers shall also gather intelligence information regarding criminal activities involving school-aged or juvenile offenders. This information is then shared with the appropriate resources.

E. Additional Duties of the School Resource Officers

1. The SROs shall coordinate all of their activities with the City, the District's Director of Safety & Security, the principal and staff members concerned, and will seek permission, advice, and guidance prior to enacting any programs within the School.
2. The SROs shall develop expertise in presenting various subjects to the students. Such subjects shall include a basic understanding of the laws, the role of the police, and the police mission.
3. The SROs shall encourage individual and small group discussions with students based on material presented in class to further establish rapport with the students.
4. When requested by the District's Director of Safety & Security or by the respective principal, the SROs shall attend parent/faculty meetings to solicit

support and understanding of the SRO program. Each year, the SROs should provide faculty members, especially new members, an overview of the SRO program.

5. The SROs shall make themselves available for conferences with students, parents, and faculty members in order to assist them with problems of law enforcement, crime prevention, or violence prevention topics. Confidential information shall not be disclosed except as provided by law or court order.
6. The SROs shall become familiar with all community agencies that offer assistance to youth and their families such as mental health clinics, drug treatment centers, etc. The SROs shall make referrals to such agencies and liaise when necessary, thereby acting as a resource person to the students, faculty and staff of the school.
7. The SROs shall assist the District's Director of Safety & Security and principal(s) in developing plans and strategies to prevent and/or minimize dangerous situations that may occur on campus or during school sponsored events.
8. The SROs shall adhere to School Board policy, City policy and legal requirements should it become necessary to conduct formal police activities with the students.
9. An SRO will **immediately** be notified if a weapons threat or possession of a weapon becomes known or needs investigated. This includes weapons that are not firearms, e.g., knives, clubs etc. The SRO will aid in the investigation.
10. If an SRO becomes aware of any criminal investigation at the SRO's respective school(s), the SRO should help coordinate that investigation, even though the SRO may not be the lead investigator. For example, when the SRO becomes aware of a child abuse case, they may not be the lead investigator; however, the SRO will make the necessary contacts with the appropriate investigating agency to facilitate the investigation.
11. The SROs shall take law enforcement action as required. As soon as practical, the SROs shall make the District's Director of Safety & Security, along with the respective principal, aware of such action. At the request of District's Director of Safety & Security or the respective school principal, the SROs shall take appropriate law enforcement action for violations of the law on school property or at related school functions as allowed by Missouri Statutes.
12. The SROs shall give assistance to other law enforcement officers and/or other local law enforcement departments in matters regarding his/her school assignment, whenever necessary.

13. The SROs shall, whenever possible, and in accordance with established overtime procedures, participate in and/or attend school functions.
 14. The SROs will assist with non-campus investigations relating to runaways or truant students that attend the school.
 15. The SROs shall not act as school disciplinarians or conduct searches or frisks on behalf of an administrator for issues only related to school discipline. However, if there is a safety risk; or the District's Director of Safety & Security or the principal believes a violation of law has occurred, and the school district intends to pursue the matter criminally; then an SRO shall be contacted. The SRO shall determine whether law enforcement action is appropriate. If the District's Director of Safety & Security disagrees, then the SRO's supervisor at the City shall be consulted.
 16. The SROs are not to be used for regularly assigned lunchroom duties, hall monitor, bus monitor, in school suspension monitor, or any other regularly assigned duties that are filled by a School or District employee. If there is a problem in one of these areas, the SRO should be actively involved and help the school solve the problem. These solutions will vary, but may include the presence of the SRO in these areas. Even though the SRO is not to be assigned regular duties of another School or District member in these high traffic areas, the SRO should make a consistent and regular practice to be visible in these areas. The SRO's presence will provide great opportunities to make positive contacts with students and to help deter negative issues from occurring.
 17. The SROs should ensure the City (SRO Supervisor) and the District's Director of Safety & Security are notified when the SRO is sick or injured prior to the start of the school day.
 18. The SRO will assist the School District with home visits.
- F. Access to Education Records
1. School officials shall allow the SRO to inspect any public records maintained by the School District to the extent allowed by state and federal law; however, law enforcement officials may not inspect and/or copy confidential student education records except in accordance with Board of Education Policy and Regulations.
 2. If some information in a student's cumulative record is needed in an emergency to protect the health or safety of the student or other individuals, school officials may disclose to the SRO that information which is needed to respond to the emergency situation based on the seriousness of the threat to someone's health or safety.

3. A full explanation as to the need of the information to handle the emergency and the extent to which time is of the essence shall be articulated in the SRO's official report.
4. If confidential student record information is needed, but no emergency exists, the information may be released only upon the issuance of a search warrant or subpoena to produce the records, or with consent of the student's parent or guardian as required by Board Policy or as otherwise allowed by state and federal law.
5. The City, the Police Department and the SROs will comply with the Family Educational Rights and Privacy Act, 20 U.S.C.A. § 1232g, and will indemnify the District, to the extent permitted by law, for any damages suffered by it by reason of its failure to do so.

IV. RIGHTS, DUTIES AND RESPONSIBILITIES OF THE DISTRICT

- A. District Administration shall provide to all the full-time SROs the following materials and facilities, which are deemed necessary to the performance of the SRO duties, with the exception of Elkhorn and the Early Childhood Center:
 1. Access to an air-conditioned and properly lighted private office, which shall contain a telephone to be used for general business purposes. This office may be shared by another SRO, but shall be for SRO use only.
 2. A location for files and records, which can be properly locked and secured.
 3. A desk with drawers, a desk chair, additional guest chair(s), filing cabinet office supplies.
 4. Access to a computer and/or secretarial assistance.
- B. The School Principal will report student acts to the SRO in the time and manner required by § 167.117 RSMo. and the attached Third-Degree Assault Reporting agreement:
 1. The School Principal will immediately report to the SRO student acts that occur on school property, on a school bus in service on behalf of the District, or during school activities that would be assault in the first or second degree if committed by an adult, sexual assault, or deviate sexual assault against a pupil or school employee. (See § 167.117 RSMo.).
 2. The School Principal will report to the SRO student acts that occur on school property, on a school bus in service on behalf of the District, or during school activities that would be assault in the third degree pursuant to the attached Third-Degree Assault Reporting agreement (Annex A).

V. FINANCING OF THE SCHOOL RESOURCE OFFICER PROGRAM

- A. The District agrees to provide a reimbursement to the City for the costs of SRO services at the rate of Seventy-Five Percent (75%) of the base salary and benefits, plus overtime pay for District-related activities when applicable to hours worked of the three (3) assigned SROs.
- B. The City will submit an invoice to the District by May 30th, 2025 reflecting the salary and benefits as described above, and the actual overtime hours worked by the SROs through that date. The District agrees to pay said invoice on or before July 31st, 2025.
- C. For the 2024-2025 Academic School Year, the total costs of the School Resource Program shall not exceed \$175,000.00.

VI. TERM OF THE SCHOOL RESOURCE OFFICER PROGRAM

This program is effective for the twelve-month period beginning on July 1st, 2024, for the academic school year, and shall remain in effect until either June 30, 2025, or until a party provides written notice to the other party indicating a request for either amendment or termination as indicated in section IX, entitled TERMINATION OF AGREEMENT.

VII. EMPLOYMENT STATUS OF THE SCHOOL RESOURCE OFFICER

- A. The School Resource Officer shall remain an employee of the City of Excelsior Springs, Missouri, and shall not be an employee of the District.
- B. The District and the City acknowledge that the School Resource Officers shall remain responsible to the chain of command of the Department. However, the School Resource Officers shall coordinate efforts and activities with the District's Director of Safety & Security and respective school principals.

VIII. DISMISSAL OF SCHOOL RESOURCE OFFICER; REPLACEMENT

- A. In the event the principal of the school to which an SRO is assigned feels that the particular SRO is not effectively performing his or her duties and responsibilities, the principal shall discuss the matter with School District's Director of Safety & Security and the SRO Supervisor. The School District's Director of Safety & Security will try to resolve any issues. However, if the principal and the School District's Director of Safety & Security agree that the respective SRO should be removed from the program then the School District's Director of Safety & Security shall then give this written recommendation to the Deputy Superintendent.
- B. The Deputy Superintendent will exhaust all avenues in an attempt to resolve the situation. If resolution cannot be gained, the recommendation to remove the SRO from the program will be forwarded to the Superintendent of the District. Within a reasonable time after receiving the recommendation to remove the SRO from the program, the Superintendent or his/her designee shall advise the City of the request.

- C. If the City so desires, the Superintendent and the City Manager or his/her designees, shall meet with the SRO to mediate or resolve any problems, which may exist. At such a meeting, specific members of the respective school, along with the School District's Director of Safety & Security and Deputy Superintendent may be required to be present. If, within a reasonable amount of time after commencement of such mediation, the problem cannot be resolved or mediated, or in the event the City does not seek mediation, then the SRO shall be removed from the program and the school. The City shall then provide a replacement SRO as soon as practicable.
- D. The City may dismiss or reassign an SRO based upon City Rules, Regulations and/or General Orders and when it is in the best interest of the people of the City of Excelsior Springs, Missouri, and the District.
- E. In the event of the resignation, dismissal, reassignment or long-term absence of an SRO, the City shall provide a temporary replacement for the SRO within thirty (30) calendar days of receiving notice of such resignation, dismissal, reassignment or long-term absence, when feasible. If the City is unable to provide a temporary replacement, the reimbursement invoice will reflect a commensurate pro-rated reduction in costs to the District.

IX. TERMINATION OF AGREEMENT

- A. This agreement may be terminated by either party upon ninety (90) days written notice that any other party has failed to substantially perform in accordance with the terms and conditions of this Agreement.
- B. Either party upon one hundred eighty (180) days written notice may terminate this Agreement without cause.
- C. Termination of this Agreement may only be accomplished as provided herein.
- D. In the event this Agreement is terminated, reimbursement will be made to the City for all services performed to the date of the termination.

X. EVALUATION OF PROGRAM

- A. It is mutually agreed that the City and the District shall annually evaluate the School Resource Officer Program and implement recommendations and changes as needed and agreed upon.

XI. NOTICES

Any and all notices or any other communication herein required or permitted shall be deemed to have been given when deposited in the United States postal service as regular mail, postage prepaid and addressed as follows:

Dr. Jaret Tomlinson, Superintendent
Excelsior Springs School District #40

300 W. Broadway Ave
Excelsior Springs, MO 64024

Molly McGovern
City Manager
201 E. Broadway Ave
Excelsior Springs, Missouri 64024

XII. GOOD FAITH

- A. The District, the City, their agents and employees agree to cooperate in good faith in fulfilling the terms of this Agreement.
- B. Unforeseen difficulties or questions will be resolved by negotiation between the District Superintendent and the City Manager, or their designees.

XIII. MODIFICATION

This document constitutes the full understanding of the parties and no terms, conditions, understandings or agreement purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the party to be charged.

XIV. NON-ASSIGNMENT

This Agreement, and each and every covenant herein, shall not be capable of assignment, unless the express written consent of the District and the City is obtained.

XV. MERGER

This agreement constitutes a final written expression of all the terms of this Agreement and is a complete and exclusive statement of those terms.

XVI. INSURANCE

It is understood that both the City and the School District are governmental bodies and maintain appropriate insurance coverage.

XVII. LEGAL CONTINGENCIES

It is understood and agreed that this agreement is entered into solely for the benefit of the parties hereto and gives no right to any other party. Without waiving any governmental immunity, sovereign immunity, or official immunity, each party agrees to be responsible and assumes liability for its own actions and omissions and those of its Officers, teachers, staff or any other agent for any incident arising out of or in connection

with this agreement, to the fullest extent required by the law and agrees to save, indemnify, defend and hold the other party harmless from such liability for its own actions.

XVIII. NO WAIVER OF IMMUNITY

Nothing in this Agreement waives any governmental immunity including sovereign immunity or official immunity available to the parties or their agents. The parties hereby expressly reserve all immunities available under Missouri law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duty-authorized officers.

EXCELSIOR SPRINGS SCHOOL DISTRICT #40



Charles (Tray) Harkins III, School Board President

25 June 2024

Date



Dr. Jaret Tomlinson, Superintendent

6/26/2024

Date

CITY OF EXCELSIOR SPRINGS, MISSOURI

Molly McGovern, City Manager

Date

Annex A
Handling of Assaults
AGREEMENT

Between
City of Excelsior Springs
Police Department
&
The Excelsior Springs School District
Clay/Ray County, Missouri
District #40

Definitions:

Revised Missouri State Statute 167.117, states, in any instance when any person is believed to have committed an act which if committed by an adult would be assault in the first, second or third degree, sexual assault, or deviate sexual assault against a pupil or school employee, while on school property, including a school bus in service on behalf of the district, or while involved in school activities, the principal shall immediately report such incident to the appropriate local law enforcement agency and to the superintendent, except in any instance when any person is believed to have committed an act which if committed by an adult would be assault in the third degree and a written agreement as to the procedure for the reporting of such incidents of third degree assault has been executed between the superintendent of the school district and the appropriate local law enforcement agency, the principal shall report such incident to the appropriate local law enforcement agency in accordance with such agreement.

Assault in the third degree

565.054. 1. A person commits the offense of assault in the third degree if he or she knowingly causes physical injury to another person.

2. The offense of assault in the third degree is a class E felony, unless the victim of such assault is a special victim, as the term "special victim" is defined under section 565.002, in which case it is a class D felony.

Assault in the fourth degree

565.056. Assault in the fourth degree. — 1. A person commits the offense of assault in the fourth degree if:

(1) The person attempts to cause or recklessly causes physical injury, physical pain, or illness to another person;

(2) With criminal negligence the person causes physical injury to another person by means of a firearm;

Section 167.117 Third-Degree Assault Reporting Agreement Authorities

- (3) The person purposely places another person in apprehension of immediate physical injury;**
 - (4) The person recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person;**
 - (5) The person knowingly causes or attempts to cause physical contact with a person with a disability, which a reasonable person, who does not have a disability, would consider offensive or provocative; or**
 - (6) The person knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative.**
- 2. Except as provided in subsection 3 of this section, assault in the fourth degree is a class A misdemeanor.**
 - 3. Violation of the provisions of subdivision (3) or (6) of subsection 1 of this section is a class C misdemeanor unless the victim is a special victim, as the term "special victim" is defined under section 565.002, in which case a violation of such provisions is a class A misdemeanor.**
-

The school environment can provide an opportunity for third degree assaults to be perceived that can lead to increased caseload for the Excelsior Springs Police Department and can detract from classroom instruction time. Knowing this, the Excelsior Springs Police Department and the Excelsior Springs School District enter into the following agreement for reporting third degree assaults that RSMO 167.117 requires us to place into writing.

The school district will report all required crimes as determined by law. However, in regard to third degree assaults, school resource officers will have the final discretion to only take an internal school district report on third degree assaults and to not file any related lesser criminal charges when:

1. No victim or parent of the victim (in the cases of juveniles) wishes to press charges and when
2. The injury requires nothing more than minor medical treatment. Examples of minor medical treatment include but are not limited to the use of pain reliever such as acetaminophen, ice pack, bandage, rest, or basic first aid.

Both the Excelsior Springs Police Department and the Excelsior Springs School District realize that in a majority of cases, criminal charges will not be filed and arrests will not be made. However, the Excelsior Springs Police Department will consider filing charges, under special circumstances, as each incident will be reviewed on a case-by-case basis.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duty-authorized officers:

Section 167.117 Third-Degree Assault Reporting Agreement Authorities

EXCELSIOR SPRINGS SCHOOL DISTRICT #40



Charles (Tray) Harkins III, School Board President

25 June 2024
Date



Dr. Jaret Tomlinson, Superintendent

6/26/2024
Date

CITY OF EXCELSIOR SPRINGS, MISSOURI

Gregory Dull, Chief of Police

Date