

# == NOTICE OF MEETING ==

## BOARD OF ALDERMEN

*Regular Meeting – Tuesday, January 28, 2020 – 6:00 p.m.*  
Council Chambers – Branson City Hall – 110 W. Maddux

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### AGENDA

#### MEETING CALLED TO ORDER

#### PLEDGE OF ALLEGIANCE

#### INVOCATION

- Jamie Rouch

#### ROLL CALL

#### AWARDS/RECOGNITIONS:

#### PUBLIC COMMENT:

To speak during public comment, please sign the speaker sign-up sheet located at the front door of the council chambers prior to the start of the meeting.

#### CONSENT AGENDA:

- 1) **Approval of Board of Aldermen Minutes:**
  - a) January 14, 2020 Regular Meeting
- 2) **Acknowledge Receipt of Minutes:**
  - a) Park Board meeting of November 19, 2019
  - b) Human Resources Committee meeting of November 27, 2019
- 3) **Acknowledge Receipt of Annexation Petition filed for:**
  - a) Property located at 150 Gunner Hill Lane
  - b) Property located at 3855 Fall Creek Road
- 4) **Final Reading of Bill No. 5766 amending Appendix A of the Branson Municipal Code pertaining to Lodging Establishment, Swimming Pools and Spas, and Health and Sanitation Fees.**
- 5) **Final Reading of Bill No. 5767 amending the adopted 2020 Budget for the City of Branson to adjust monies for the Public Safety Fund.**
- 6) **Final Reading of Bill No. 5768 approving a contract with Metrohm USA to provide a handheld narcotics analyzer with maintenance services and authorizing the Mayor to execute the contract.**

- 7) **Final Reading of Bill No. 5769 approving a contract with Ed Roehr Safety Products Co. to provide Active Shooter, Hostile Event Response Kits and authorizing the Mayor to execute the contract.**
- 8) **Final Reading of Bill No. 5770 accepting a Warranty Deed for property from BH Land Company, LLC pertaining to the Summit Ridge Residences Subdivision and authorizing the Mayor to execute the Acceptance of Conveyance.**
- 9) **Final Reading of Bill No. 5771 accepting the proposal of the Salvation Army pertaining to the provision of services to provide temporary public assistance and authorizing the Mayor to execute the contract.**
- 10) **Final Reading of Bill No. 5772 approving a contract with S & S Pumping, Inc. to accept holding tank and special waste for treatment at the Branson Wastewater Treatment Facilities and authorizing the Mayor to execute the contract.**
- 11) **Final Reading of Bill No. 5773 authorizing an agreement with SW Missouri Engineering LLC, dba Cochran, for professional design services for replacement of the Lift Station #17 forcemain and authorizing the Mayor to execute the contract.**
- 12) **Final Reading of Bill No. 5774 authorizing an agreement with SW Missouri Engineering LLC, dba Cochran, for professional design services to engineer upgrades for the Spring Creek water and sewer systems and authorizing the Mayor to execute the contract.**
- 13) **Final Reading of Bill No. 5775 amending Appendix A of the Branson Municipal Code pertaining to Utilities Fee Schedule.**

**REGULAR AGENDA:**

- 14) **Presentation of 2020 Marketing Plan of the Branson/Lakes Area Chamber of Commerce & CVB.**
- 15) **A Resolution approving the Marketing Budget of the Branson/Lakes Area Chamber of Commerce and Convention & Visitors Bureau from January 1, 2020 to December 31, 2020.**
- 16) **Discussion on additional Marketing Study.**
- 17) **Final Reading of Bill No. 5732 amending the adopted 2019 Budget for the City of Branson, to adjust monies for the Tourism and Capital Projects Funds. (Postponed during the January 14, 2020 meeting)**
- 18) **Final Reading of Bill No. 5676 approving an agreement between CenturyLink Communications, LLC and the City of Branson relating to relocation costs of CenturyLink Telecommunication Facilities relating to the Highway 76 Country Boulevard Improvements Project and authorizing the Mayor to execute the contract. (Postponed during the January 14, 2020 meeting)**

- 19) **Final Reading of Bill No. 5677 approving a Special Construction Proposal between CenturyLink and the City of Branson relating to engineering design costs of CenturyLink relating to the Highway 76 Country Boulevard Improvements Project and authorizing the Mayor to execute the contract. (Postponed during the January 14, 2020 meeting)**
- 20) **Final Reading of Bill No. 5398 approving a Memorandum of Understanding pertaining to a donation of a Lighthouse Memorial Monument for Old School Park and authorizing the Mayor to execute the contract. (Postponed from the January 8, 2019 Meeting)**
- 21) **A Resolution consenting to the Assignment and Assumption Agreement between Ballparks of America, LLC and Cedar Rapids Bank and Trust Company as Attorney-in-Fact for Ballparks of Branson, LLC.**
- 22) **First Reading of Bill No. 5776 amending the adopted 2020 Budget for the City of Branson, to adjust monies for the General Fund.**
- 23) **First Reading of Bill No. 5777 approving the Ground Lease Agreement between the City of Branson and Ballparks of America LLC and authorizing the Mayor to execute the contract.**
- 24) **First Reading of Bill No. 5778 amending Chapter 58 of the Branson Municipal Code pertaining to persons under 21 years of age prohibited from the purchase of tobacco products and prohibiting the sale of tobacco products to persons under 21 years of age.**
- 25) **First Reading of Bill No. 5779 approving the contract with Don Brown Chevrolet pertaining to purchase of a 2020 Chevy Tahoe PPV for the Police Departments K9 Unit and authorizing the Mayor to execute the contract.**
- 26) **First Reading of Bill No. 5780 approving the contract with Clifton Larson Allen LLP pertaining to Auditing Services and authorizing the Mayor to execute the contract.**

## **REPORTS**

## **ADJOURN INTO EXECUTIVE SESSION**

**Closed Executive Session pursuant to 610.021.2 RSMo for real estate and 610.021.3 RSMo for personnel.**

## **ADJOURN**

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Lisa Westfall, City Clerk, 417-337-8522

# MINUTES

THE REGULAR MEETING OF THE  
BOARD OF ALDERMEN  
CITY OF BRANSON, MISSOURI  
January 14, 2020

## INTRODUCTORY

The Board of Aldermen of the City of Branson, Missouri, met in regular session in the Council Chambers of the City Hall on January 14, 2020, at 6:00 p.m. Mayor Akers called the meeting to order with the "Pledge of Allegiance" and Ted Martin gave the invocation.

## ROLL CALL

City Clerk Lisa Westfall called roll: Mayor Edd Akers presiding, Kevin McConnell, Brian Clonts, Bob Simmons, Bill Skains, Larry Milton and Rick Castillon.

## AWARDS / RECOGNITIONS

### Employee of the Month

Alderman Milton presented Harold Clements of the Police Department as the January Employee of the Month in recognition for displaying City of Branson Values.

## PUBLIC COMMENT

Mayor Akers began the Public Comments section of the Board of Aldermen meeting and stated in order to give everyone a chance to speak tonight I would like to ask you all who are speaking on an item that you keep your comments as succinct as possible to the topic and as short as possible. You will be allowed to only speak once on an item and please do not repeat after what has already been said by another speaker. Once public discussion has ended on the item and the Board starts their discussion, there will be no additional comments taken from the audience. However, if a Board of Aldermen wishes to bring someone forward for a point of clarification, they can address the Chair of the meeting. Please remember to speak into the mic, state your name and address for the record. Thank you and please seek to stay within the five minute guideline.

Marshall Howden, 106 Rose Oneill Drive, Branson, Missouri commented he'd like to express a philosophical point on the distinction between two very important concepts: marketing versus messaging. He explained the reason he's bringing this up is in reference to the Music and Theater Commission proposal. He mentioned giving many speeches about the proposal and from the information that's been relayed to him, the Board wants to wait until the study from the Chamber is released in April or May to revisit the topic. He said he's perfectly at peace with this and he wants to put a pin in his proposal until then and explained his position is different than some as he believes marketing can have an impact on the future of that industry. He added, so under the umbrella of marketing he can understand wanting to bring together a coalition of the three most influential industries in town to review how Branson's marketing dollars are being used. He commented the ultimate reason he believes there needs to be a Music and Theater Commission to solely represent the interests of that industry is because messaging is different than marketing. Marketing is the result of the tax dollars the City contracts with the entity this Board selects and messaging would be

the signal this Board could send if it instituted something like this commission. He clarified marketing includes the television ads for Branson that people see around the Midwest and messaging is when the Springfield News Leader does a story about the rift between entertainers and City Hall. Unfortunately, marketing has been hash tagged "Not your Grandma's Branson" and messaging has been 60 minutes calling Branson "The Entertainment Capital of the Universe." He asked everyone to not forget the messaging side of it. In response to Alderman Milton's questions regarding the Board's intention to wait until the show study was done in April before taking action, he said on the specific Music and Theater Commission proposal that's the information relayed to him by the City Administrator. Mr. Howden said he's given plenty of speeches and is the reason he wanted to bring it up once again. He said he's following the instructions he's been given, but wanted to keep it in the forefront of everyone's mind.

Gary Groman, 350 S. Wildwood Drive, Branson, Missouri, recalled during the Public Comments Section of the December 10<sup>th</sup> Board of Aldermen meeting, Alderman Milton attempted to ask him a question regarding his comments related to concerns about the City Attorney's position that the Mayor had the authority to change an Aldermen's abstention on a vote to a no vote. He stated the Mayor, in what he believes was a violation of proper decorum and City Ordinance, interrupted Alderman Milton by saying "we do not ask questions until all the speakers are finished, that's why I read the thing to start with Larry." Mr. Groman said the thing referred to and upon which the Mayor appears to base his interruption as relates to this presentation said, "you will be allowed to speak only once on an item, please don't repeat what has already been said by another speaker. Once the public discussion has ended on an item, the Board starts their discussion." Mr. Groman recalled during the exchange between Alderman Milton and the Mayor, Alderman Milton pointed out this was a big change from the way public comments had been done in the past and he asked for clarification that what the Mayor was saying is that after everyone has spoken then the Board could ask questions. Mr. Groman remembered Mayor Akers' reply was "yes that's right, then it's our turn." Additionally, he recalled Mayor Akers saying "this is the same document that I have read at every meeting that we have had, where we have had a group of people, I haven't changed it a bit, this was provided by our City Clerk." Mr. Groman commented outside the fact that the Mayor announced policy for the public comment section of the meeting, it appears to be in violation of subsection 2-70c of the Branson Municipal Code governing the conduct of the public comment portion of the meeting. The tapes of the public comment periods from April 2019 to the first meeting of 2019 shows that the Mayor read no such statement, if at all, before the vast majority of public comments periods involved in those meetings. He explained these public comments included one person or a group of people, which makes his contention that he hasn't changed it a bit as meaningless as the portion of his statement saying that this is the same document that he's read at every meeting when there's been a group of people. Mr. Groman commented particularly abhorable to him is what he believes was the Mayor's attempt to distort the truth by using information out of contexts for his own purposes by throwing the City Clerk under the bus. He stated she is one of the finest and most professional women he knows and the City is blessed to have her. Although I can picture her giving the Mayor that precise verbiage for use in some other part of the meeting, such as the Regular Agenda portion, he will bet his reputation on the fact that she never gave the Mayor that verbiage for use as the introduction for public comment portion of the meeting. Mr. Groman said he personally believes the Mayor misused that verbiage for his own purposes and what he believes was a vain attempt to control and muzzle the Aldermen's ability to interact with the public during the public comment period of the meeting. He pointed out that although he did not mention the fact that he is a retired attorney or representing himself as an attorney, the City Attorney with what he presumes was with the blessing of senior City Staff using City resources, made inquiries about his registration and disciplinary status with the Illinois Bar Association. The City Attorney then sent an email out with the results to the Board and Senior Staff. Mr. Groman asked for what legitimate purpose was such action taken. He requested information on the situation through a Freedom of Information Act request and received a copy of the email with all the information redacted, including his name. He asked the Board what message this action by the City sends to its residents and businesses about interacting with the City and what to expect. To this citizen and voter, it's nothing related to honor, integrity, transparency or trust. In response to Alderman Milton's question, Mr. Groman explained he didn't recall any meetings in the past with public comment sections in which Aldermen called people back up to ask them questions. He stated including this Mayor, when the sports people were here there were about 15 to 20 people and were asked questions as they went along. Mr. Groman commented Aldermen Simmons, McConnell and Skains could testify that this is a change from the way the City's been doing it and it's a change from what the City ordinance reads. He reported City ordinance says people get

5 minutes, the Mayor or Aldermen may interrupt during the five minutes and the time is extended. He added, obviously this can only happen if someone interrupts and there's also a second part where the Mayor, Aldermen and Staff can ask questions of the respondent and that is limited to five minutes. He said he's never seen anything like this and feels it's almost inconceivable the Mayor can violate City Ordinance with impunity and everyone else has to follow the rules. He said he just doesn't understand it.

## CONSENT AGENDA

Mayor Akers stated it's my responsibility as Mayor under state law to take care of the ordinances of our City and the state law relating to our City that are complied with. Under one of our ordinances, Branson Municipal Code 2-64, I am tasked with the responsibility of being the Presiding Officer of the Board and am required to preserve strict order and decorum of the meetings. The citizens of Branson elected us to make decisions on policy matters and we make those decisions by voting. We are obligated to vote unless a conflict of interest prevents us from doing so. The common law of the State of Missouri supports this. Although I cannot force any member of the Board to cast a vote, and no member can be required to cast a vote, I do have the ability to control the order and decorum of these meetings. As a result, I'm announcing under my authority to preserve order and decorum of these meetings and any abstention by any member of the Board during this meeting will be recast as a no vote.

Mayor Akers asked if there were any citizens who had any items they wished to have removed from the Consent Agenda for further discussion. Hearing none, Mayor Akers asked if any member of the Board had any items they wished to have removed from the Consent Agenda. Hearing none, Mayor Akers asked City Clerk Lisa Westfall to read the items on the Consent Agenda. City Clerk Lisa Westfall read the following Consent Agenda items by title.

Approval of Board of Aldermen Minutes:

- a) December 4, 2019 Special Meeting
- b) December 10, 2019 Regular Meeting

Acknowledge Receipt of Minutes:

- a) Advisory Park Board meeting of October 15, 2019
- b) Budget & Finance Committee and Capital Improvement Committee meeting of October 31, 2019.

### **BILL NO. 5745**

**Ord. No. 2020-0001      Approving amendments to the City of Branson's Human Resources Manual.**

Final Reading of Bill No. 5745, an ordinance approving amendments to the City of Branson's Human Resources Manual was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0001 was duly enacted.

### **BILL NO. 5750**

**Ord. No. 2020-0002      Approving High Density Residential (HDR) Zoning for the property located at 115 Lakefront Drive, Branson, Missouri.**

Final Reading of Bill No. 5750, an ordinance approving High Density Residential (HDR) Zoning for the property located at 115 Lakefront Drive, Branson, Missouri, was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0002 was duly enacted.

**BILL NO. 5751**  
**Ord. No. 2020-0003**      **Approving High Density Residential (HDR) Zoning for the property located at 125 Lakefront Drive, Branson, Missouri.**

Final Reading of Bill No. 5751, an ordinance approving High Density Residential (HDR) Zoning for the property located at 125 Lakefront Drive, Branson, Missouri, was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0003 was duly enacted.

**BILL NO. 5752**  
**Ord. No. 2020-0004**      **Approving High Density Residential (HDR) Zoning for the property located at 111 Chateau Cove Drive, Branson, Missouri.**

Final Reading of Bill No. 5752, an ordinance approving High Density Residential (HDR) Zoning for the property located at 111 Chateau Cove Drive, Branson, Missouri, was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0004 was duly enacted.

**BILL NO. 5753**  
**Ord. No. 2020-0005**      **Approving High Density Residential (HDR) Zoning for the property located at 250 Chateau Cove Drive, Branson, Missouri.**

Final Reading of Bill No. 5753, an ordinance approving High Density Residential (HDR) Zoning for the property located at 250 Chateau Cove Drive, Branson, Missouri, was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0005 was duly enacted.

**BILL NO. 5757**  
**Ord. No. 2020-0006**      **Authorizing an agreement with the Conservation Commission of the State of Missouri for water main easements on the Ruth and Paul Henning Conservation Property.**

Final Reading of Bill No. 5757, an ordinance authorizing an agreement with the Conservation Commission of the State of Missouri for water main easements on the Ruth and Paul Henning Conservation Property and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0006 was duly enacted.

**BILL NO. 5758**  
**Ord. No. 2020-0007**      **Accepting the proposal of Kirk's Excavation Inc. for a Sanitary Sewer Main Extension in the area of Harmony Lane.**

Final Reading of Bill No. 5758, an ordinance accepting the proposal of Kirk's Excavation Inc. for a Sanitary Sewer Main Extension in the area of Harmony Lane and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0007 was duly enacted.

**BILL NO. 5760**  
**Ord. No. 2020-0008**

**Approving an agreement between Empire District, A Liberty Utilities Company and the City of Branson for relocation costs of street light facilities relating to the Gretna Road median island removal.**

Final Reading of Bill No. 5760, an ordinance approving an agreement between Empire District, A Liberty Utilities Company and the City of Branson for relocation costs of street light facilities relating to the Gretna Road median island removal and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0008 was duly enacted.

**BILL NO 5761**  
**Ord. No. 2020-0009**

**Approving the Intergovernmental Cooperative Agreement with the City of Kimberling City, Missouri Police Department pertaining to the donation of TASER X26 Equipment.**

Final Reading of Bill No. 5761, an ordinance approving the Intergovernmental Cooperative Agreement with the City of Kimberling City, Missouri Police Department pertaining to the donation of TASER X26 equipment and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0009 was duly enacted.

**BILL NO 5762**  
**Ord. No. 2020-0010**

**Accepting the proposal of Ace Pipe Cleaning for Sanitary Sewer System Improvements.**

Final Reading of Bill No. 5762, an ordinance accepting the proposal of Ace Pipe Cleaning for Sanitary Sewer System Improvements and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0010 was duly enacted.

**BILL NO 5763**  
**Ord. No. 2020-0011**

**Accepting the proposal of Technology International, Inc. for the purchase of a waste feed grinder for the Cooper Creek Wastewater Treatment Plant.**

Final Reading of Bill No. 5763, an ordinance accepting the proposal of Technology International, Inc. for the purchase of a waste feed grinder for the Cooper Creek Wastewater Treatment Plant and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0011 was duly enacted.

**BILL NO 5764**  
**Ord. No. 2020-0012**

**Amending Chapter 18 of the Branson Municipal Code pertaining to Electrical Provisions within the 2018 International Residential Code.**

Final Reading of Bill No. 5764, an ordinance amending Chapter 18 of the Branson Municipal Code pertaining to Electrical Provisions within the 2018 International Residential Code was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0012 was duly enacted.

Mayor Akers opened the floor for a motion to approve all items on the Consent Agenda. Alderman Skains moved to approve all items on the Consent Agenda, seconded by Alderman Clonts. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Alderman Castillon disclosed the reason for his abstention is due to not being at the meeting.

## **REGULAR AGENDA**

### **Discussion and Legal Opinion on Mayor Recasting Abstentions.**

Mayor Akers began with a Discussion and Legal Opinion on Mayor Recasting Abstentions and a staff report was provided by City Attorney Chris Lebeck and Attorney James Meadows of Kutak Rock, LLP, special legal counsel for the City. Mr. Meadows provided a handout (see attached). Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion.

### **5 in FIVE: Theatre Industry Study Update presented by Grant Sloan, Vice President of Member Engagement Branson/Lakes Area Chamber of Commerce & CVB.**

A presentation on 5 in FIVE: Theater Industry Study Update was made by Grant Sloan, Vice President of Member Engagement Branson/Lakes Area Chamber of Commerce & CVB. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion.

### **BILL NO. 5732 POSTPONED**

### **Amending the adopted 2019 Budget for the City of Branson, to adjust monies for the Tourism and Capital Projects Funds.**

Final Reading of Bill No. 5732, an ordinance amending the adopted 2019 Budget for the City of Branson, to adjust monies for the Tourism and Capital Projects Funds was read by title by City Clerk Lisa Westfall. She stated this bill was postponed on its Final Reading during the December 10, 2019 Regular Meeting. It is in need of a motion, second and a vote.

Alderman McConnell recused himself from the meeting and read a statement: I've recently been asked by a client to change my vote on undergrounding utilities. I do indeed have a conflict if I change my vote to satisfy a client; it's going to protect my business, but it's an opposition to what I deeply believe. If I don't change my vote, I believe it will hurt my business. This is a conflict in the truest sense of the word. Due to the obvious financial conflict of interest I will be recusing myself, not abstaining, but recusing myself from any further discussion or voting on this measure.

**Alderman McConnell left the meeting at 6:59 p.m.**

**Mayor Akers left the meeting at 7:00 p.m. Acting President Simmons presided over the meeting.**

**The meeting recessed at 7:00 p.m. and reconvened at 7:06 p.m. with Mayor Akers presiding and Brian Clonts, Bob Simmons, Bill Skains, Larry Milton and Rick Castillon present.**

Alderman Skains moved to postpone Bill No. 5732 to January 28, 2020, seconded by Alderman Clonts. Mayor Akers called for a vote on the postponement of Bill No. 5732. Voting aye: Clonts, Simmons, and Skains. Nays: Milton and Castillon. Absent: McConnell. Motion carried.

**BILL NO. 5676  
POSTPONED**

**Approving an agreement between CenturyLink Communications, LLC and the City of Branson relating to relocation costs of CenturyLink Telecommunication Facilities relating to the Highway 76 Country Boulevard Improvements Project.**

Alderman Clonts moved to postpone Bill No. 5676 to January 28, 2020, seconded by Alderman Skains. Mayor Akers called for a vote on the postponement of Bill No. 5676. Voting aye: Clonts, Simmons, and Skains. Nays: Milton and Castillon. Absent: McConnell. Motion carried.

**BILL NO. 5677  
POSTPONED**

**Approving a Special Construction Proposal between CenturyLink and the City of Branson relating to engineering design costs of CenturyLink relating to the Highway 76 Country Boulevard Improvements Project.**

Alderman Clonts moved to postpone Bill No. 5677 to January 28, 2020, seconded by Alderman Skains. Discussion. Mayor Akers called for a vote on the postponement of Bill No. 5677. Voting aye: Clonts, Simmons, and Skains. Nays: Milton and Castillon. Absent: McConnell. Motion carried.

**BILL NO. 5766**

**Amending Appendix A of the Branson Municipal Code pertaining to Lodging Establishment, Swimming Pools and Spas, and Health and Sanitation Fees.**

First Reading of Bill No. 5766, an ordinance amending Appendix A of the Branson Municipal Code pertaining to Lodging Establishment, Swimming Pools and Spas, and Health and Sanitation Fees was read by title by City Clerk Lisa Westfall.

**Alderman McConnell returned to the meeting at 7:11 p.m.**

A staff report was presented by Finance Director Jamie Rouch.

Lisa Marshall, 320 Rinehart Road, Branson, Missouri, introduced herself as a representative with the Taney County Health Department and is here tonight to answer any questions. In response to the Board's questions, she explained in 2017 the Health Department realized it hadn't taken a look at the extra costs associated with doing these inspections and Appendix A is a breakdown of its costs. She mentioned contacting neighboring counties and some larger counties to get a perspective of what's being charged across the state for these inspections and she reported these fees are right in alignment with what's happening across the state.

Mayor Akers asked for a motion approving Bill No. 5766. Alderman Castillon so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5767**

**Amending the adopted 2020 Budget for the City of Branson to adjust monies for the Public Safety Fund.**

First Reading of Bill No. 5767, an ordinance amending the adopted 2020 Budget for the City of Branson to adjust monies for the Public Safety Fund was read by title by City Clerk Lisa Westfall and a staff report was presented by Finance Director Jamie Rouch. Mayor Akers asked for a motion approving Bill No.

5767. Alderman Milton so moved, seconded by Alderman Skains. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5768**

**Approving a contract with Metrohm USA to provide a handheld narcotics analyzer with maintenance services.**

First Reading of Bill No. 5768, an ordinance approving a contract with Metrohm USA to provide a handheld narcotics analyzer with maintenance services and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Police Chief Jeff Matthews. Mayor Akers asked for a motion approving Bill No. 5768. Alderman Skains so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5769**

**Approving a contract with Ed Roehr Safety Products Co. to provide Active Shooter, Hostile Event Response Kits.**

First Reading of Bill No. 5769, an ordinance approving a contract with Ed Roehr Safety Products Co. to provide Active Shooter, Hostile Event Response Kits and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Police Chief Jeff Matthews. Mayor Akers asked for a motion approving Bill No. 5769. Alderman Castillon so moved, seconded by Alderman Skains. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5770**

**Accepting a Warranty Deed for property from BH Land Company, LLC pertaining to the Summit Ridge Residences Subdivision.**

First Reading of Bill No. 5770, an ordinance accepting a Warranty Deed for property from BH Land Company, LLC pertaining to the Summit Ridge Residences Subdivision and authorizing the Mayor to execute the Acceptance of Conveyance was read by title by City Clerk Lisa Westfall and a staff report was presented by Planning and Development Director Joel Hornickel. Mayor Akers asked for a motion approving Bill No. 5770. Alderman Skains so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5771**

**Accepting the proposal of the Salvation Army pertaining to the provision of services to provide temporary public assistance.**

First Reading of Bill No. 5771, an ordinance accepting the proposal of the Salvation Army pertaining to the provision of services to provide temporary public assistance and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Fire Chief Ted Martin. Mayor Akers asked for a motion approving Bill No. 5771. Alderman Skains so moved, seconded by Alderman Clonts. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter.

Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5772**

**Approving a contract with S & S Pumping, Inc. to accept holding tank and special waste for treatment at the Branson Wastewater Treatment Facilities.**

First Reading of Bill No. 5772, an ordinance approving a contract with S & S Pumping, Inc. to accept holding tank and special waste for treatment at the Branson Wastewater Treatment Facilities and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5772. Alderman Milton so moved, seconded by Alderman Skains. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5773**

**Authorizing an agreement with SW Missouri Engineering LLC, dba Cochran, for professional design services for replacement of the Lift Station #17 forcemain.**

First Reading of Bill No. 5773, an ordinance authorizing an agreement with SW Missouri Engineering LLC, dba Cochran, for professional design services for replacement of the Lift Station #17 forcemain and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5773. Alderman Skains so moved, seconded by Alderman Clonts. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5774**

**Authorizing an agreement with SW Missouri Engineering LLC, dba Cochran, for professional design services to engineer upgrades for the Spring Creek water and sewer systems.**

First Reading of Bill No. 5774, an ordinance authorizing an agreement with SW Missouri Engineering LLC, dba Cochran, for professional design services to engineer upgrades for the Spring Creek water and sewer systems and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5774. Alderman McConnell so moved, seconded by Alderman Skains. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: Castillon. Motion carried.

**BILL NO. 5775**

**Amending Appendix A of the Branson Municipal Code pertaining to Utilities Fee Schedule.**

First Reading of Bill No. 5775, an ordinance amending Appendix A of the Branson Municipal Code pertaining to Utilities Fee Schedule was read by title by City Clerk Lisa Westfall and a staff report was presented by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5775. Alderman

McConnell so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. No discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

## **APPOINTMENTS**

Mayor Akers stated this appointment process is in accordance with the Board and Committee Appointments Procedure. Mayor Akers requested the following appointments be made for Category 5:

### **Category 5:**

#### **Historic Downtown Branson Community Improvement District (CID) Board:**

Jerry Jeschke, Re-appointment to the Historic Downtown Branson CID Board with a term expiring April 18, 2024.

Tom Motley, Re-appointment to the Historic Downtown Branson CID Board with a term expiring April 18, 2024.

Mayor Akers asked for a motion to approve the appointments as listed for Category 5. Alderman Skains so moved, seconded by Alderman Simmons. Mayor Akers asked for comments from the Board. No discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: None. Motion carried.

## **DISBURSEMENTS**

Mayor Akers stated the next item is the review of disbursements [(October 17, 2019 through November 15, 2019) See Master File for copies of disbursements] Mayor Akers asked if there were any questions regarding the disbursements. No discussion. Mayor Akers asked for a motion to acknowledge the receipt of disbursements from October 17, 2019 through November 15, 2019. Alderman Simmons so moved, seconded by Alderman Skains. Mayor Akers asked for any comments. No discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: None. Motion carried.

## **MAYOR/ALDERMEN/ADMINISTRATOR'S REPORTS**

Alderman McConnell stated he was recently asked by a constituent in Ward III how the Mayor was able to change an abstention to a no vote. He mentioned asking City Attorney Chris Lebeck to explain this and the Branson Municipal Code who answered him and copied the entire Board of Aldermen. Alderman McConnell stated because he marked the email confidential attorney client privileged, he was not permitted to share the answer with the very individual who asked him the question. Alderman McConnell stated in a memo dated December 13<sup>th</sup>, the City Attorney wrote that a member of the Board violated their duties and obligations to the Board and the City by knowingly disclosing this privileged attorney client communication to Mr. Groman without permission of the Board. Alderman McConnell added, he went on to say to protect communications, he's asked and received approval to turn off auto forwarding for all aldermen bransonmo.gov email addresses. In the future all communications from the Legal Department will only go to bransonmo.gov email addresses where they will terminate. Alderman McConnell stated lastly he wrote, in the interest of security and continuity, it's important that we protect privileged communications by keeping them internal to the City of Branson. Alderman McConnell said he read this to say there's no transparency and he's quite certain that all six aldermen would approve of answering a municipal code question asked by a constituent. He explained after receiving the reprimand from the City Attorney, he decided to get an outside legal opinion from a trusted law firm with considerably more municipal law experience than the City Board of Aldermen

Attorney. Alderman McConnell reported he was told as elected officials, the Board decides what is confidential attorney client privileged, not the City Attorney. He further explained, otherwise the City Attorney could send the Board his grocery list, slap attorney client privileged on it and the Board would have to treat it as confidential. He reiterated, the decision is up to each member of the Board, not the person working for the Board. He added, of course if the Board were to share proprietary information on the sale of a business or something that adversely affects the City, an individual or business, they would be responsible for that damage. But an answer of municipal code, absolutely not. Mr. McConnell stated before anyone on the Board says they shouldn't question the City Attorney, he would like to remind them about a recent staff recommendation on using tourism tax which is designed for infrastructure on sports fields. He recalled this was a recommendation by City Staff and it took Gary Groman reminding the Board this would be against the law to use these funds in this way, which the City Attorney ultimately agreed. Alderman McConnell said how the City thanked Mr. Groman for his contribution of keeping the City out of legal trouble was the City Attorney accused him of offering pro bono legal advice to the Board. He explained Mr. Groman was searched by City Staff all the way back to 1973 in the State of Illinois where he actually did practice law, but Mr. Groman never presented himself as an attorney to this Board. He feels it's time to stop attempting to conduct City business behind closed doors because it's the people's business and he'll continue to seek input and inform where appropriate those who are really in charge, the citizens and residents of Branson. Alderman McConnell mentioned hearing Board members have been criticized for fighting and that they should all just get along. He said if people get upset because three Board members walk out of a meeting in protest after the Mayor changes the rules of abstention behind their backs with the assistance of the City Attorney, then Ward III elected the wrong Alderman. He stated he will never trade kumbaya or comfort for bad policy and a lack of transparency.

Alderman Skains stated he serves as the Board's representative on the M. Graham Clark Downtown Airport Board. He reported it recently received a very large grant from MoDOT to totally rework the landing strip to improve its condition. He added, the airport actually showed a gain of \$17,000 at the end of the year versus \$12,529 in 2018 as the demand in the second part of the year was significantly up from where it was. Alderman Skains gave kudos to the Fire Department regarding the water rescue go bags and for being on top of all of this as the community needs it. Over the last few days he's received a lot of feedback from constituents about the City's sign ordinance which people seem to be pleased with the changes. He thanked Planning and Development Director Joel Hornickel and his staff for implementing this and he feels there's a better atmosphere of cooperation which the community likes. Alderman Skains said on a sad note, his neighbor Terry Sander's son was killed in a car wreck this last week and his service will be on Saturday. He encouraged everyone to support Terry Sanders as he's been there for the community. Alderman Skains said lastly, he's very much in support of the Board giving an official position on Ozark Mountain Christmas. He understands Branson is America's Christmas Tree City, but it's known for Ozark Mountain Christmas and he hates abandoning that. He feels it could be Ozark Mountain Christmas, Home of America's Christmas Tree City, but doesn't want to see Branson give up on something he personally worked on 30 years ago.

Alderman Milton expressed his concerns about the City's finances. He complimented Utilities Director Mike Ray for doing a great job and said he knows the projects he's coming up with are needed, but he's concerned about the money the City has and its forecasts. He just doesn't see where these needed funds are coming from.

Mayor Akers reported he's continuing to seek funding for the protection of the sewer treatment plant and mentioned traveling to Jefferson City to visit with Senator David Sater, Representative Jeff Justice and Missouri Department of Economic Development Director Rob Dixon. He stated there's a lot of things going on and mentioned talking about the legislative agenda and its status which he'll continue to report on and provide updates. Mayor Akers said he thinks it's important for the City to seek sources of funds and mentioned hearing Utilities Director Mike Ray report tonight about seeking additional funds from the County for part of projects to help reduce costs to the City. He said he feels it's important to look at finances and he expressed his desire for focus and agreement on priorities.

## EXECUTIVE SESSION

Mayor Akers asked for a motion to go into closed executive session. Alderman Simmons moved to go into closed executive session pursuant to 610.021.2 RSMo for real estate and 610.021.3 RSMo for personnel, seconded by Alderman Skains. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

## ADJOURN

Mayor Akers asked for a motion to adjourn. Alderman Clonts moved to adjourn, seconded by Alderman Castillon. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried. Meeting adjourned at 8:16 p.m.

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E. Edd Akers  
Mayor

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Lisa Westfall  
City Clerk

**HANDOUT SUBMITTED BY JAMES MEADOWS DURING ITEM #15**

Handout item 15.

**KUTAKROCK**

Kutak Rock LLP  
300 South John Q Hammons Parkway, Suite 800, Springfield, MO 65806-2550  
office 417.720.1410

James E. Meadows  
417.755.7320  
james.meadows@kutakrock.com

January 14, 2020

**VIA HAND DELIVERY**

Chris Lebeck  
City Attorney  
City of Branson  
110 W. Maddux Street, Suite 205  
Branson, MO 65616

Re: Strategic Abstentions

Dear Mr. Lebeck:

We have examined, at your request, the issue of strategic abstentions from voting by members of the Board of Aldermen. These abstentions occur without a conflict of interest present and are presumably made strategically to prevent a tie vote from occurring which the Mayor can then break by voting.

The Mayor does have the authority to recast strategic abstentions as "no" votes. A tie vote thereby be created that the Mayor can then break. Additionally, any aldermen abstaining from voting create potential grounds for their removal from the Board for neglect of official duty.

***Strategic Abstentions May be Recast as "No" Votes***

In Branson, there are six aldermen. A majority of the aldermen must vote in favor of a bill for it to become an ordinance. Mo. Ann. Stat. § 79.130 (West). The mayor has a seat in and presides over the aldermen but "shall not vote on any question except in case of a tie." Mo. Ann. Stat. § 79.120 (West). The city has adopted the latest version of Robert's Rules of Order, which is currently the 11<sup>th</sup> edition, to govern the procedural aspects of their meetings unless otherwise stated. Branson Municipal Code, Section 2-80 ("The rules of parliamentary practice, comprised in Robert's Rules of Order, latest edition, shall govern the board where applicable, except where otherwise directed.").

Robert's Rules provide that an abstention can be recast as a "no" vote. Robert's Rules acknowledge that there is an obligation to vote and a right to abstain stating "[a]lthough it is the duty of every member who has opinion on a question to express it by his vote, he can abstain, since he cannot be compelled to vote." Robert's Rules of Order 11th (2011) at 407. The rules provide for a number of scenarios where an "abstention has the same effect as a negative vote." *Id.* at 402-403.

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Missouri courts have not considered the question directly of whether a mayor or other presiding officer may recast or treat abstentions as “no” votes, but other states have. In *State v. Yates*, the eight aldermen met for a meeting. 47 P. 1004, 1004 (1897). Four voted in favor of Yates to be the new sheriff and four abstained. *Id.* The court held that the abstentions should be considered “no” votes, and therefore, there was a tie that the mayor could break. *Id.* at 1005. The court noted that considering an abstention to be a no vote was the best position the minority could contend for and further stated “[i]t is an exploded notion that a member of a legislative body such as a city council can be present at a meeting, thus helping to make a quorum of the body, yet defeat the progress of legislation by refusing to vote when the roll is called.” *Id.* The court further stated that allowing a member to benefit from failing in their duty to vote would not be right. *Id.* The Supreme Court of Illinois has reached the same conclusion. *Launtz v. People ex rel. Sullivan*, 113 Ill. 137, 144 (1885).

At common law, an abstention was treated as an acquiescence and a vote with the majority. *Bonsack & Pearce, Inc. v. School District of Marceline*, 49 S.W.2d 1085 (1932); *Mullins v. Eveland*, 234 S.W.2d 639 (Mo. App. 1950). However, the common law rule does not apply if a statute expressly governs the voting requirements. *Braddy v. Zych*, 702 S.W.2d 491, 495 (Mo. Ct. App. 1985); *State ex rel. Stewart v. King*, 562 S.W.2d 704, 706 (Mo. Ct. App. 1978). Here, a statute requires that a majority of the aldermen vote in favor of a bill for it to become an ordinance. Mo. Ann. Stat. § 79.130 (West). This type of affirmative voting requirement has been held to override the common law rule and does not allow the abstentions to be recast as an acquiesce and vote with the majority. *Braddy*, 702 S.W.2d at 49 (holding that abstentions cannot be recast as votes in favor with the majority because the Charter provided that “no bill shall become an ordinance unless a majority of all the members vote in favor of its adoption”); *State ex rel. Stewart*, 562 S.W.2d at 706. A Missouri Attorney General’s opinion from 1981 advises that abstentions might not be able to be counted for either the majority or minority in a vote, but, as the Court of Appeals noted in *State ex re. Stewart v. King*, an “Attorney General’s opinion can be entitled to no more weight ‘than that given the opinion of any other competent attorney.’” *King*, 562 S.W.2d at 709 (quoting *Gershman Investment Corporation v. Danforth*, 517 S.W.2d 33, l.c. 36 (Mo. banc 1974)).

## *Alderman May Be Removed of Neglect of Duty*

An alderman can be removed from the Board for failure to attend meetings or abstaining from votes without cause. Aldermen have a duty to vote. See *Bonsack & Pearce v. Sch. Dist. of Marceline*, 49 S.W.2d 1085, 1088 (1932); *Spencer v. Barton Cty. Ambulance Dist.*, No. 16-05083-CV-SW-RK, 2017 WL 7036658, at \*7 (W.D. Mo. Sept. 13, 2017) (quoting *Mullins v. Eveland*, 234 S.W.2d 639, 641 (Mo. App. 1950)). Aldermen are presumed to know the law because persons are conclusively presumed to know the law, and this principal is especially applicable to public officials. *Russell*, 45 S.W.3d at 497. If the aldermen fail to attend meetings or fail to vote at meetings, they are intentionally failing to act, contrary to their known duty to vote. Therefore, such actions could subject aldermen to removal from office. Further, Branson’s ordinances allow for removal of a board member who neglects his duty, including failing to appear for scheduled meetings of the board three consecutive times. Branson Ordinance, Section 2-201.

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Any elected or appointed city official “shall [ ] forfeit his office” and may be removed from office, via the statutory procedure, if the person “fail[s] personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty. . . .” Mo. Rev. Stat. § 106.220. Mere violation of an official duty is not sufficient to remove an official, the misconduct must be a willful or fraudulent violation or willful neglect of an official duty. *State ex rel. Thomas v. Olvera*, 987 S.W.2d 373, 376 (Mo. Ct. App. 1999). Willful neglect of an official duty is “intentionally fail[ing] to act, contrary to a known duty.” *Simmons v. McCulloch*, 501 S.W.3d 14, 19 (Mo. Ct. App. 2016) (quoting *State ex inf. Fuchs v. Foote*, 903 S.W.2d 535, 539 (Mo. banc 1995) (abrogated on other grounds by *State v. Olvera*, 969 S.W.2d 715 (Mo. banc 1998))).

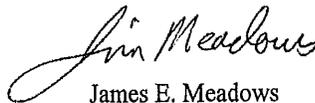
Public officials have been removed from office for willful neglect in Missouri. A sheriff was removed for failing to confine prisoners in accordance with statutory requirements. *State ex rel. Nixon v. Russell*, 45 S.W.3d 487, 497 (Mo. Ct. App. 2001). It did not matter that other sheriffs were not following the statutes, the sheriff at issue still had a duty to follow it. *Id.* In another case, the county recorder was removed from office for changing entries in the official fee book even though she believed she was removing a mistake. *Olvera*, 987 S.W.2d at 376. The county recorder “intentionally failed to act by not making the effort to find out if the unusual \$77.00 entry was in fact accurate, and instead merely assumed a mistake had been made and summarily changed the entry, contrary to the known duty to keep and report an accurate record.” *Id.* at 377.

## Conclusion

As with any legal opinion, slight alternations is facts or condition could impact the validity of this opinion. There are likely factors of which we are currently unaware. If you have any questions or knowledge of additional factors that might impact our analysis, please let us know.

Sincerely,

Kutak Rock LLP



James E. Meadows

JEM/jj

4844-8604-1521.1

Park Board Minutes  
November 19, 2019

Members Present: Candy Sullinger, Jamie Whiteis, Julie Wolfe, Clark Harris, Scott McCaulley, David Parish, Garrett Vanderpool and Scott Wuest

Members Absent: Bob Simmons and Andrew Brown,

Staff Present: Cindy Shook, Jason Reinsch, Amy Jackson and Marsha Fulton

Guests: Kristina Hagey and Tara Alphonso

The meeting was called to order by Candy Sullinger. Jamie Whiteis made a motion to approve the Park Board minutes dated October 15, 2019. Scott McCaulley seconded the motion. All were in favor.

Cindy opened the meeting by introducing the guests, Kristina Hagey, Chairperson for the Branson Sports Task Force, and Terra Alphonso, Director of Sports Marketing and Development for Branson Lakes Area CVB.

Kristina Hagey thanked the Board for allowing her to speak as a guest, and then provided the Park Board with a brief history of the various studies and initiatives that have taken place in the last ten years to build more sport facilities in Branson. Kristina shared that her daughter is a softball player that she grew up playing in the Branson Park and Recreation leagues, before joining a more competitive traveling team. She is now being recruited as a college softball player. Kristina stated that this experience had led her to get involved with the Sports Funding and Development Advisory Task Force, which is now focusing their efforts behind passing a park and storm water tax to fund improvements in the community. In order to gain community feedback and input, they will be hosting upcoming town hall meetings on December 2<sup>nd</sup> in Ward 1 at the Radisson Hotel, on December 3<sup>rd</sup> in Ward 2 at the Branson RecPlex and on December 5<sup>th</sup> in Ward 3 at the Pointe Royale Club House. Kristina went on to explain that the feedback they receive from the meetings will determine how they proceed. She explained that they were hoping for the initiative to be well received and be able to then take the results to the City of Branson Board of Alderman meeting in December. At that meeting, the Sports Task Force would be asking the Board to allow the tax initiative to be placed on the April ballot. Kristina explained that they were looking at either a ¼ or ½ cent tax for just parks and storm water. The tax would allow for a sustainment plan and could be used for staffing to infrastructure needs. Kristina concluded by thanking the board for listening and stated she would e-mail the town hall meeting flyer to the board. Candy thanked her for the information.

Business:

1. The first item from the agenda was a presentation by new Landscape Specialist, Amy Jackson. Amy introduced herself to the board and gave them an overview of her education and

work experience. Amy shared that as of September 16, she had joined the Park's Department in the new position of Landscape Specialist after transferring from the Planning Department. She stated that her main priorities are ... Tree maintenance plan, tree inventory, etc. Amy then went on to share information about the new Tree Keepers program that she is rolling out to the community as a volunteer opportunity. The main purpose of the Tree Keeper program is to encourage public involvement in the enhancement of our community as it relates to tree planting, care and maintenance. Amy passed out a flyer that provides details about volunteer opportunities, which also includes an adopt-a-flowerbed and an adopt-a-trail initiative. Amy shared that she was also looking at the possibility of recognizing members of the community for more than just landscaping that go above and beyond as it relates to ... . Examples include installing a raid garden in an area that ponds, stalling pervious surface that would allow better drainage, planting native Missouri plants. Jason then added that Amy is a great resource for the maintenance staff as well, explaining that she has the ability to educate the staff on plant species and proper care. Cindy added that this was a great opportunity to be able to start a position from scratch and be able to build off of it, sometimes requiring that many hats be worn. Amy then added that she was also hoping to build on the Arbor Day program hoping to involve the local schools more. David asked if the tree keeper flier was on the website. Cindy confirmed that she had put it on the website, adding that it was located under volunteer opportunities.

2. The next item on the agenda was the presentation of the October financial report. Cindy opened this item by sharing with the board that Stacy McAllister, the Assistant Finance Director, had given the department some very positive feedback in reference to the report. Cindy then pointed out that the campground was doing very well despite a couple of high water events. Cindy added the City had just received a payment in the amount of \$2,621.00 from FEMA for the 2015 flood that is reflected in other revenues. Jason then went on to point out that at the RecPlex revenue was up, largely due to gate admissions, while expenses were down, a trend that was wonderful to see. Cindy added revenue is up at the Dog Park as well as the tennis cost center, which reflect revenue from pickleball.

3. The next item on the agenda was an update on the capital improvement projects. Cindy reminded the board that the presentation to the Board had been in August and she was very pleased to announce that the Park's Department had five projects approved for 2020.

- Phase 1 and Phase 2 of the Roark Creek Trail, which reflects 1900 linear feet of trail expansion. Jason provided a map of the proposed new trail, which extends past the Ledbetter property to the Johnson Property.
- Cantwell Park retaining wall. Cindy shared that this project will include the replacement of the retaining wall that support the basketball court.
- Sandblasting and painting of the campground shower house. Cindy explained that much like the pool sandblasting that was completed earlier this year, it is necessary to sandblast the shower house to maintain the appearance.
- Replacement of the trash truck. Cindy shared that they would be replacing the trash truck with a flatbed truck with a dump bed that will better overall better usage for the department.

4. The next item on the agenda was the presentation of the park map that breaks down residential density in relationship to city park locations. Cindy reminded the board that Clark had suggested at the last meeting that they look into getting a population map of Branson to compare to where current parks were located. Cindy stated that Curtis Copeland had been great to work with and to be able to provide the map for the board to review. Scott McCauley asked if the tax that Kristina Hagey had discussed were to pass if it could be used to purchase property for additional parks. Jamie confirmed that the tax could be used to purchase land, adding that he too was on the Branson Sports Task Force. Scott McCauley then stated that the ability to provide parks could be what could push the tax over the top. Clark then asked if in the past there had ever been a master parks plan done. Cindy indicated that a master plan had not been completed since the RecPlex was built and although it had been submitted as a capital project in the past, it was currently unfunded. Clark indicated that he thought this could be very helpful moving forward.

5. The next item on the agenda was the update on upcoming special events. Cindy shared with the board the numerous upcoming special events, including a state qualifying archery tournament, the 2<sup>nd</sup> annual Benefit the Badge pickleball tournament and Breakfast with Santa. In addition, the Adopt-A-Senior program at the Community Center was well underway. Cindy went on to share that they would be looking for partners to help deliver gifts, in case anyone on the board was interested.

6. The next item on the agenda was the cancellation of the December Park Board meeting. Candy explained that in previous years they were unable to get a quorum for December so if no one had any objections they would be cancelling the December meeting. With no objections or additional comments the board moved to cancel the December meeting.

#### Member's Report

1. Clark stated that the posted hours on the bathrooms was helpful for runners to be to know what bathrooms were available for use

2. Julie Wolfe stated that she was down at Stockstill several times a week and she wondered if there was any way to notify schools when there had been flooding, which may impact their field trips. Cindy explained that while there were press releases and other media coverage on the impact of flooding on the park, but unfortunately not everyone knows ahead of time. Cindy added that many schools just show up in a bus at the park, without reserving anything, so there is not an opportunity for communication ahead of time.

3. Scott Wuest stated that he had just learned about the adopt-a-senior program and he was wondering if it was something that the Chamber may be able to help getting the word out on to all their members. She responded that was a good idea and she would follow up.

Garrett made a motion to adjourn. Julie seconded the motion. All were in favor.

Meeting adjourned 6:55pm

# MINUTES

HUMAN RESOURCES COMMITTEE

CITY OF BRANSON, MISSOURI

November 27, 2019

**1) Call to Order**

The Human Resources Committee met in the Fishbowl of City Hall, Wednesday, November 27, 2019. The meeting was called to order by Mayor Edd Akers at 9:30 a.m.

**2) Roll Call**

Committee Members present: Mayor Edd Akers, City Administrator Stan Dobbins, Alderman Kevin McConnell, Alderman Rick Castillon and community members Bryan Cossiboom and Joshua Allen. There is a quorum.

Also present: Assistant City Administrator John Manning, Human Resources Director Jan Fischer, Bob Smither, Kimberly Cooper, Gina Stech, Keith Francis and Chris Lebeck.

**3) Acknowledgement of October 16, 2019 Minutes.**

Motion to approve: Alderman Rick Castillon; Second: Alderman Kevin McConnell; Vote: 6 yes, 0 no.

**4) Discussion of New Hires/Promotions/Reclassifications.**

Discussion led by Human Resources Director Jan Fischer.

**5) Review Wellness Appeal.**

Discussion introduced by Jan Fischer. Discussion among committee members.

Motion to recommend to City Administrator to extend Appeal Application Number 20192711D two weeks, until December 11, 2019 to get Primary Care Physician Form turned in and if by that deadline, can move to Tier I; Appeal Application Numbers 20192711A, 20192711B, 20192711C recommended to be approved to move to Tier I since their forms are already turned in: Alderman Kevin McConnell; Second: Joshua Allen; Vote: 5 yes, 0 no, 1 Abstain. (City Administrator Stan Dobbins abstained.)

**6) Update from Safety and Risk Management.**

Safety update given by Bob Smither.

**7) Human Resources Director's Report.**

Update given by Jan Fischer. Open enrollment started today, November 27, 2019 and will go through next week, December 6, 2019. Health Risk Assessments are available to City employees, their spouses and elected officials on January 31, 2020 and February 7, 2020 at the Branson RecPlex.

**8) Adjourn.**

Motion to adjourn: City Administrator Stan Dobbins; Second: Alderman Rick Castillon; Vote: 6 yes, 0 no.  
Time Adjourned: 10:00 a.m.



# STAFF REPORT

**ITEM/SUBJECT:** PRESENTATION OF A PETITION FOR CONSENT OF ANNEXATION FOR THE PROPERTY LOCATED AT 150 GUNNER HILL LANE, BRANSON, MISSOURI.

**INITIATED BY:** PLANNING & DEVELOPMENT DEPARTMENT

**DATE:** JANUARY 28, 2020

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**EXECUTIVE SUMMARY:**

- A petition for annexation has been received from Mark Ruda on behalf of Table Rock at Branson, Inc for this property.
- The property is currently vacant, but is proposed to be developed with a mix of nightly rental structures similar to the adjacent development, Lodges at Chateau Cove.
- Staff has reviewed the file and determined the property is contiguous with existing city limits.
- The Public Hearing concerning this petition has been scheduled for February 11, 2020. It is statutory requirement that the Public Hearing cannot take place sooner than 14 days after the petition is presented to the Board of Aldermen. Any person wishing to speak in regards to the petition can do so at the Public Hearing.
- The final reading is tentatively scheduled for February 25, 2020.

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**FINANCIAL IMPACT:**

- No impact/Not applicable  
 Budgeted in the current year's budget  
 Other (see additional explanation)

**STAFF RECOMMENDATION:**

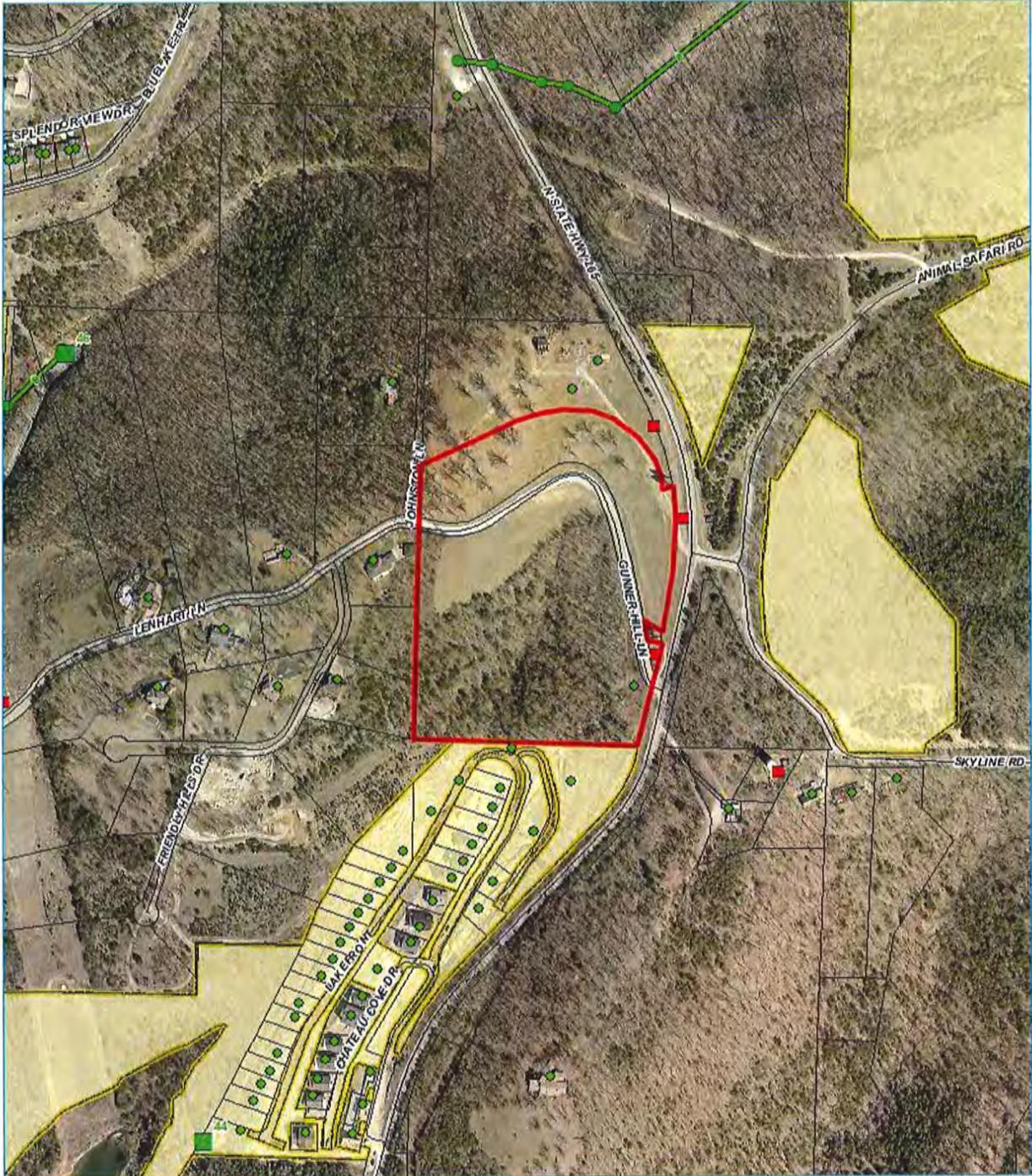
- Recommended  
 Not Recommended  
 Neutral/None

**COMMUNITY PLAN 2030:** LU-2: Annexation.

**ATTACHED EXHIBITS:**  
1) Vicinity Map  
2) Annexation Application  
3) Petition for Application

SD

1) VICINITY MAP



City of Branson  
Planning & Development  
January 16, 2020

**150 Gunner Hill Ln**



### ANNEXATION APPLICATION

110 W. Maddux St., Ste. 215, Branson, MO 65616  
417-337-8549/Fax 417-334-2391

Office Use Only	
ANNX	20-17.02
Date Applied	1/15/2020

**Property Information**

911 Property Address TBD Gunner Hill Lane

Property Owner Table Rock at Branson Inc  Owner is applicant

Contact Name Mark Ruda Email mruda@thousandhills.com

Mailing Address 245 S Wildwood Drive Branson, MO 65616 Phone 417-336-8242

**Agent Information (if different from property owner)**

Name Lifestyle Contractors - Steve Redford Email bransongc@gmail.com

Mailing Address 4675 N Gretna Road, Suite 201 Branson, MO 65616 Phone 417-320-6014

**Additional Required Information**

- Annexation Request (\$352) Current status of land:  Developed  Undeveloped
- Briefly describe current use: Vacant land
- Reason for request: Development of future vacation rental community similar to Chateau Cove

Attach a recent copy of the **WARRANTY DEED/DEED OF TRUST** and check the appropriate box below:

- No deed restrictions
- A list of **DEED RESTRICTIONS** have been attached to application.

**Property Owner / Agent Acknowledgement**

In signing this application, the applicant acknowledges all information provided is complete and accurate. The applicant also agrees to abide by the regulations of the Branson Municipal Code.

	<u>Mark Ruda</u>	<u>1/14/2020</u>
Property Owner Original Signature	Print Name	Date
	<u>Steve Redford</u>	<u>1/14/2020</u>
Agent Original Signature	Print Name	Date

OFFICE USE ONLY					
✓	Description	Comments	✓	Description	Comments
	Warranty Deed/Deed of Trust			Public notice date	
	Deed Restrictions			Public hearing date	
				Additional fees paid	
				Staff Initials	



3) PETITION FOR ANNEXATION

**PETITION FROM PROPERTY OWNER AT 150 GUNNER HILL LANE**  
**REQUESTING ANNEXATION**

Petition Requesting Annexation to the City of Branson  
Parcel ID # 18-2.0-10-001-003-002.000

We, the undersigned **Table Rock at Branson Inc.**, a corporation of the State of Missouri, hereinafter referred to as the Petitioner, for its petition to the Board of Aldermen of the City of Branson state and allege as follows:

1. That we are the owners of all fee interests of record in the real estate in Taney County, Missouri, described as follows, to wit:

See Exhibit 'A'

2. That said real estate is not now a part of any incorporated municipality.
3. That the said real estate is contiguous to the existing corporate limits of the City of Branson, Missouri.
4. That we request that the said real estate to be annexed to, and be included within the corporate limits of, the City of Branson, Missouri, as authorized by the provisions of Section 71.012, RSMo.
5. That we request the Board of Aldermen of the City of Branson to cause the required notice to be published and to conduct the public hearing required by law and to thereafter adopt an ordinance extending the limits of the City of Branson to include the above described real estate.

This Petition Requesting Annexation, made this 16<sup>th</sup> day of January, 2020.

  
\_\_\_\_\_  
Managing Member

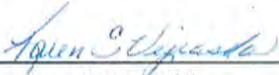
VERIFICATION

STATE OF MISSOURI     )  
  )     SS.  
COUNTY OF TANEY     )

COMES NOW Mark Ruda, being of lawful age and after being duly sworn, states that he has read the foregoing Petition Requesting Voluntary Annexation of Property into the City of Branson and that the facts therein are true and correct according to his best knowledge and belief.

  
\_\_\_\_\_  
Petitioner

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

April 8, 2023

[SEAL]

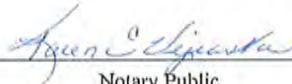


ACKNOWLEDGMENT OF PROPERTY OWNER

STATE OF MISSOURI     )  
  )     SS.  
COUNTY OF TANEY     )

On this 16<sup>th</sup> day of January, 2020, before me personally appeared Mark Ruda, to me known, and who being by me duly sworn, did say that he is the managing member of Table Rock at Branson Inc., a corporation of the State of Missouri, and that as such managing member he has the authority to execute the foregoing *Voluntary Petition For Annexation* on behalf of said corporation, and said managing member acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

April 8, 2023

[SEAL]

KAREN E. VEJRASKA Notary Public - Notary Seal STATE OF MISSOURI Taney County My Commission Expires: April 8, 2023 Commission #15396476
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EXHIBIT 'A'

DESCRIPTION:

A TRACT OF LAND BEING LOCATED IN PART OF THE SW1/4 OF THE NE1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 22 WEST, TANEY COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT AN EXISTING LIMESTONE MARKING THE SOUTHWEST CORNER OF THE SW1/4 OF THE NE1/4 OF SAID SECTION 10; THENCE N 01°25'58" E, ALONG THE WEST LINE OF SAID SW1/4 OF THE NE1/4, A DISTANCE OF 870.83 FEET; THENCE S 88°58'14" E, LEAVING SAID WEST LINE, A DISTANCE OF 4.00 FEET; THENCE SOUTHEASTERLY ALONG A NON-TANGENT CURVE TO THE LEFT 30.45 FEET (SAID CURVE HAVING A DELTA OF 116°19'19" A CHORD BEARING AND DISTANCE OF S 58°48'51" E, 25.49 FEET AND HAVING A RADIUS OF 15.00 FEET); THENCE N 63°01'30" E, A DISTANCE OF 277.62 FEET; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT 66.87 FEET (SAID CURVE HAVING A DELTA OF 14°37'26" AND HAVING A RADIUS OF 262.00 FEET); THENCE N 77°38'55" E, A DISTANCE OF 77.73 FEET; THENCE SOUTHEASTERLY ALONG A CURVE TO THE RIGHT 172.55 FEET (SAID CURVE HAVING A DELTA OF 37°44'06" AND HAVING A RADIUS OF 262.00 FEET); THENCE S 64°36'59" E, A DISTANCE OF 24.84 FEET; THENCE SOUTHEASTERLY ALONG A CURVE TO THE RIGHT 177.61 FEET (SAID CURVE HAVING A DELTA OF 38°50'28" AND HAVING A RADIUS OF 262.00 FEET); THENCE S 25°46'31" E, A DISTANCE OF 53.47 FEET; THENCE S 16°21'59" E, A DISTANCE OF 45.51 FEET; THENCE N 54°24'28" E, A DISTANCE OF 36.30 FEET, TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF M.S.H.D. #265; ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF SAID M.S.H.D. #265 AS FOLLOWS: THENCE SOUTHERLY ALONG A NON-TANGENT SEGMENT OF A CURVE TO THE RIGHT 345.72 FEET (SAID SEGMENT HAVING A DELTA OF 22°08'02" A CHORD BEARING AND DISTANCE OF S 01°52'09" W, 343.58 FEET, AND HAVING A RADIUS OF 894.94 FEET); THENCE S 10°22'49" W, A DISTANCE OF 130.97 FEET; THENCE N 59°58'01" W, LEAVING SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 45.65 FEET; THENCE S 11°34'17" W, A DISTANCE OF 46.60 FEET; THENCE N 80°30'49" E, A DISTANCE OF 46.75 FEET, TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF M.S.H.D. #265; ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF SAID M.S.H.D. #265 AS FOLLOWS: THENCE S 10°22'49" W, A DISTANCE OF 94.97 FEET; THENCE S 12°42'31" W, A DISTANCE OF 130.01 FEET; THENCE S 12°33'30" W, A DISTANCE OF 115.86 FEET, TO A POINT ON THE SOUTH LINE OF THE SW1/4 OF THE NE1/4;

THENCE N 88°14'17" W, LEAVING WESTERLY RIGHT-OF-WAY LINE AND ALONG THE SOUTH LINE OF SAID SW1/4 OF THE NE1/4, A DISTANCE OF 121.17 FEET, TO A POINT ON THE NORTHERLY LINE OF THE AMENDED PLAT OF BUILDINGS 38, 41 AND 42 OF THE LODGES AT CHATEAU COVE, PHASE 6, AS PER THE RECORDED PLAT THEREOF, RECORDED IN PLAT BOOK/SLIDE L AT PAGES 529 AND 530, IN THE TANEY COUNTY RECORDERS OFFICE, TANEY COUNTY, MISSOURI; THENCE N 01°45'43" E, LEAVING SOUTH LINE OF THE SW1/4 OF THE NE1/4, ALONG SAID NORTHERLY BOUNDARY LINE, A DISTANCE OF 60.14 FEET, TO THE NORTHEAST CORNER OF SAID AMENDED PLAT, THE LODGES AT CHATEAU COVE PHASE 6; THENCE N 88°10'15" W, ALONG THE SAID NORTH LINE, AND ALONG THE NORTH LINE OF THE AMENDED PLAT OF BUILDINGS 14-17, 37 AND 43 OF THE LODGES AT CHATEAU COVE, PHASE 4, AS PER THE RECORDED PLAT THEREOF, RECORDED IN PLAT BOOK/SLIDE L AT PAGES 531 AND 532, IN THE TANEY COUNTY RECORDERS OFFICE, TANEY COUNTY, MISSOURI, A DISTANCE OF 407.63 FEET, TO THE NORTHWEST CORNER OF SAID AMENDED PLAT OF THE LODGES AT CHATEAU COVE, PHASE 4; THENCE S 42°10'06" W, ALONG THE WESTERLY LINE OF SAID AMENDED PLAT OF THE LODGES AT CHATEAU COVE, PHASE 4, A DISTANCE OF 79.61 FEET, TO A POINT ON THE SOUTH LINE OF THE SW1/4 OF THE NE1/4; THENCE N 88°14'17" W, ALONG SAID SOUTH LINE, A DISTANCE OF 125.21 FEET, TO THE POINT OF BEGINNING. TRACT CONTAINING 16.54 ACRES OF LAND, MORE OR LESS.



# STAFF REPORT

**ITEM/SUBJECT:** PRESENTATION OF A PETITION FOR CONSENT OF ANNEXATION FOR THE PROPERTY LOCATED AT 3855 FALL CREEK ROAD, BRANSON, MISSOURI.

**INITIATED BY:** PLANNING & DEVELOPMENT DEPARTMENT

**DATE:** JANUARY 28, 2020

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**EXECUTIVE SUMMARY:**

- A petition for annexation has been received from Dan Ruda on behalf of Fountains on Fall Creek, LLC for this property.
- The property is currently vacant, but is proposed to be developed with a mix of residential and some commercial uses.
- Staff has reviewed the file and determined the property is contiguous with existing city limits.
- The Public Hearing concerning this petition has been scheduled for February 11, 2020. It is statutory requirement that the Public Hearing cannot take place sooner than 14 days after the petition is presented to the Board of Aldermen. Any person wishing to speak in regards to the petition can do so at the Public Hearing.
- The final reading is tentatively scheduled for February 25, 2020.

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**FINANCIAL IMPACT:**

- No impact/Not applicable  
 Budgeted in the current year's budget  
 Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended  
 Not Recommended  
 Neutral/None

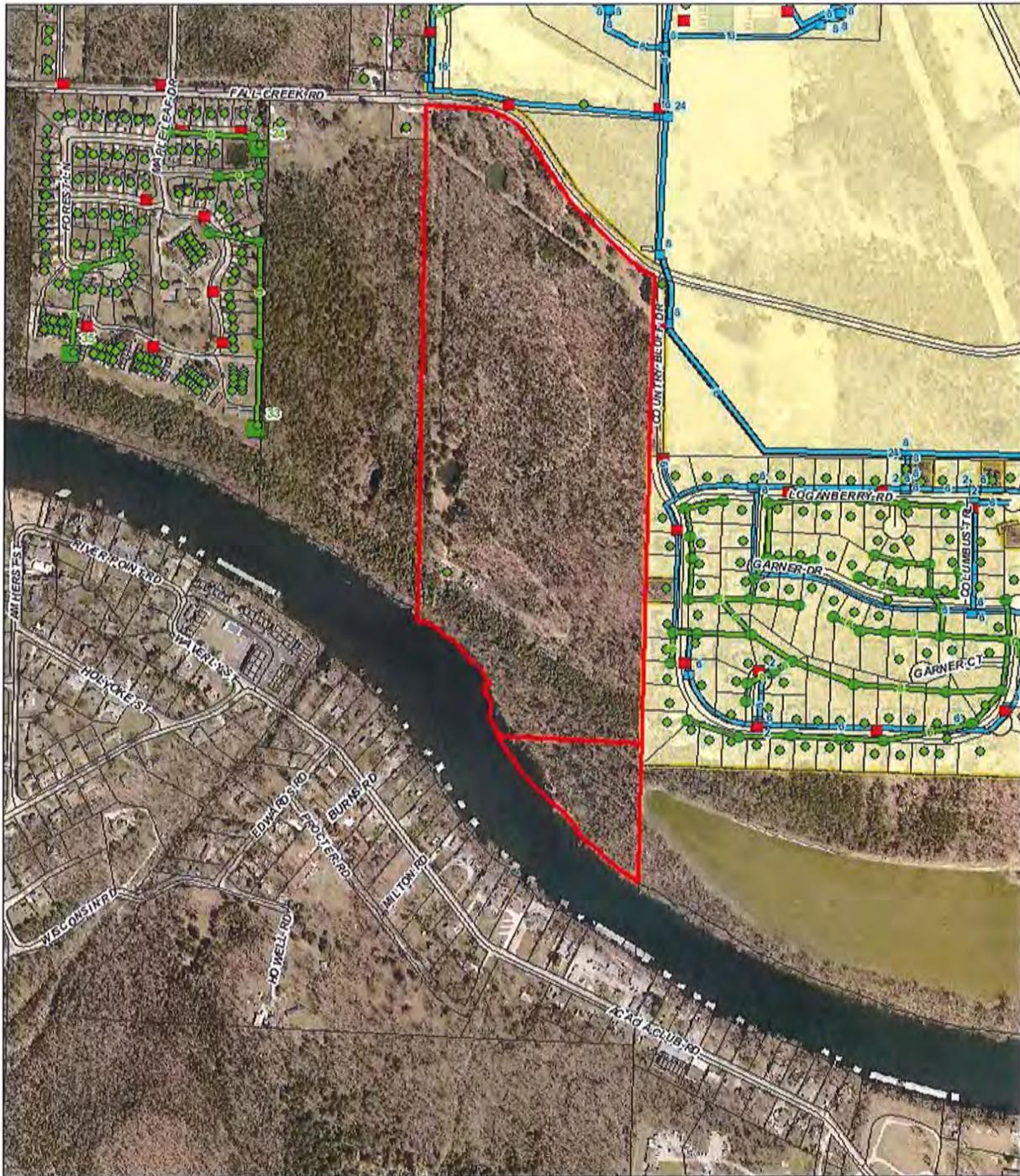
**COMMUNITY PLAN 2030:** LU-2: Annexation.

**ATTACHED EXHIBITS:**

- 1) Vicinity Map
- 2) Annexation Application
- 3) Petition for Application

A handwritten signature in black ink, appearing to be a stylized name, located to the right of the Staff Recommendation section.

1) VICINITY MAP



 N  
City of Branson  
Planning & Development  
January 16, 2020

**3855 Fall Creek Rd**



**ANNEXATION APPLICATION**

110 W. Maddux St., Ste. 215, Branson, MO 65616  
417-337-8549/Fax 417-334-2391

20-17.1

Office Use Only	
ANNX	19-17.19
Date Applied	1/14/2020

**Property Information**

911 Property Address 3855 Fall Creek Rd

Property Owner Fountains on Fall Creek LLC  Owner is applicant

Contact Name Dan Ruda Email druda@thousandhills.com

Mailing Address 245 S. Wildwood Drive Branson Mo Phone 417-335-0284

**Agent Information (if different from property owner)**

Name \_\_\_\_\_ Email \_\_\_\_\_

Mailing Address \_\_\_\_\_ Phone \_\_\_\_\_

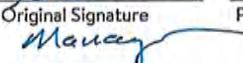
**Additional Required Information**

- Annexation Request (\$352) Current status of land:  Developed  Undeveloped
  - Briefly describe current use: Agricultural
  - Reason for request: City Services
- Attach a recent copy of the WARRANTY DEED/DEED OF TRUST and check the appropriate box below:
- No deed restrictions
- A list of DEED RESTRICTIONS have been attached to application.

**Property Owner / Agent Acknowledgement**

In signing this application, the applicant acknowledges all information provided is complete and accurate. The applicant also agrees to abide by the regulations of the Branson Municipal Code.

 Daniel C Ruda 1-13-2020  
Property Owner Original Signature Print Name Date

 \_\_\_\_\_  
Agent Original Signature Print Name Date

OFFICE USE ONLY					
✓	Description	Comments	✓	Description	Comments
	Warranty Deed/Deed of Trust			Public notice date	
	Deed Restrictions			Public hearing date	
				Additional fees paid	
				Staff Initials	



**PETITION FROM PROPERTY OWNER AT 3855 FALL CREEK ROAD**  
**REQUESTING ANNEXATION**

Petition Requesting Annexation to the City of Branson  
Parcel ID # 18-1.0-12-004-001-002.000 and 18-6.0-13-001-001-001.000

We, the undersigned **Fountains on Fall Creek LLC**, a limited liability company of the State of Missouri, hereinafter referred to as the Petitioner, for its petition to the Board of Aldermen of the City of Branson state and allege as follows:

1. That we are the owners of all fee interests of record in the real estate in Taney County, Missouri, described as follows, to wit:  
  
TRACT 1: All that part to the East 3/4 of the E 1/2 of the SEFRL 1/4 lying South of Fall Creek Road in Section 12, Township 22, Range 22, in Taney County, Missouri.  
  
TRACT 2: All that part in the Northeast corner of the NEFRL 1/4 (left bank of white River descending) of Section 13, Township 22, Range 22, in Taney County, Missouri.
2. That said real estate is not now a part of any incorporated municipality.
3. That the said real estate is contiguous to the existing corporate limits of the City of Branson, Missouri.
4. That we request that the said real estate to be annexed to, and be included within the corporate limits of, the City of Branson, Missouri, as authorized by the provisions of Section 71.012, RSMo.
5. That we request the Board of Aldermen of the City of Branson to cause the required notice to be published and to conduct the public hearing required by law and to thereafter adopt an ordinance extending the limits of the City of Branson to include the above described real estate.

This Petition Requesting Annexation, made this 16<sup>th</sup> day of January, 2020.

  
Managing Member

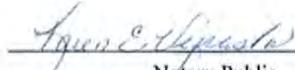
VERIFICATION

STATE OF Missouri )  
 ) SS.  
COUNTY OF Taney )

COMES NOW Dan Ruda, being of lawful age and after being duly sworn, states that he has read the foregoing Petition Requesting Voluntary Annexation of Property into the City of Branson and that the facts therein are true and correct according to his best knowledge and belief.

  
Petitioner

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

April 8, 2023

[SEAL]



**ACKNOWLEDGMENT OF PROPERTY OWNER**

STATE OF Missouri )  
 ) SS.  
COUNTY OF Taney )

On this 16<sup>th</sup> day of January, 2020, before me personally appeared Dan Ruda, to me known, and who being by me duly sworn, did say that he is the managing member of Fountains on Fall Creek LLC, a limited liability company of the State of Missouri, and that as such managing member he has the authority to execute the foregoing *Voluntary Petition For Annexation* on behalf of said limited liability company, and said managing member acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

*Karen E. Vejraska*  
Notary Public

My Commission Expires:

*April 8, 2023*

[SEAL]





# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL AMENDING APPENDIX A OF THE BRANSON MUNICIPAL CODE PERTAINING TO LODGING ESTABLISHMENT, SWIMMING POOLS AND SPAS, AND HEALTH AND SANITATION FEES.

**INITIATED BY:** FINANCE DEPARTMENT

**FIRST READING:** JANUARY 14, 2020

**FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- The Budget and Finance Committee approved a three-year phase-in of increased fees for health inspections for food establishments, pools and spas, body art and massage establishments, and lodging establishments on November 30, 2017.
- On October 31, 2019, the Budget and Finance Committee approved the third year of the phase-in. Attached as Exhibit “A” are the documents presented to the Budget and Finance Committee by the Taney County Health Department (TCHD).
- The fees assist the TCHD in maintaining the City’s inspection standards, safeguarding the public health of visitors and residents.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year’s budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** C-1 Public Safety: Branson is committed to the overall public safety of its residents and visitors.

**ATTACHED EXHIBITS:** Exhibit “A”

## EXHIBIT A

### MEMORANDUM

**TO:** Budget & Finance Committee  
**FROM:** Lisa Marshall, Taney County Health Department Director  
**DATE:** October 31, 2019  
**SUBJECTS:** Appendix A – Fee Schedule (Chapter 46)

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The Taney County Health Department reviewed fees in 2017 associated with the types of businesses inspected. A three-year phase in plan was presented to the City of Branson in 2017 with the first phase implemented in 2018. To more accurately reflect their cost of providing the associated services, the Taney County Health Department recommends the implementation of the third year of the three-year phase in.

Following the same process used to review other City fees found in Appendix A of the Branson Municipal Code, staff is proposing amendments to the following fees which are collected by the Taney County Health Department:

- **Food Establishment Fee (amend current fee)**
- **Pool and Spa Fee (amend current fee)**
- **Body Art and Massage Establishment Fee (amend current fee)**
- **Lodging Establishment Fee (amend current fee)**

The breakdown and calculations for these fees can be found within Exhibit A which has been attached for reference. An explanation of each column within the calculations is as follows:

- **Inspection Time (Avg)** - Category average inspection time, includes drive time to inspection.
- **Processing Time (Avg)** - Time inspector and administrative assistant spends on facility before it opens and throughout the year.
- **Consulting/Education/Training (Avg)** - Continuous consulting/education/training that is provided to the facility.
- **Number of Inspections** - Inspection frequency per permit year.
- **Total Average Hours** - Total of Inspection Time, Consulting/Education/Training, and Number of Inspections columns.
- **Average Gross Hourly Wage** - Average inspector hourly wage.
- **Benefits Per Hour** - Average benefits per inspector per hour.
- **Wage and Benefits Total** - Total of the Average Gross Hourly Wage and Benefits columns.
- **Admin Cost** - Hourly average wage for administrative assistant.
- **Total** - Total wages, benefits and admin cost per inspection.
- **City Cost** - What it would cost the City of Branson for each inspection type.
- **2017 Fee** - 2017 Fee for each category.
- **1<sup>st</sup> Year- 2018 30% Proposed Fee** – 2018 fees for each category
- **2<sup>nd</sup> Year- 2019 30% Proposed Fee** - Current fees for each category
- **3<sup>rd</sup> Year Total additional 40% proposed fee** – Fee request for 2020
- **Percent of Total City Cost**- Percentage of city cost recovered by fees based on 2017 cost analysis

Staff will be available during the meeting to answer questions and provide additional information as necessary.

EXHIBIT A

Food Establishment Fees Environmental Health Services	Inspection Time (Avg)	Processing Time (Avg)	Consulting/ Education/ Training (Avg)	Number of Inspections	Total Avg Hrs	Avg. Gross Hrlly. Wage	Benefit/hr	Wage and Benefits Total	Admin Cost	Total	City Cost	2017 Fee	1st Year-2018 30% proposed fee	2nd Year-2019 30% proposed fee	3rd Year-2020 total additional 40% proposed fee	% of Total City Cost over 3 years
Low Food	1.32	1	1	1	3.32	24	10	34	17	51	169.32	100	115	130	150	88%
Med Food	1.58	1.5	1.5	2	6.16	24	10	34	17	51	314.16	250	265	280	300	95.50%
High Food	2.25	2	2	3	10.75	24	10	34	17	51	548.25	400	430	460	500	91%
Food Revisit	1	1	1	1	3	24	10	34	17	51	153	100	112	125	140	92%
Food Complaint	0.85	1	1	1	2.85	24	10	34	17	51	145.35	100	110.5	125	135	92%
Food New Construction	3	2.5	3	1	8.5	24	10	34	17	51	433.5	350	365	380	400	92%
Food Pre-Open Existing	2	1.5	1.5	1	5	24	10	34	17	51	255	200	207.5	215	225	88%

Pool and Spa Fees Environmental Health Services	Inspection Time (Avg)	Processing Time (Avg)	Consulting/ Education/ Training (Avg)	Number of Inspections	Total Avg Hrs	Avg. Gross Hrlly. Wage	Benefit/hr	Wage and Benefits Total	Admin Cost	Total	City Cost	Current Fee	1st Year 30% proposed fee	2nd Year additional 30% proposed fee	3rd Year total additional 40% proposed fee	% of Total City Cost over 3 years
Annual Outdoor Pool & Spa	0.94	1	1.5	2	4.38	24	10	34	17	51	223.38	150	165	180	200	90%
Annual Indoor Pool & Spa	0.82	1.5	1.5	3	5.46	24	10	34	17	51	278.46	200	215	230	250	90%
POOL NEW CONSTRUCTION	1.5	3	3	1	7.5	24	10	34	17	51	382.5	350	350	350	350	91%
POOL EXISTING	1	1	1	1	3	24	10	34	17	51	153	125	132.5	140	150	98%
SPA NEW CONSTRUCTION	1	1	1	1	3	24	10	34	17	51	153	75	94.5	114	140	91%
SPA EXISTING	1	1	1	1	3	24	10	34	17	51	153	75	94.5	114	140	91%
Pool/Spa Revisit	1	1	1	1	3	24	10	34	17	51	153	100	115	130	150	98%

Lodging Fees Environmental Health Service	Inspection Time (Avg)	Processing Time (Avg)	Consulting/ Education/ Training (Avg)	Number of Inspections	Total Avg Hrs	Avg. Gross Hrlly. Wage	Benefit/hr	Wage and Benefits Total	Admin Cost	Total	City Cost	Current fee	1st Year 30% proposed fee	2nd Year additional 30% proposed fee	3rd Year total additional 40% proposed fee	% of Total City Cost over 3 years
Annual Lodging Permit (<50 rooms)	4.56	1.5	1	1	7.06	24	10	34	17	51	360.06	0	105	210	350	97%
Annual Lodging Permit (51-200 rooms)	4.56	2	1.5	1	8.06	24	10	34	17	51	411.06	0	120	240	400	97%
Annual Lodging Permit (201+)	4.56	2.5	2	1	9.06	24	10	34	17	51	462.06	0	135	270	450	97%
Lodging Pre-Open (New Construction or 18 months or more)	3.5	2	2	1	7.5	24	10	34	17	51	382.5	0	105	210	350	91%
Lodging Pre-Open (Less than 18 months)	3	2	1	1	6	24	10	34	17	51	306	0	82.5	165	275	90%
Lodging Complaint	2	1	1	1	4	24	10	34	17	51	204	0	52.5	105	175	86%
Lodging Revisit	2	1	1	1	4	24	10	34	17	51	204	0	52.5	105	175	86%

\*Lodging proposed annual fee is the average of the proposed tier fees.

Body Art/Massage Fees Environmental Health Service	Inspection Time (Avg)	Processing Time (Avg)	Consulting/ Education/ Training (Avg)	Number of Inspections	Total Avg Hrs	Avg. Gross Hrlly. Wage	Benefit/hr	Wage and Benefits Total	Admin Cost	Total	City Cost	Current fee	1st Year 30% proposed fee	2nd Year additional 30% proposed fee	3rd Year total additional 40% proposed fee	% of Total City Cost over 3 years
Annual Body Art Permit	1.3	0.5	0.5	2	3.6	24	10	34	17	51	183.6	100	115	130	150	81.70%
Body Art Pre-Open	1	1	1	1	3	24	10	34	17	51	153	100	107.5	115	125	82%
Body Art Revisit	0.75	0.5	0.5	1	1.75	24	10	34	17	51	89.25	0	22.5	45	75	84%
Massage	1.23	0.5	0.5	2	3.46	24	10	34	17	51	176.46	100	115	130	150	85%
Massage Pre-Open	1	1	1	1	3	24	10	34	17	51	153	100	107.5	115	125	82%
Massage Revisit	0.75	0.5	0.5	1	1.75	24	10	34	17	51	89.25	0	22.5	45	75	84%

BILL NO. 5766

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING APPENDIX A OF THE BRANSON MUNICIPAL CODE PERTAINING TO LODGING ESTABLISHMENT, SWIMMING POOLS AND SPAS, AND HEALTH AND SANITATION FEES.**

---

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, THE FOLLOWING:**

Section 1: It is the intention of the Board, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of the Branson Municipal Code, and the sections of this ordinance may be renumbered to accomplish such intention.

Section 2: That Appendix A – FEE SCHEDULE of the Branson Municipal Code is hereby amended to read as follows:

APPENDIX A – FEE SCHEDULE

Code Section	Description	Fee
<i>Chapter 46—Health Sanitation</i>		
46-31	Massage establishment permits:	
	• Pre-open inspection	<del>115.00</del> <b><u>125.00</u></b>
	• Permit	<del>130.00</del> <b><u>150.00</u></b>
	• Reinspection	<del>45.00</del> <b><u>75.00</u></b>
	Body art establishment permits:	
	• Pre-open inspection	<del>115.00</del> <b><u>125.00</u></b>
	• Permit	<del>130.00</del> <b><u>150.00</u></b>
	• Reinspection	<del>45.00</del> <b><u>75.00</u></b>
	Public swimming pool permits, per body of water (including theme parks):	
	• Pre-open inspection:	

	- New construction/remodel	350.00
	- Existing establishment/new owner	140.00 <b><u>150.00</u></b>
	• Permit:	
	- Outdoor pool permit	180.00 <b><u>200.00</u></b>
	- Indoor pool permit	230.00 <b><u>250.00</u></b>
	• Reinspection (excluding temporary permits) for each reinspection after routine inspection or complaint with action	130.00 <b><u>150.00</u></b>
	Spa permits, per body of water (including theme parks):	
	• Pre-open inspection:	
	- New construction/remodel	114.00 <b><u>140.00</u></b>
	- Existing establishment/new owner	114.00 <b><u>140.00</u></b>
	• Permit:	
	- Outdoor spa permit	180.00 <b><u>200.00</u></b>
	- Indoor spa permit	230.00 <b><u>250.00</u></b>
	• Reinspection (excluding temporary permits) for each reinspecton after routine inspection or complaint with action	130.00 <b><u>150.00</u></b>
	Food establishment permits, per establishment:	
	• Pre-open inspection:	
	- New construction/remodel	380.00 <b><u>400.00</u></b>
	- Existing establishment/new owner	215.00 <b><u>225.00</u></b>
	• Permit:	
	- High risk category 3 permit	460.00 <b><u>500.00</u></b>
	- Medium risk category 2 permit	280.00 <b><u>300.00</u></b>

	- Low risk category 1 permit	<del>130.00</del> <b><u>150.00</u></b>
	- Temporary food establishment permit	100.00
	• Reinspection (excluding temporary permits) for each reinspection after routine inspection or complaint with action	<del>125.00</del> <b><u>140.00</u></b>
	• Complaint inspection	<del>125.00</del> <b><u>135.00</u></b>
	Lodging establishment permits, per establishment:	
	• Pre-open inspection:	
	- New construction or closed for 18 months or more	<del>210.00</del> <b><u>350.00</u></b>
	- Existing establishment or closed for less than 18 months	<del>165.00</del> <b><u>275.00</u></b>
	• Permit:	
	- <50 rooms	<del>210.00</del> <b><u>350.00</u></b>
	- 51—200 rooms	<del>240.00</del> <b><u>400.00</u></b>
	- >201 rooms	<del>270.00</del> <b><u>450.00</u></b>
	• Reinspection (excluding temporary permits) for each reinspection after routine inspection or complaint with action	<del>105.00</del> <b><u>175.00</u></b>
	• Complaint inspection	<del>105.00</del> <b><u>175.00</u></b>

NOTE: LANGUAGE WHICH IS **BOLD, UNDERLINED** HAS BEEN ADDED; LANGUAGE WHICH IS [~~BRACKETED, STRICKEN~~] HAS BEEN REMOVED.

Section 3: This ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and approval of the Mayor.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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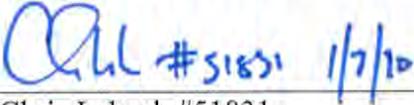
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

---

Lisa K Westfall  
City Clerk

 #51831 1/7/10

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Chris Lebeck #51831  
City Attorney



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL AMENDING THE ADOPTED 2020 BUDGET FOR THE CITY OF BRANSON TO ADJUST MONIES FOR THE PUBLIC SAFETY FUND.

**INITIATED BY:** FINANCE DEPARTMENT

**FIRST READING:** JANUARY 14, 2020

**FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- The Police Department had budgeted funds of \$20,000.00 for a one-time expenditure in the 2019 Budget for the purchase of Patrol/Ballistic Rifle Plates. The Department received a donation of \$12,600.00 from Benefit the Badge. The total amount of the contract for these items is \$34,347.28 and the Police Department has identified funds for the remaining \$1,747.28 unspent in the 2019 Budget.
- The Police Department also budgeted funds of \$21,000.00 for a handheld narcotics analyzer as a capital item in the 2019 Budget. The contracted price for this item is \$18,500.00.
- The contracts for both of these purchases were not awarded by December 31, 2019 and the funds could not be encumbered. Unspent 2019 funds reverted back to the Public Safety Fund Reserve.
- If the Board of Aldermen elects to appropriate these funds, the fund balance in the Public Safety Fund Reserve will be lowered to cover these amounts.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year's budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** Accountability and Financial Stewardship: We will ensure the efficient efficient and appropriate use of public funds by being good financial stewards on behalf of our residents and businesses.

**ATTACHED EXHIBITS:**

BILL NO. 5767

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING THE ADOPTED 2020 BUDGET FOR THE CITY OF BRANSON TO ADJUST MONIES FOR THE PUBLIC SAFETY FUND.**

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**WHEREAS**, Section 2-418 of the Branson Municipal Code states that any increase in appropriation within a budgeted fund shall require the approval of the Board of Aldermen; and

**WHEREAS**, it is necessary to adjust monies for the Public Safety Fund in the 2020 Budget.

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, THAT THE 2020 BUDGET FOR THE CITY OF BRANSON IS HEREBY AMENDED AS FOLLOWS:**

Section 1: The following amendment is authorized to transfer funds within the 2020 Budget of the Public Safety Fund.

**Public Safety Fund**

	<b><u>Increase</u></b>
260-2022-520.40-10 (Public Safety Fund)	\$34,347.28
Unreserved Fund Balance (Public Safety Fund)	(\$34,347.28)
260-2022-520.90-10 (Public Safety Fund)	\$18,500.00
Unreserved Fund Balance (Public Safety Fund)	(\$18,500.00)

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

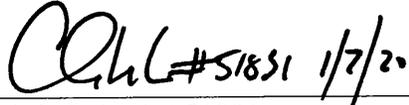
Read, this second time, passed and truly agreed to by the Board of Aldermen of City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE CONTRACT WITH METROHM USA TO PROVIDE A HANDHELD NARCOTICS ANALYZER WITH MAINTENANCE SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** POLICE DEPARTMENT

**FIRST READING:** JANUARY 14, 2020

**FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- The Police Department budgeted for and received approval to purchase a handheld narcotics analyzer. This equipment will be used to safely test narcotics without physical contact and exposing our officers to the risks of toxic drugs.
- Bids were solicited and received from the following vendors:
 

Thermo Fisher Scientific	\$24,500
B & W Tek / Metrohm	\$18,500
Farr West	\$29,900
- Staff recommends Metrohm USA, the lowest responding bidder, be awarded the contract.
- The total amount of the contract is \$18,500.00. This is a budgeted expense from the 2019 approved budget.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year's budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** C-1 Public Safety.

**ATTACHED EXHIBITS:**



Master Contract Number: \_\_\_\_\_

## PURCHASE OF COMMODITIES CONTRACT

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Branson, Missouri (the "City") and **Metrohm USA** ("Seller").

WHEREAS, the City of Branson desires to purchase and the Seller agrees to sell to the City certain commodities more particularly described in **Exhibit A** (bid); and

WHEREAS, the Seller made certain representations and statements to the City with respect to the provision of such commodities and the City has accepted the Seller's proposal;

The City and the Seller agree as follows:

1. **Item(s) and dates of Purchase.** The City agrees to purchase and the Seller agrees to sell the following item(s): **handheld narcotics analyzer, from a date beginning on the execution date of this contract to a date ending December 31, 2021.**
2. **Quantities to be Purchased and Purchase Price.**
  - a. The City agrees to purchase and the Seller agrees to sell the following quantities/amounts for the purchase price(s) listed: **See Exhibit B.**
  - b. The City assumes no obligations for articles or materials shipped in excess in the quantity ordered. Any unauthorized quantity is subject to the City's rejection and may be returned at the Seller's expense.
  - c. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Seller under the terms of this contract exceed the sum of **Eighteen Thousand Five Hundred Dollars (\$18,500.00), all of which is dependent upon budget appropriations.**
3. **Delivery and Shipment.**
  - a. The Seller is responsible for the costs of shipment.
  - b. Time is of the essence with respect to each shipment.
  - c. If deliveries are not made **upon demand**, the City reserves the right to cancel this contract, purchase the commodities elsewhere, and hold the Seller liable for any re-procurement costs.
  - d. Deliveries are to be made to: **110 W. Maddux Street, Suite 100, Branson, Missouri 65616.**

**4. Invoices.** An original and three copies of the invoice shall be submitted by the Seller to the City, showing the purchase order number or contract number and containing a full description of the commodities furnished.

**5. Inspection and Acceptance.**

- a. No goods received by the City pursuant to this contract shall be deemed accepted until the City has had reasonable opportunity to inspect said goods.
- b. All goods discovered to be defective (at any time) or which do not conform to any bid specifications or to any warranty of the Seller may be returned at the Seller's expense for full refund or replacement.
- c. The City's right to return defective and/or non-conforming goods does not bar any other legal, equitable or contractual remedies the City may have against the Seller.

**6. Warranty.**

- a. Seller expressly warrants that all articles, materials and work covered by this contract conform to each and every specification, drawing, sample or other description which is furnished to or is adopted by the City and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect.
- b. Such warranty shall not be deemed waived either by reason of the City's acceptance of said material or goods or by payment for them.
- c. Any implied warranties are not altered by this written contract.
- d. Additional terms: N/A.

**7. Patents.** Seller guarantees that the sale or use of the articles described herein will not infringe upon any U.S. or foreign patent and Seller covenants that he will, at his own expense, defend every suit which may be brought against the City, or those selling or using City's product for any alleged infringement of any patent by reason of the sale or use of such articles and Seller agrees that he will pay all costs, damages and profits recoverable in any such suit.

**8. Bankruptcy or Insolvency.** In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of Seller, or in the event of breach of any of the terms hereof including in the warranties of the Seller, City may cancel this contract or affirm the contract and hold Seller responsible in damages.

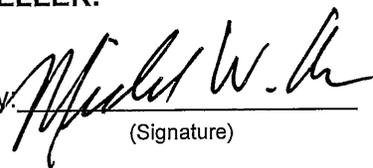
**9. Compliance with Applicable Laws.** The Seller warrants it has complied with all Applicable laws, rules and ordinances of the United States, or any state, municipality or any other governmental authority or agency in the manufacture or sale of the items

covered by this contract, including but not limited to all provisions of the Fair Labor Standard Act of 1938, as amended.

- 10. Conflicts.** Any bidder or signee of this contract shall disclose any financial relationship (direct or indirect) to salaried officer, employee of the City or member of the City Board of Aldermen in writing at the time of the execution of this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Seller covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work to be performed under this contract. The Seller further covenants that in the performance of this contract no person having such interest shall be employed.
- 11. Interpretation of Contract and Assignments.** The contract shall be construed according to the laws of the State of Missouri. Seller hereunder may not assign the contract, or any rights, obligations or duties without City's written consent or any attempted assignment without such consent shall be void.
- 12. Termination of Contract.** The City reserves the right to terminate the contract at any Time if any of the provisions of the contract are violated by the Seller, in the sole judgment and discretion of The City. In the event of such termination, the Seller shall be liable for any excess costs incurred by the City. If the contract is terminated, the City may purchase upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to the good identified in this contract; the Seller will be liable for any excess costs occasioned thereby.
- 13. Non-discrimination in Employment.** In connection with the furnishing of supplies or performances or work under this contract, the Seller agrees to comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable federal and state laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder. The Seller agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Seller or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- 14. Provisions by Law Deemed Inserted.** Each and every provision of the law and clauses required by law to be inserted in this contract will be deemed to be inserted herein and will be read and enforced as though it were included herein, and if through mistake, or otherwise any such provision is not inserted, then upon the application of either party the contract will be physically amended to make such insertion or correction.
- 15. Tax-Exempt.** The City of Branson is exempt from Sales Tax and Federal Excise Tax.
- 16. Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

17. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

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

<b>SELLER:</b>	<b>CITY OF BRANSON, MISSOURI</b>
By: <u></u> <u>20 Dec 2019</u>	_____
(Signature) Date	E. Edd Akers Mayor
Name: <u>MICHAEL W. ALLEN</u>	_____
(Printed Name)	ATTEST: Lisa K Westfall City Clerk
Title: <u>VP, MARKETING</u>	_____
Company Name: <u>Metrohm USA, Inc.</u>	Date
Address: <u>9250 Camden Field Pkwy</u>	
<u>Riverview, FL 33578</u>	
Phone: <u>866-638-7646</u>	APPROVED AS TO FORM:
E-Mail: <u>customersupport@metrohmusa.com</u>	<u></u> <u>#51831</u> <u>11/13/17</u>
Tax ID: <u>26-0130818</u>	Chris Lebeck #51831 City Attorney
	_____
	Date

Metrohm USA  
19 Shea Way, Suite 301  
Newark, DE 19713  
Attn: Ken Friedman

### **SCOPE OF WORK**

1. Purpose: Metrohm USA agrees to provide a TacticID-N handheld narcotics analyzer as specified in the following general requirements.
2. General Requirements:
  - 2.1 Pricing includes shipping, delivered to facilities located in Branson, MO.
  - 2.2 The equipment shall be the manufacturer's latest design and production.
  - 2.3 Unit shall perform fast, non-destructive testing of solids, liquids, gels, and powders.
  - 2.4 Extensive library of narcotics, cutting agents, and counterfeit drugs must be available.
  - 2.5 Unit will have the ability to safely test an array of samples through packaging.
  - 2.6 Unit must be able to analyze a sample, identify multiple components and give a percentage breakdown of components identified within chemical mixtures.
  - 2.7 2 year warranty included.
  - 2.8 Metrohm USA shall provide ongoing support and updates to the library for 5 years.
  - 2.9 Protective storage/carrying case.
  - 2.10 Instrument must be easy to test and calibrate.

**PRICING PAGE**

Metrohm USA provided pricing information as specified below to provide a handheld narcotics analyzer in accordance with the terms and conditions of the contract.

	Product	Unit Price
001.	Tactic ID-N portable handheld narcotics analyzer	\$ 18,500.00



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING A CONTRACT WITH ED ROEHR SAFETY PRODUCTS CO. TO PROVIDE ACTIVE SHOOTER, HOSTILE EVENT RESPONSE KITS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** POLICE DEPARTMENT

**FIRST READING:** JANUARY 14, 2020

**FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- This contract is for the purchase of 22 Active Shooter Kits. These kits contain a ballistic helmet, front and back Type III ballistic rifle plates with adjustable carrier, rifle magazine pouch and Police ID patches. These kits will equip all Police Patrol Vehicles in the fleet.
- These items will be purchased off a Missouri State Bid through Ed Roehr Safety Products Co. The State of Missouri completed a bid process for these items and secured distributors whom the State approved to purchase these items from. Additionally, Staff compared pricing with other vendors to confirm the State Bid was the lowest.
- The total expense for these items is \$34,347.28. These funds were secured in the Police Department's 2019 budget and additional funds were donated by the Benefit the Badge organization.
- The Active Shooter Kits will enable all patrol officers access to ballistic protection against rifle threats which the Department currently has none. The daily wear ballistic vests only protect against handgun rounds; these ballistic vests provide much better officer protection. This is essential protective gear for 21<sup>st</sup> Century policing.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year's budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** C-1 Public Safety

**ATTACHED EXHIBITS:**

BILL NO. 5769

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING A CONTRACT WITH ED ROEHR SAFETY PRODUCTS CO. TO PROVIDE ACTIVE SHOOTER, HOSTILE EVENT RESPONSE KITS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the City of Branson wishes to enter into a contract with Ed Roehr Safety Products Co. to provide handheld narcotics analyzer; and

**WHEREAS**, the contract between Ed Roehr Safety Products Co. and the City of Branson has been recommended for approval by Staff; and

**WHEREAS**, the Board of Aldermen desires to enter into the agreement.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:**

Section 1: The Board of Aldermen hereby accepts the proposed contract with Ed Roehr Safety Products Co. with a not-to-exceed amount of \$34,347.28 and authorizes the Mayor to execute the contract attached hereto as Exhibit "1".

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

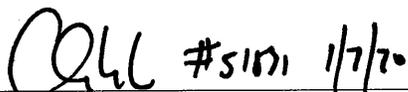
Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

Master Contract Number: \_\_\_\_\_

## PURCHASE OF COMMODITIES CONTRACT

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Branson, Missouri (the "City") and Ed Roehr Safety Products Co. ("Seller").

WHEREAS, the City of Branson desires to purchase and the Seller agrees to sell to the City certain commodities more particularly described in **Exhibit A** (bid); and

WHEREAS, the Seller made certain representations and statements to the City with respect to the provision of such commodities and the City has accepted the Seller's proposal;

The City and the Seller agree as follows:

1. **Item(s) and dates of Purchase.** The City agrees to purchase and the Seller agrees to sell the following item(s): **active shooter, hostile event response kits, from a date beginning on the execution date of this contract to a date ending June 30, 2020.**
2. **Quantities to be Purchased and Purchase Price.**
  - a. The City agrees to purchase and the Seller agrees to sell the following quantities/amounts for the purchase price(s) listed: **See Exhibit A.**
  - b. The City assumes no obligations for articles or materials shipped in excess in the quantity ordered. Any unauthorized quantity is subject to the City's rejection and may be returned at the Seller's expense.
  - c. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Seller under the terms of this contract exceed the sum of **Thirty Four Thousand Three Hundred Forty Seven Dollars and Twenty Eight Cents (\$34,347.28)**, all of which is dependent upon budget appropriations.
3. **Delivery and Shipment.**
  - a. The Seller is responsible for the costs of shipment.
  - b. Time is of the essence with respect to each shipment.
  - c. If deliveries are not made **upon demand**, the City reserves the right to cancel this contract, purchase the commodities elsewhere, and hold the Seller liable for any re-procurement costs.
  - d. Deliveries are to be made to: **110 W. Maddux Street, Suite 100, Branson, Missouri 65616.**

Ed Roehr Safety Products Co.  
Page 1 of 5

4. **Invoices.** An original and three copies of the invoice shall be submitted by the Seller to the City, showing the purchase order number or contract number and containing a full description of the commodities furnished.
5. **Inspection and Acceptance.**
  - a. No goods received by the City pursuant to this contract shall be deemed accepted until the City has had reasonable opportunity to inspect said goods.
  - b. All goods discovered to be defective (at any time) or which do not conform to any bid specifications or to any warranty of the Seller may be returned at the Seller's expense for full refund or replacement.
  - c. The City's right to return defective and/or non-conforming goods does not bar any other legal, equitable or contractual remedies the City may have against the Seller.
6. **Warranty.**
  - a. Seller expressly warrants that all articles, materials and work covered by this contract conform to each and every specification, drawing, sample or other description which is furnished to or is adopted by the City and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect.
  - b. Such warranty shall not be deemed waived either by reason of the City's acceptance of said material or goods or by payment for them.
  - c. Any implied warranties are not altered by this written contract.
  - d. Additional terms: N/A.
7. **Patents.** Seller guarantees that the sale or use of the articles described herein will not infringe upon any U.S. or foreign patent and Seller covenants that he will, at his own expense, defend every suit which may be brought against the City, or those selling or using City's product for any alleged infringement of any patent by reason of the sale or use of such articles and Seller agrees that he will pay all costs, damages and profits recoverable in any such suit.
8. **Bankruptcy or Insolvency.** In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of Seller, or in the event of breach of any of the terms hereof including in the warranties of the Seller, City may cancel this contract or affirm the contract and hold Seller responsible in damages.
9. **Compliance with Applicable Laws.** The Seller warrants it has complied with all Applicable laws, rules and ordinances of the United States, or any state, municipality or any other governmental authority or agency in the manufacture or sale of the items

covered by this contract, including but not limited to all provisions of the Fair Labor Standard Act of 1938, as amended.

- 10. Conflicts.** Any bidder or signee of this contract shall disclose any financial relationship (direct or indirect) to salaried officer, employee of the City or member of the City Board of Aldermen in writing at the time of the execution of this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Seller covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work to be performed under this contract. The Seller further covenants that in the performance of this contract no person having such interest shall be employed.
- 11. Interpretation of Contract and Assignments.** The contract shall be construed according to the laws of the State of Missouri. Seller hereunder may not assign the contract, or any rights, obligations or duties without City's written consent or any attempted assignment without such consent shall be void.
- 12. Termination of Contract.** The City reserves the right to terminate the contract at any Time if any of the provisions of the contract are violated by the Seller, in the sole judgment and discretion of The City. In the event of such termination, the Seller shall be liable for any excess costs incurred by the City. If the contract is terminated, the City may purchase upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to the good identified in this contract; the Seller will be liable for any excess costs occasioned thereby.
- 13. Non-discrimination in Employment.** In connection with the furnishing of supplies or performances or work under this contract, the Seller agrees to comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable federal and state laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder. The Seller agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Seller or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- 14. Provisions by Law Deemed Inserted.** Each and every provision of the law and clauses required by law to be inserted in this contract will be deemed to be inserted herein and will be read and enforced as though it were included herein, and if through mistake, or otherwise any such provision is not inserted, then upon the application of either party the contract will be physically amended to make such insertion or correction.
- 15. Tax-Exempt.** The City of Branson is exempt from Sales Tax and Federal Excise Tax.
- 16. Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

17. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

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

**SELLER:**

By: Duane L Wall 12-3-19  
(Signature) Date

Name: Duane L. Wall  
(Printed Name)

Title: President

Company Name: Ed Roehr Safety Products

Address: 2550 St. Louis Ave  
St. Louis Mo 63106

Phone: 314-533-9344

E-Mail: dwall@edroehrsafety.com

Tax ID: 43-0624955

**CITY OF BRANSON, MISSOURI**

\_\_\_\_\_  
E. Edd Akers Date  
Mayor

**ATTEST:**

\_\_\_\_\_  
Lisa K Westfall Date  
City Clerk

**APPROVED AS TO FORM:**

Chris Lebeck #51831 12/3/19  
Chris Lebeck #51831 Date  
City Attorney

Ed Roehr Safety Products  
2550 St. Louis Ave.  
St. Louis, MO 63106

### SCOPE OF WORK

Purpose: Ed Roehr agrees to furnish the following equipment as specified from State of Missouri Contract CC160735003.

Quantity	Description	Price each
22	#PT1220976-FC ProTech Tactical Delta 4 Full-Cut Ballistic Helmet, Black NIJ Level IIIA, R2S Ratcheting Suspension System w/ Mesh Crown Suspension System, Bolted <u>\$349.00</u>	
22	#PTTAC-PR-TMW-CARR -BKL ProTech Tacitcal TAC-PR Plate Rack Carrier w/ MOLLE Attachment System, Black, Buckle Closure	<u>\$139.00</u>
22	#PTTP-LT5A ProTech Tactical PT5A Dual M4/AR Magazine Pouch	\$ 37.50
44	#PT1302172 HARDWIRE Lightweight Type III Ballistic Rifle Plate 10x12" Multi-Curve	<u>\$494.12</u>
22	#ESP6115-B Elite Survival Active Shooter Kit Carry Bag, Black	\$ 37.50
44	#PT1223589-PL ProTech "POLICE" ID's wNelcro Back Black w/ White Letters	<u>\$ 5.00</u>



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL ACCEPTING A WARRANTY DEED FOR PROPERTY FROM BH LAND COMPANY, LLC PERTAINING TO THE SUMMIT RIDGE RESIDENCES SUBDIVISION AND AUTHORIZING THE MAYOR TO EXECUTE THE ACCEPTANCE OF CONVEYANCE.

**INITIATED BY:** PLANNING AND DEVELOPMENT DEPARTMENT

**FIRST READING:** JANUARY 14, 2020

**FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- On June 11, 2019, the Board of Aldermen approved a Final Subdivision Plat for Summit Ridge Residences (Ord. No. 2019-0069). Within that approval, the City agreed to accept approximately 5.96 acres more or less of public open space, which exceeded the required amount as described by Branson Municipal Code Section 94-119 by approximately 2.88 acres more or less.
- The approved land is in close proximity to the RecPlex and will help the community with preserving land for open space and recreational opportunities. The land’s ideal use will be to support the expansion of the City’s trail network along with preserving a visible hillside as defined by the Community Plan 2030.
- Because the Warranty Deed for the property was recorded in error on December 20, 2019, a corrected Warranty Deed has been included to be recorded along with the City’s Acceptance of Conveyance for the property so the process can be completed.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year’s budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None



**COMMUNITY PLAN 2030:** POS Strategy 1.3

**ATTACHED EXHIBITS:** 1) Ordinance No. 2019-0069

**BILL NO. 5580**

**ORDINANCE NO. 2019-0069**

**AN ORDINANCE APPROVING A FINAL SUBDIVISION PLAT FOR SUMMIT RIDGE RESIDENCES.**

---

**WHEREAS,** the property owner has petitioned the City of Branson for approval of a Final Subdivision Plat for Summit Ridge Residences Subdivision; and,

**WHEREAS,** on May 7, 2019, the Planning Commission for the City of Branson reviewed the application for said Final Subdivision Plat and recommends approval; and,

**WHEREAS,** the Board of Aldermen for the City of Branson find that such Final Subdivision Plat is reasonable and necessary.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, THE FOLLOWING:**

Section 1: The Board of Aldermen for the City of Branson hereby approves the Final Subdivision Plat for Summit Ridge Residences attached hereto as Exhibit 'A' and legally described as Exhibit 'B'.

Section 2: The Planning and Development Department is hereby directed to record the Final Subdivision Plat for Summit Ridge Residences in the Office of the Recorder of Deeds of Taney County, Missouri, within thirty (30) days of the date of this ordinance, provided all public works improvements have been completed and upon payment by the subdivider of all fees associated with the recording.

Section 3: Severability Clause. If any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or major sections, sentences, clauses or phrases be declared invalid.

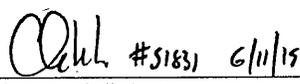
Section 4: This ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and approval by the Mayor.

Read, this first time on this 28<sup>th</sup> day of May, 2019.

Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri on this 11<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:  
  
\_\_\_\_\_  
Lisa K Westfall  
City Clerk

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney





**EXHIBIT 'B'**

A TRACT OF LAND SITUATED IN PART OF THE W1/2 OF THE SE1/4 OF SECTION 18, TOWNSHIP 23 NORTH, RANGE 21 WEST, CITY OF BRANSON, TANEY COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN EXISTING SANDSTONE MARKING THE SOUTHWEST CORNER OF THE SW1/4 OF THE SE1/4 OF SAID SECTION 18; THENCE N 1°36'02" E, A DISTANCE OF 1285.33 FEET, TO A POINT ON THE WEST LINE OF THE SW1/4 OF THE SE1/4 OF SAID SECTION 18; THENCE S 88°23'58" E, A DISTANCE OF 49.21 FEET, TO THE NEW POINT OF BEGINNING; THENCE N 6°47'18" W, A DISTANCE OF 227.36 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BRANSON HILLS PARKWAY; THENCE NORTHERLY ALONG A NON-TANGENT CURVE TO THE LEFT, 67.59 FEET (SAID CURVE HAVING A DELTA OF 3°05'54", A CHORD BEARING OF N 80°53'58" E, CHORD DISTANCE OF 67.59 FEET AND HAVING A RADIUS OF 1250.00 FEET); THENCE N 79°21'01" E, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF BRANSON HILLS PARKWAY, A DISTANCE OF 431.03 FEET; THENCE NORTHERLY ALONG A CURVE TO THE RIGHT, 481.86 FEET (SAID CURVE HAVING A DELTA OF 32°28'50" AND HAVING A RADIUS OF 850.00 FEET); THENCE S 6°33'00" E, LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 231.39 FEET; THENCE S 24°49'24" W, A DISTANCE OF 170.00 FEET; THENCE S 33°52'33" W, A DISTANCE OF 228.48 FEET; THENCE N 90°00'00" W, A DISTANCE OF 155.00 FEET; THENCE S 25°34'43" W, A DISTANCE OF 174.66 FEET; THENCE N 64°25'17" W, A DISTANCE OF 343.02 FEET; THENCE NORTHERLY ALONG A CURVE TO THE RIGHT, 402.35 FEET (SAID CURVE HAVING A DELTA OF 57°37'58" AND HAVING A RADIUS OF 400.00 FEET), TO THE NEW POINT OF BEGINNING, SAID TRACT CONTAINING 12.31 ACRES OF LAND, MORE OR LESS.

BILL NO. 5770

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ACCEPTING A WARRANTY DEED FOR PROPERTY FROM BH LAND COMPANY, LLC PERTAINING TO THE SUMMIT RIDGE RESIDENCES SUBDIVISION AND AUTHORIZING THE MAYOR TO EXECUTE THE ACCEPTANCE OF CONVEYANCE.**

---

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, AS FOLLOWS:**

Section 1: The attached Exhibit "1" Warranty Deed, for property from BH Land Company, LLC pertaining to the Summit Ridge Residences Subdivision is hereby accepted and the Mayor is authorized to execute Exhibit "2" Acceptance of Conveyance.

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

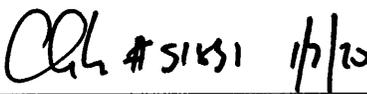
Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

**CORRECTED WARRANTY DEED**

Date of document: 12/18/2019 (recorded 12/20/2019)

Grantor: BH Land Company, LLC

Grantee: City of Branson

Grantee's address: 110 West Maddux, Branson, MO 65616

Legal description: See Exhibit "A" attached hereto and made a part hereof

Reference document: Book 2019, Page L33548



\* 2 0 1 9 L 3 3 5 4 8 3 \*

BOOK PAGE  
**2019L33548**  
12/20/2019 08:08:41AM  
REC FEE:30.00  
NON-STD FEE:  
PAGES: 3  
REAL ESTATE DOCUMENT  
TANEY COUNTY, MISSOURI  
RECORDERS CERTIFICATION

JODY C STAHL

**WARRANTY DEED**  
(By Limited Liability Company)

**THIS INDENTURE**, made on the 18<sup>TH</sup> day of <sup>DECEMBER</sup> ~~August~~, A.D. 2019, by and between **BH LAND COMPANY, LLC**, (Grantor) of the County of Taney in the State of Missouri, a limited liability company organized and existing under the laws of the State of Missouri, party of the first part, in consideration of **TEN AND NO/100 DOLLARS** and other good and valuable consideration to it paid by **CITY OF** ✓ **BRANSON**, a municipality (Grantee) of the County of Taney and State of Missouri, party of the second part,

Grantee Mailing Address: 110 West Maddux, Branson, MO 65616 ✓

the receipt whereof is hereby acknowledged, does by these presents, Grant, Bargain, Sell, Convey and Confirm unto the said party of the second part, its successors and assigns, the following described lots, tracts, or parcels of land, lying, being and situate in the County of Taney and State of Missouri, to-wit:

See Exhibit "A" attached hereto and made a part hereof.

**TO HAVE AND TO HOLD** the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining unto the said party of the second part, and unto its successors and assigns, forever. The said party of the first part hereby covenanting that it is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that its has good right to convey the same; that the said premises are free and clear of any incumbrances done or suffered by it or those under whom it claim(s); and that it will warrant and defend the title to the said premises unto the said party of the second part and unto its successors and assigns, forever, against the lawful claims and demands of all persons whomsoever.

**IN WITNESS WHEREOF**, the Manager(s) of the said party of the first part has caused these presents to be signed this the day and year first above written..

(NO SEAL)

**BH LAND COMPANY, LLC**

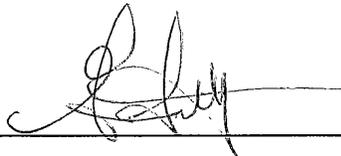
By:   
Richard E. Huffman, Manager

**ACKNOWLEDGMENT**  
(L.L.C. Individual)

**STATE OF MISSOURI** )  
 ) ss.  
County of Taney )

On this 18<sup>TH</sup> day of ~~August~~ <sup>DECEMBER</sup>, A.D. 2019, before me personally appeared Richard E. Huffman, to me (personally known, who being duly sworn, did say that (s)he is one of the Manager(s) of BH LAND COMPANY, LLC; that the Company has no seal; and that the said instrument was signed and sealed in behalf of said Company by authority of its Members and the said Richard E. Huffman acknowledged said instrument to be the free act and deed of said Company.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal, at my office in said county and state, the day and year first above written.



Notary Public County of STONE  
My Commission expires: 3/30/21



# EXHIBIT "A"

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PUBLIC OPEN SPACE 1 of SUMMIT RIDGE RESIDENCES, a subdivision per the recorded plat thereof, Plat Book/Slide L, pages 470-473, situated in the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 18, Township 23 North, Range 21 West, City of Branson, Taney County, Missouri, being more particularly described as follows:

Commencing at an existing sandstone marking the Southwest corner of the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of said Section 18; thence North 01° 36' 02" East along the West line thereof the 1285.33 feet; Thence South 88° 24' 16" East 49.21 feet to the POINT OF BEGINNING; thence North 06° 47' 18" West 227.36 feet to a point on the Southerly R/W of Branson Hills Parkway; thence Northeasterly along R/W on a non-tangent curve to the left, 67.59 feet (said curve having a delta of 3°05'54", a chord bearing and distance of North 80° 53' 58" East 67.59 feet and a radius of 1250.00 feet); thence North 79° 21' 01" East along R/W 48.19 feet; thence South 10° 38' 59" East 22.97 feet; thence South 17° 01' 07" West 153.01 feet; thence South 09° 37' 44" East 153.05 feet; thence South 88° 11' 24" East 561.47 feet; thence South 17° 44' 43" West 169.05 feet; thence South 28° 15' 30" East 57.80 feet; thence South 25° 34' 43" West 174.66 feet; thence North 64° 25' 17" West 343.02 feet; thence Northwesterly along a curve to the right, 402.35 feet (said curve having a delta of 57° 37' 58" and a radius of 400.00 feet) to the point of beginning, said tract containing 3.89 acres of land, more or less.

PUBLIC OPEN SPACE 2 of SUMMIT RIDGE RESIDENCES, a subdivision per the recorded plat thereof, Plat Book/Slide L, pages 470-473, situated in the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 18, Township 23 North, Range 21 West, City of Branson, Taney County, Missouri, being more particularly described as follows:

Commencing at an existing sandstone marking the Southwest corner of the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of said Section 18; thence North 01° 36' 02" East 1332.70 feet to an existing limestone marking the Northwest corner of SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of said Section 18; thence North 49° 13' 52" East 335.36 feet to a point on the Southerly R/W of Branson Hills Parkway; thence North 79° 21' 01" East along R/W 89.37 feet for a POINT OF BEGINNING; thence continuing North 79° 21' 01" East along R/W 172.49 feet; thence Easterly along R/W on a curve to the right, 481.86 feet (said curve having a delta of 32° 28' 50" and a radius of 850.00 feet); thence South 06° 33' 00" East 231.39 feet; thence South 24° 49' 24" West 170.00 feet; thence South 33° 52' 33" West 126.55 feet; thence North 56° 07' 27" West 203.18 feet; thence North 75° 20' 59" East 166.76 feet; thence North 07° 33' 53" East 148.91 feet; thence North 66° 29' 59" East 33.69 feet; thence North 23° 30' 01" West 156.98 feet; thence North 82° 13' 51" West 161.40 feet; thence North 85° 46' 32" West 106.47 feet; thence North 87° 21' 11" West 123.84 feet; thence South 89° 15' 05" West 116.10 feet; thence North 11° 11' 02" West 9.55 feet to the point of beginning, said tract containing 2.07 acres of land, more or less.

A 20 foot wide ACCESS EASEMENT over and across the DETENTION POND of SUMMIT RIDGE RESIDENCES, a subdivision per the recorded plat thereof, Plat Book/Slide L, pages 470-473, situated in the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 18, Township 23 North, Range 21 West, City of Branson, Taney County, Missouri, being more particularly described as follows:

Commencing at an existing sandstone marking the Southwest corner of the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of said Section 18; thence North 01° 36' 02" East 1332.70 feet to an existing limestone marking the Northwest corner of said SW $\frac{1}{4}$  of the SE $\frac{1}{4}$ ; thence South 78° 19' 05" East 695.74 feet; thence South 17° 44' 43" West 70.33 feet to the POINT OF BEGINNING; thence North 79° 07' 34" East 94.42 feet; thence South 56° 07' 27" East 28.41 feet; thence South 79° 07' 34" West 125.51 feet; thence North 17° 44' 43" East 22.78 feet to the point of beginning, said easement containing 2,199.33 sq. ft. (0.05 acre) of land, more or less.





# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL ACCEPTING THE PROPOSAL OF THE SALVATION ARMY PERTAINING TO THE PROVISION OF SERVICES TO PROVIDE TEMPORARY PUBLIC ASSISTANCE AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** ADMINISTRATION

**FIRST READING:** JANUARY 14, 2020

**FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- The City each year has budgeted to contract for services for temporary public assistance. Bids were solicited and agencies submitting bids were asked to make presentations to the Outside Program Assistance Committee.
- The committee met on November 15, 2019 to hear presentations and make recommendations for money to be awarded to those who responded to the RFP.
- The contracts listed on the detailed analysis page are based on the committee's recommendations and services are for the 2020 fiscal year with a total award amount of \$80,000.00.
- The Salvation Army contract is the last contract needing approval. They will be allowed to turn in receipts for reimbursement from the date of execution of the contract until December 31, 2020.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in this year's budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** C Strategy 2.2: Community Fabric.

**ATTACHED EXHIBITS:**

**ITEM/SUBJECT: READING OF A BILL ACCEPTING THE PROPOSAL OF THE SALVATION ARMY PERTAINING TO THE PROVISION OF SERVICES TO PROVIDE TEMPORARY PUBLIC ASSISTANCE AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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**DETAILED ANALYSIS:**

- The Salvation Army awarded \$12,000.00 - will use the City grant funds to provide emergency housing for residents who find themselves displaced unexpectedly as its primary focus and utility assistance and gas vouchers as its secondary focus.

These contracts have already been approved:

- The Boys & Girls Club of the Ozarks awarded \$11,000.00 - will use the City grant funds to provide summer enrichment programs for families currently facing challenges with rural poverty in Branson.
- The Faith Community Health Center, Inc. awarded \$12,000.00 - will use the City grant funds to assist Branson residents when the patient is unable to obtain a prescribed medication for an urgent dental or medical need when the patient would otherwise go untreated.
- Jesus Was Homeless awarded \$8,500.00 - will use the City grant funds to reimburse fuel and repair expenses for Jesus Was Homeless vans providing transportation for Branson residents to get to essential medical appointments and health and mental health services.
- The Christian Action Ministries awarded \$12,000.00 - will use the City grant funds to provide funding for the purchase of food to assist Branson residents experiencing temporary crisis and economic hardship.
- The Women's Crisis Center of Taney County, Inc. awarded \$5,000.00 - will use the City grant funds to assist with prescription assistance, food, personal hygiene supplies, clothing, diapers and basic necessities for women and their children staying in the women's shelter.
- The Branson Regional Arts Council awarded \$10,000.00 - will use the City grant funds to provide funding for youth scholarship opportunities for underprivileged or gifted students in the visual arts and theater arts for Branson youth residents in the amount not to exceed \$4,500.00, and funding for an educational youth symphony experience with the Springfield Symphony Orchestra for Branson youth residents in the amount not to exceed \$5,500.00.
- The Taneyhills Community Library awarded \$9,500.00 - will use the City grant funds to provide funding to purchase Children's and Young Adult (YA) books in the amount not to exceed \$7,000.00, and to purchase eAudio and eBook annual subscriptions in the amount not to exceed \$2,500.00.

BILL NO. 5771

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ACCEPTING THE PROPOSAL OF THE SALVATION ARMY PERTAINING TO THE PROVISION OF SERVICES TO PROVIDE TEMPORARY PUBLIC ASSISTANCE AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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**WHEREAS**, the City of Branson desires to play a limited role in aiding families and individuals with short term or temporary needs which may create a life threatening situation; and

**WHEREAS**, the Board of Aldermen desires to execute a contract with The Salvation Army for temporary public assistance.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON AS FOLLOWS:**

Section 1: The Board of Aldermen hereby accepts the proposal of The Salvation Army pertaining to the provision of services to provide temporary public assistance in the amount of \$12,000.00 and authorizes the Mayor to execute the contract attached hereto as Exhibit "1".

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

Master Contract Number: \_\_\_\_\_

### SERVICES CONTRACT

**THIS CONTRACT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Branson, Missouri (the "City") and **The Salvation Army** ("Service Provider").

WITNESSETH:

THAT, WHEREAS, the City of Branson desires to engage the Service Provider to provide certain services hereafter more particularly described in **Exhibit A**; and

WHEREAS, the Service Provider made certain representations and statements to the City with respect to the provision of such services and the City has accepted said proposal;

NOW, THEREFORE, for the considerations herein expressed, it is agreed by and between the City and the Service Provider as follows:

1. **Scope Of Work.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities hereinafter set forth in **Exhibit A**.
2. **Addition to Work.** The City and the Service Provider may amend the scope of work set forth in **Exhibit A**, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 7B of this contract. Any amendments shall be in written form and prepared and approved by the appointed City Officials and countersigned by the Service Provider.
3. **Exchange of Data.** All information, data, and reports as are existing, available and necessary for the carrying out of the work, shall be furnished to the requesting party without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of work.
4. **Payment for Labor and Materials.** The Service Provider agrees and binds itself to secure and pay for all personnel, labor, materials and supplies required to perform the services called for under this contract by Service Provider. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Service Provider. All of the work required hereunder will be performed by the Service Provider or under Service Provider's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such work. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.
5. **Term.** The work of the Service Provider shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract. **The funding period will be from a date beginning on January 1, 2020 to a date ending December 31, 2020. If execution of the contract occurs after January 1, 2020, then the funding period will begin on the execution date to a date ending December 31, 2020.**
6. **Costs not to Exceed.** The City is limited by law with respect to the amount of money it can pay. Therefore, the City has established a fixed sum for this contract which cannot be exceeded unless this contract is amended. The Service Provider providing work hereunder

shall be required to keep track of the amount of work performed under this contract at all times; and any work, materials, supplies or expenses in excess of the fixed sum shall not be eligible for payment. The Service Provider shall notify the City if Service Provider anticipates that the contract amount may be exceeded, in order to determine whether or not the City is prepared to increase the total compensation. The Service Provider shall establish a billing system showing the amount of money remaining on the contract which shall be shown in each monthly billing.

## 7. Payment.

A. Conditioned upon acceptable performance. The City agrees to pay the Service Provider in accordance with the terms set forth in **Exhibit A**, which shall constitute complete compensation for all work to be rendered under this contract; provided, that where payments are to be made periodically to Service Provider for work rendered under this contract, the City expressly reserves the right to disapprove in whole or in part a request for payment where the work performed during the period for which payment is claimed are not performed in a timely and satisfactory manner in accordance with the schedule and description of work set forth in **Exhibit A**.

B. **Total compensation not to exceed.** It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Service Provider under the terms of this contract exceed the sum of **Twelve Thousand Dollars (\$12,000.00), all of which is dependent upon budget appropriations.**

## 8. Termination of Contract.

A. Termination for breach. Failure of the Service Provider to fulfill Service Provider's obligations under this contract in a timely and satisfactory manner in accordance with the schedule and description of work set forth in **Exhibit A** shall constitute a breach of the contract, and the City shall thereupon have the right to immediately terminate the contract. The City shall give written notice of termination to the Service Provider by one of three different means: Facsimile Transmission ("FAX") if Service Provider has a FAX number; U.S. Postal Service Mails; or by hand delivering a copy of the same to the Service Provider; or may give notice by any combination of the above methods. The date of termination shall be the date upon which notice of termination is hand delivered to Service Provider or given by FAX, or the third day following mailing of the notice of termination, whichever first occurs. In the event of termination for breach, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the Service Provider under this contract shall at the option of the City become its property, and the Service Provider shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials; provided, that the Service Provider shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the contract by the Service Provider.

B. Right to terminate in the absence of breach. Either party may terminate this contract for any reason, by serving notice of intent to terminate upon the other party by the means specified in paragraph A of this section. Such notice shall specify the date of termination, but in no event shall either party terminate the contract under this provision upon less than thirty (30) days' notice to the other party; provided, that the parties may mutually agree to waive the thirty (30) day requirement and to shorten the time for notice of termination, in the event of termination in the absence of breach.

C. Surviving Terms. Notwithstanding any provisions to the contrary, provisions pertaining to liability and indemnity shall survive the termination of this contract.

9. **Conflicts.** Any bidder or signee of this contract shall disclose any financial relationship (direct or indirect) to salaried officer, employee of the City or member of the City Board of Aldermen in writing at the time of the execution of this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Service Provider covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work to be performed under this contract. The Service Provider further covenants that in the performance of this contract no person having such interest shall be employed.

10. **Assignment.** The Service Provider shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto. Provided, however, that claims for money due or to become due to the Service Provider from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement, though City will attempt to so notify any such assignee.

11. **Performance.** It is understood by the parties that time is of the essence in this contract.

12. **Discrimination.** The Service Provider agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Service Provider or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

13. **General Independent Service Provider Clause.** This contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Service Provider will be an independent Service Provider and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. The Service Provider will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Service Provider's activities and responsibilities hereunder. The Service Provider agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, that this agreement shall not be construed as creating any joint employment relationship between the Service Provider and the City, and the City will not be liable for any obligation incurred by the Service Provider.

14. **City Benefits.** The Service Provider shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

15. **Liability and Indemnity.** The parties mutually agree to the following:

A. In no event shall the City be liable to the Service Provider for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum

liability of the City shall be limited to the amount of money to be paid by the City under this contract. All of the provisions in the agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.

B. The Service Provider shall defend, indemnify, and hold the City harmless from and against all claims, losses, actions, causes of action, demands and liabilities arising out of personal injuries, including death, and damage or impairment to property or any rights which are caused by the Service Provider arising out of or in any way connected with this contract. Service Provider further agrees to defend, indemnify and hold the City harmless from and against any claims, losses and liabilities arising out of the award of this contract to the Service Provider.

C. The Service Provider shall indemnify and hold the city harmless from all wages or overtime compensation due its employees and from any and all claims by Subcontractors in rendering work pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law.

16. **Notices.** All notices required or permitted herein under and required to be in writing may be given by FAX or by first class mail addressed to City and Service Provider at the addresses provided. The date of delivery of any notice given by mail shall be the date falling on the third day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 4:30 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

17. **Jurisdiction.** This contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

18. **Missouri Immigration Law Affidavit.** After January 1, 2009, the service provider takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The service provider will provide with their bid specifications and bonding information a statement that the company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.

\_\_\_\_ If this box is checked, then the requirement for an Immigration Law Affidavit does not apply because the dollar value of the contract is less than the \$5,000 minimum.

19. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

20. **Compliance with Laws.** Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state and federal taxes and assessments owed by Contractor is current.

21. **Safety.** Contractor and subcontractors performing service for the City are required and shall comply with all applicable Occupational Safety and Health Administration (OSHA). All contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site.

22. **Contact Information:** City of Branson  
Attn: Contract Management  
110 W Maddux St., Ste. 205  
Branson, MO 65616  
417-337-8522

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

**SERVICE PROVIDER:**

By:  12/5/17  
(Signature) Date  
Bramwell E. Higgins  
Name: Secretary  
(Printed Name)

Title: \_\_\_\_\_

Company Name: The Salvation Army

Address: 1130 Hampton Ave

St. Louis, MO 63139

Phone: 314-646-3012

E-Mail: TSA.MidlandContracts@usc.salvationarmy.org

Tax ID: 36-2167910

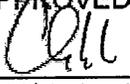
**CITY OF BRANSON, MISSOURI**

\_\_\_\_\_  
E. Edd Akers Date  
Mayor

**ATTEST:**

\_\_\_\_\_  
Lisa K Westfall Date  
City Clerk

**APPROVED AS TO FORM:**

 #51831 11/15/17  
Chris Lebeck #51831 Date  
City Attorney 

### **Scope of Services**

The Salvation Army will use the City grant funds to provide emergency housing for residents who find themselves displaced unexpectedly as its primary focus and utility assistance and gas vouchers as its secondary focus. These dollars need to be used for residents of Branson. No funds will be used for staff or other overhead costs. Funds will not be used to promote religious beliefs or convey a religious agenda to the public, and they will not be passed through to another agency.

The City agrees to pay the Service Provider in accordance with fees and rates set forth in the proposal for services provided and authorized by a purchase order or other written notice issued by the Purchasing Department. All payments will be paid upon submission of invoices to the Finance Department. Invoices must be dated within the funding period according to the term of the contract.



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING A CONTRACT WITH S & S PUMPING, INC. TO ACCEPT HOLDING TANK AND SPECIAL WASTE FOR TREATMENT AT THE BRANSON WASTEWATER TREATMENT FACILITIES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** UTILITIES DEPARTMENT

**FIRST READING:** JANUARY 14, 2020

**FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- Following the requirements outlined in Branson Municipal Code Sec 90-35, Holding Tank Waste and Special Waste Delivered By Truck, the Utilities Department currently allows area septic haulers to deliver domestic waste pumped from individual septic tanks, small wastewater treatment plants and various holding tanks from locations within Stone and Taney Counties, to the Branson wastewater treatment facilities. Anticipated volume of waste to be delivered to our facilities by S & S Pumping, Inc. in 2020 is approximately 1.3 million gallons.
- Branson has provided this service to area septic haulers since 2002. Treatment of this waste has had no adverse effect on our systems and has been a benefit to the environment and local community.
- The 2020 fee structure of \$9.45/1000 gallons for holding tank waste and \$19.97/1000 gallons for septic and sludge waste will produce adequate revenues to offset the cost of treatment.
- The proposed contract and established fee structure was reviewed by the Budget and Finance Committee on December 6, 2019. The Committee recommended the contract be submitted to the Board of Aldermen for consideration.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year's budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** EI-3

**ATTACHED EXHIBITS:**

BILL NO. 5772

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING A CONTRACT WITH S & S PUMPING, INC. TO ACCEPT HOLDING TANK AND SPECIAL WASTE FOR TREATMENT AT THE BRANSON WASTEWATER TREATMENT FACILITIES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

**WHEREAS**, the City of Branson desires to enter into a contractual agreement to process holding tank and special wastes delivered to the Branson wastewater treatment facilities by S & S Pumping, Inc.; and

**WHEREAS**, the Board of Aldermen desire to award the agreement.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:**

Section 1: That the Board of Aldermen hereby approves a contract with S & S Pumping, Inc. to accept holding tank and special waste for treatment at the Branson Wastewater Treatment Facilities and authorizes the Mayor to execute the contract hereto as Exhibit "1".

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read this first time on \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Read this second time, passed, and truly agreed to by the Board of Aldermen of the City of Branson, Missouri, on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

*CLC #51831 1/7/20*  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

## CONTRACTUAL AGREEMENT

This agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between THE CITY OF BRANSON, a Fourth Class City in the State of Missouri, hereinafter referred to as "City" and S & S PUMPING, INC. hereinafter referred to as "Septic Hauler".

WITNESSETH:

WHEREAS, the proper treatment of wastewater is advantageous to both the City and the Septic Hauler, and;

WHEREAS, the long-term environmental and economic vitality of the region is dependent upon the quality and health of Table Rock Lake, Lake Taneycomo, Bull Shoals Lake, and all area streams and ground water, and;

WHEREAS, it is the mutual benefit of the parties hereto to enter into the following agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS;

1. The term of this agreement will be from **Upon Execution of the Agreement by the Mayor until December 31, 2020.**
2. Septic Hauler agrees to only transport untreated domestic wastewater originating from holding tanks or special waste (defined as septic tank pumpage or waste sludge from package treatment systems) from within Stone and Taney Counties of Missouri and transport to a location in the City's sewer collection system. The exact location to be utilized is to be designated by the City's Utilities Director. Septic Hauler agrees to provide any and all manpower, labor, equipment, and appurtenances necessary to discharge the wastewater into the City's sewer system.
3. Due to loading capacity at the wastewater plants, the City will only accept up to a maximum of 30,000 gallons per day of holding tank waste and up to a maximum of 30,000 gallons per day of septic tank/waste sludge. These wastes will be accepted on a first come first served basis from various septic haulers. Once the maximum gallons per day amount is received, no additional waste will be accepted unless approved by the Utilities Director and only in the event of an environmental emergency.
4. The City agrees to accept holding tank waste and special waste for treatment provided the waste strength is no more than 10,000 mg/1 in Biochemical Oxygen Demand (BOD). However, the City may reject any load or loads or suspend the service at any time. Any waste with greater strength than 10,000 mg/1 is hereby rejected.

5. Septic Hauler agrees to pay to the City on a monthly basis an amount of:

- a) **\$9.45/1000 gallons for holding tank wastes with BOD strength of 0 - 600 mg/l.**
- b) **\$19.97/1000 gallons for special waste (Septic tank waste or waste sludge from package treatment plant) with BOD strength of 600 - 10,000 mg/l.**

Rates for treatment of holding and special wastes are subject to change as determined and established by ordinances set forth and approved by the City Board of Aldermen. These rates are established in City Code, Article II - Section 90-35. Any change in the rates shall take place after thirty (30) days notice from the City to the Septic Hauler. Billing shall be on a monthly basis.

Late payments shall be subject to the requirements of City Code, Article II – Section 90-38. If any bill for services received shall remain due and unpaid from the due date thereof, a five (5) percent late charge shall be added to the next month's bill for said services. Failure to pay an overdue bill within twenty five (25) days from the due date will result in discontinuation and disconnect of services. Services shall not be reconnected until the bill is paid in full, together with a \$20.00 disconnection and reconnection charge. If a five (5) percent late charge is not paid within twenty (25) days of the due date of the bill upon which the charge first appears, service will be discontinued and disconnected and shall not be reconnected until the late fee is paid in full, together with a disconnection and reconnection charge of \$20.00.

- 6. Nothing contained in this agreement shall constitute or be interpreted as a repeal of the City's ordinances or resolutions, or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants; nor shall this agreement prohibit the enactment or increase by the City of any tax or fee.
- 7. The parties agree they will cooperate with one another in accomplishing the terms, conditions, and provisions of this agreement, and will execute such additional documents as necessary to effectuate the same.
- 8. Septic Hauler agrees it will hold the City harmless from any and all claims, causes and actions, or liabilities arising out of this agreement or the operation hereunder and will indemnify, save and hold harmless the City against any and all costs, expenses, counsel fees, and judgments resulting there from.
- 9. Both parties agree this agreement represents a complete agreement between the parties and there are no promises of representations or understandings not expressly set out herein. This agreement may only be modified in writing, signed by both parties, and approved by the City and Septic Hauler with the same formalities as this agreement. This agreement may be terminated, at will, by either party after providing a 60-day written notification of the desire to terminate.

10. Liability and Indemnity. The parties mutually agree to the following:

- A. In no event shall the City be liable to the Service Provider for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid by the City under this contract. All of the provisions in this agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.
- B. The Service Provider shall defend, indemnify, and hold the City harmless from and against all claims, losses, actions, causes of action, demands and liabilities arising out of personal injuries, including death, and damage or impairment to property or any rights which are caused by the Service Provider arising out of or in any way connected with this contract. Service Provider further agrees to defend, indemnify and hold the City harmless from and against any claims, losses and liabilities arising out of the award of this contract to the Service Provider.
- C. The Service Provider shall indemnify and hold the city harmless from all wages or overtime compensation due its employees and from any and all claims by Subcontractors in rendering work pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law.

11. The Septic Hauler must have and maintain, at the Septic Hauler's expense, adequate liability insurance and bonds (if applicable) to satisfy statutory bonding requirements, of section 537.610.2 and 537.610.5 of the Missouri Revised Statutes to protect the City and the general public against any loss, damage and/or expense related to the Septic Hauler's performance under this contract. The insurance coverage shall include, but need not be limited to, the following coverage's in the amounts specified. Such insurance must indemnify the City to the fullest extent possible under the laws of the State of Missouri.

- A. General Liability Insurance with a company licensed to do business in the State of Missouri with limits of liability not less than two million nine hundred five thousand six hundred sixty-four dollars (\$2,905,664.00) per occurrence for personal injuries (including death) and property damage. The City of Branson must be named as an additional insured.
- B. Automobile liability insurance with a company authorized to do business in the State of Missouri having limits of liability not less than two million nine hundred five thousand six hundred sixty-four dollars (\$2,905,664.00) per occurrence for personal injuries (including death). The City of Branson must be named as an additional insured.

- C. Workers' Compensation Insurance with a company authorized to do business in the State of Missouri having limits not less than one million dollars (\$1,000,000.00), including occupational disease provisions for all employees of the Service Provider(s) and Sub-Service Provider(s).
  - D. The Septic Hauler will require all Sub-Service Providers to provide and maintain like insurance as set forth above unless the Septic Hauler's policies extend to claims made against or growing out of operations of the Sub-Service Provider.
  - E. Written evidence of the required insurance coverage must be submitted before or upon award of the contract. Such policy(ies) shall name the City of Branson as additionally insured. Failure to maintain required insurance coverage shall be considered a breach of this contract.
  - F. Septic Hauler understands and agrees that the insurance required under the terms of the contract in no way precludes the Septic Hauler from carrying such other insurance as may be deemed necessary by the Septic Hauler for the operation of the Septic Hauler's business or for the benefit of the Septic Hauler's employees.
  - G. Notwithstanding any other provision of the contract to the contrary, no insurance procured by the Septic Hauler shall be construed to constitute a waiver of any sovereign immunity as set forth in section 537.600 through 537.650 of the Missouri Revised Statutes, or any other governmental or official immunity, which is barred under said doctrines of sovereign, governmental or official immunity available to the City, its Board of Aldermen, salaried officers or employees, nor constitute waiver of any available defense. The Septic Hauler shall cause all policies of insurance related to the contract to be endorsed in accord to this subparagraph.
  - H. If this is a multi-year contract then the Septic Hauler shall further require the upper limits of coverage of such policies to be adjusted on an annual basis to be at least equal to the limits of liability set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes as amended from time to time.
  - I. Insurance Certificates. It is the sole responsibility of the Septic Hauler to provide the City with the most up-to-date insurance certificates and to keep them current throughout the term of the contract and for any renewal periods. Any failure to maintain insurance coverage shall not relieve any contractual responsibility, obligation or liability under the contract documents. Insurance Certificates must be faxed to the attention of CONTRACT MANAGEMENT at 417-335-4354.
11. All notices required or permitted herein under and required to be in writing may be given by FAX or by first class mail addressed to City and Septic Hauler at the addresses shown below. The date of delivery of any notice given by mail shall be the

date falling on the third day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 4:30 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

12. This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

13. This agreement is between the parties and does not include any subcontractors or sub-service providers.

IN WITNESS WHEREOF, both parties have executed this agreement on the day and year first above written.

S & S PUMPING, INC.

  
\_\_\_\_\_  
Authorized Agent

Owner  
\_\_\_\_\_  
Title

Address: 107 Summit Pt.

Saddlebrook, MO 65630

Phone: 417 546 2390

Fax: Ø

Tax ID or SSN: 46-0996912

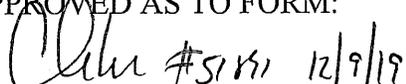
CITY OF BRANSON

\_\_\_\_\_  
E. Edd Akers, Mayor

ATTEST:

\_\_\_\_\_  
Lisa K Westfall, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Chris Lebeck #51831, City Attorney

Mail: City of Branson  
Attn: Lisa Westfall  
110 W Maddux St. Ste 205  
Branson, MO 65616

Phone: 417-337-8522



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL AUTHORIZING AN AGREEMENT WITH SW MISSOURI ENGINEERING, LLC DBA COCHRAN FOR PROFESSIONAL DESIGN SERVICES FOR REPLACEMENT OF THE LIFT STATION #17 FORCEMAIN AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** UTILITIES DEPARTMENT

**FIRST READING:** JANUARY 14, 2020

**FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- As a part of the Water and Sewer Capital Improvement Program, Staff recently advertised a Request for Proposal (RFP) for the design and engineering of a replacement forcemain for City sewer Lift Station #17.
- Lift Station 17, which is located on Thelma Doyle Drive in Branson, is used to convey sewage, collected primarily from the Fall Creek watershed, through an existing 3,600 foot 12” PVC forcemain to a gravity sewer manhole located near Dakota Road.
- The existing substandard condition of the forcemain bedding and backfill, coupled with high pressure and flow volumes produced by the station pumps, has over time caused numerous pipe ruptures resulting in sewage spills. These incidents have required repeated system shutdowns, emergency repairs and cleanup operations. The frequent spills prompted the Missouri Department of Natural Resources to submit a letter to the City in 2014 requiring an overall plan to address and correct the matter.
- To correct this situation, Staff recommends replacement of the faulty 12” PVC forcemain. The replacement forcemain will also be up-sized to provide additional capacity for anticipated future growth in the watershed.
- Twelve engineering firms submitted proposals in response to the RFP. They were scored and reviewed by an evaluation team. Staff recommends award of an engineering contract to SW Missouri Engineering, LLC dba Cochran to design a replacement forcemain for Lift Station #17 at a not to exceed cost of \$77,720.00.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year’s budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

SD

**COMMUNITY PLAN 2030:** El 1.1 Action 1.1.3

**ATTACHED EXHIBITS:**

**ITEM/SUBJECT: READING OF A BILL AUTHORIZING AN AGREEMENT WITH SW MISSOURI ENGINEERING, LLC DBA COCHRAN FOR PROFESSIONAL DESIGN SERVICES FOR REPLACEMENT OF THE LIFT STATION #17 FORCEMAIN AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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**DETAILED ANALYSIS:**

Twelve proposals were received for engineering to upgrade an existing 12” PVC forcemain associated with City sewer Lift Station #17.

The original Lift Station 17 and associated forcemain was installed in the early 1990s by development to convey wastewater flows from the lower Fall Creek basin through a series of three small sewer lift stations and the current 12” PVC forcemain. These assets were transferred to the City shortly after construction and City Staff assumed responsibility for operations and maintenance of the equipment. Numerous operational issues with the existing stations and increased flows caused by development in the area of southwest Branson required the City to begin making upgrades within the system by the year 2000. The construction of two new higher capacity lift stations to replace the three station series was completed in 2003. Due to budget constraints the new stations were connected to the existing 12” PVC forcemain previously installed by development.

After connection of the new stations, numerous failures began to occur in the existing forcemain due to higher operating pressures. Improved operational features were designed and installed at the station by City Staff which reduced the frequency of line breaks and sewer spills. Although breaks were less frequent and not as excessive, some spills continued to occur. In 2014 the Missouri Department of Natural Resources (MDNR) required the City to submit a project plan to correct this condition.

City Staff submitted response information to MDNR which included a commitment to make additional improvements to the existing station alarm features, pumping equipment and pumping functions. The priority of replacing the existing forcemain was also moved up in the long term City capital improvement plan. In addition to MDNR requirements, the City also made improvement in sewer flow management within the Fall Creek watershed by constructing a one million gallon flow equalization basin located at the watershed’s primary sewer pumping station, Lift #21. The latest station improvements and addition of the EQ basin vastly reduced the potential for spills from the system.

To fully correct the forcemain situation Staff recommends proceeding with engineering and design for replacement of the existing 12” PVC main using a pipe material such as ductile iron which is more suitable for the pressure and capacity conditions produced by the station pumping system. From conditions observed during each main break it is also clear proper pipe bedding was not installed during original installation of the forcemain. Large rock has also been observed in contact with the pipe during most excavations. These conditions will only continue to increase the potential for future breaks of the existing main.

Proper pipe materials with proper installation will provide a reliable forcemain and conveyance system. The alignment of the new main will also need to differ from the existing route due to difficult access issues and the requirement to keep the high capacity station in operation during construction. The proposed re-alignment route would have a length of approximately 3,800 linear feet. The proposed replacement forcemain would also be up-sized during the upgrade to meet the demands of future growth in southwest Branson.

**ITEM/SUBJECT: READING OF A BILL AUTHORIZING AN AGREEMENT WITH SW MISSOURI ENGINEERING, LLC DBA COCHRAN FOR PROFESSIONAL DESIGN SERVICES FOR REPLACEMENT OF THE LIFT STATION #17 FORCEMAIN AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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Steps needed for the design of this project were described in Request for Proposal (RFP) 2493–25. The RFP identified what criteria firms would need to provide for the City to evaluate and select the best qualifying candidate. At least five references were also required from similar work completed within the last five years.

Engineering firms submitting proposals were:

Allgeier, Martin and Associates, Joplin, Missouri  
Bartlett & West, Springfield, Missouri  
CFS Engineers  
CJW Consultants, Springfield, Missouri  
SW Missouri Engineering, LLC, dba Cochran, Union, Missouri  
CPWG, Branson, Missouri  
Great River Engineering, Springfield, Missouri  
McClelland Consulting Engineers, Fayetteville, Arkansas  
MECO, Hannibal, Missouri  
Rose & McCrary Engineering, Grove, Oklahoma  
Rozell Engineering, Branson, Missouri  
Veenstra & Kimm, Liberty, Missouri

Staff formed an evaluation team with members including Utilities Director, Mike Ray, Public Works & Engineering Director, Keith Francis, Utilities Operations and Development Manager, Kendall Powell, and Assistant City Engineer, Matt Filice. The team first scored each proposal individually and then met to compare rankings. After discussion of opinions, the team selected Cochran Engineering as the top ranking firm for this project.

Cochran’s proposal was very detailed and was, in the Staff’s opinion, the most comprehensive in discussion to project approach. The firm is also highly experienced in the type of work to be performed. Comments from references provided by Cochran indicate the firm is an extremely interactive company that builds strong working relationships with their clients.

On August 28, 2019 Staff submitted the proposal evaluation information to the Capital Improvements Committee. After review and discussion of the information the Committee unanimously agreed with the evaluation team’s selection and voted to direct Staff to negotiate a contract with Cochran Engineering for consideration by the Board of Aldermen.

Staff met with representatives of Cochran Engineering to form a detailed Scope of Work outlining tasks that Cochran will perform for design of the improvements and the ensuing construction. A price to perform the work was negotiated at a not to exceed cost of \$77,720.00. This amount is within Staff’s cost estimate and the percentage of engineering cost that is considered acceptable, under the Qualifications Based Selection (QBS) guidelines for professional services, when compared to the construction cost estimate.

Funds are available in the 2020 fiscal budget for this expense.

BILL NO. 5773

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING AN AGREEMENT WITH SW MISSOURI ENGINEERING LLC, DBA COCHRAN, FOR PROFESSIONAL DESIGN SERVICES FOR REPLACEMENT OF THE LIFT STATION #17 FORCEMAIN AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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**WHEREAS**, the City of Branson received proposals for design of the Lift Station #17 forcemain replacement; and

**WHEREAS**, a contract to perform the necessary design with SW Missouri Engineering LLC, dba Cochran, has been recommended for approval by Staff; and

**WHEREAS**, the Board of Aldermen desires to award the contract for design of the Lift Station #17 forcemain replacement.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, AS FOLLOWS:**

Section 1: The Board of Aldermen hereby executes an Agreement with SW Missouri Engineering LLC, dba Cochran, for design of the Lift Station #17 forcemain replacement with a not-to-exceed amount of \$77,720.00 and authorizes the Mayor to execute the contract attached hereto as Exhibit "1".

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_ day of \_\_\_\_\_, 2020.

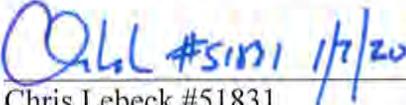
Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

<b>ROUTING ORDER</b>		<b>(1) CONTRACT MGMT.</b>	<b>(2) CITY ATTORNEY</b>
		<b>(3) CITY ADMINISTRATOR</b>	<b>(4) ORIGINATING DEPT. (5) CONSULTANT</b>
EFFECTIVE DATE	TERMINATION DATE	CONTRACT NUMBER:	
<input checked="" type="checkbox"/> NEW CONTRACT		<input type="checkbox"/> RENEWAL OF CONTRACT NO. _____	
<b>CITY</b>		<b>CONSULTANT</b>	
CITY OF BRANSON 110 W. MADDUX, SUITE 310 BRANSON, MO 65616 PHONE: (417) 243-2740 FAX: (417) 334-9519 CONTRACT ADMINISTRATOR: MIKE RAY, DIRECTOR DEPT: UTILITIES		NAME: SW MISSOURI ENGINEERING, LLC DBA COCHRAN ADDRESS: 2804 N. BIAGIO STREET, OZARK MO 65721 PHONE: 417-595-4108 FAX: 417-595-4109 ATTN: CHRIS BOONE, P.E. SSN/EIN: 82-2087027	

**AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES**

WHEREAS, the City of Branson requires professional engineering services in connection with engineering design of the Lift Station 17 Force Main Replacement. This Agreement is made as of the 30 day of December, 2019, by and between the City of Branson, Missouri (hereinafter referred to as CITY) and SW Missouri Engineering LLC, dba Cochran, specializing in consulting engineering services (hereinafter referred to as ENGINEER).

WHEREAS, CITY and ENGINEER, in consideration of their mutual covenants agree as follows: ENGINEER shall serve as CITY's professional engineering consultant per the assignments delineated in writing in this Agreement and the attached scope of work, and shall give consultation and advice to CITY during the performance of its services. All services shall be performed under the direction of a professional engineer registered in the State of Missouri, and qualified in a field relevant to the services required by the scope of this Agreement.

Neither ENGINEER nor any of its agents shall act on behalf of, or in the name of CITY, except as provided in this Agreement.

**SECTION I – AUTHORIZATION OF SERVICES & STANDARD OF CARE**

- 1.1 Services on any assignment shall be undertaken only upon written authorization of CITY and agreement of ENGINEER pursuant to this Agreement and the scope of work.
- 1.2 Assignments are delineated in this Agreement and the attached scope of work. CITY shall not compensate ENGINEER for items outside of these parameters.

- 1.3 The standard of care for ENGINEER under this Agreement shall be the care and skill used by members of the engineering profession practicing the best and most current engineering practices for municipalities in the United States of America.

## **SECTION 2 – BASIC SERVICES OF ENGINEER**

### **2.1 General**

- 2.1.1 ENGINEER shall perform professional engineering services in connection with the specifically authorized Project as provided for in this Agreement and Scope of Work attached hereto as Exhibit “A” to this Agreement and named as Lift Station 17 Force Main Replacement.
- 2.1.2 Except as provided in this Agreement all communication between ENGINEER and any Contractor or Subcontractor shall only be through CITY.
- 2.1.3 ENGINEER understands that time is of the essence in this Agreement, and services shall be rendered promptly to not delay CITY or any applicable Contractor.
- 2.1.4 ENGINEER shall be responsible to CITY for costs of errors or omissions by ENGINEER or its consultant.
- 2.1.5 ENGINEER shall coordinate the services of all design consultants for the Project, including any design consultants retained by CITY.

### **2.2 Final Design Phase**

- 2.2.1 ENGINEER shall furnish to CITY such documents and design data as may be required for, and assist in the preparation of the required documents so that CITY may secure approval from Missouri Department of Natural Resources, US Corps of Engineers, Missouri Dept. of Conservation and such other governmental authorities as have jurisdiction over design criteria applicable to the Project.
- 2.2.2 ENGINEER shall advise CITY of adjustments in excess of ten percent of the construction cost estimate for the Project caused by changes in scope, design requirements of construction costs and furnish a revised construction cost estimate for the Project based on the final Contract Drawings and Bid Documents.
- 2.2.3 ENGINEER shall furnish three approval copies of the final Contract Drawings and Bid Documents for the improvements.
- 2.2.4 All plans, specifications, estimates, drawings and documents prepared or furnished by the ENGINEER shall conform to federal and state laws and CITY ordinances.
- 2.2.5 ENGINEER shall furnish one (1) set of full size (24” X 36”) wetsealed approved final Contract Drawings and one (1) set of wetsealed approved final contract Specifications. Engineer shall also provide the final approved drawings in pdf format and the final approved specifications in Word format.

### **2.3 Bidding and Construction Phase**

- 2.3.1 ENGINEER shall answer questions from bidders during bidding process.
- 2.3.2 ENGINEER shall assist CITY in preparation of Contract Addenda.
- 2.3.3 ENGINEER shall attend Bid Opening and provide a bid tabulation and recommendation.
- 2.3.4 ENGINEER shall attend Preconstruction Conference.
- 2.3.5 ENGINEER shall provide technical support throughout the project as requested and as provided for in this Agreement and the attached scope of work.
- 2.3.6 ENGINEER shall assist CITY and contractor during startup operations as provided in this Agreement and the attached scope of work.
- 2.3.7 ENGINEER shall attend construction related meetings during the construction of the project when requested to do so in writing by CITY.
- 2.3.8 ENGINEER shall review submittals and shop drawings when requested in writing by CITY provided by the Contractor for compliance with the plans and specifications.
- 2.3.9 ENGINEER shall complete a final inspection and record any deficiencies not complying with the plans and specifications.
- 2.3.10 ENGINEER shall furnish to CITY record drawings which include all revisions made during construction. Deliverables shall be 1 (one) full size (24" X 36") set of drawings as well as a flash drive or CD with the record drawing AutoCAD DWG files.
- 2.3.11 Engineer shall provide a letter to the city stating the project was constructed in substantial conformance to the project contract documents and design intent.

### **SECTION 3 – ADDITIONAL SERVICES OF ENGINEER**

- 3.1 Services outside the scope of this Agreement will be agreed to by CITY and ENGINEER, and provided for in an amendment to this Agreement, approved as required by CITY's municipal code.
  - 3.1.1 ENGINEER shall serve as a witness and be prepared to serve as a witness for the CITY in any litigation or other proceedings involving the Project.

### **SECTION 4 – RESPONSIBILITIES OF CITY**

- 4.1 Within a reasonable time CITY, to facilitate the authorized activities of ENGINEER, shall provide information in the CITY's possession to meet the requirements of this Project.
- 4.2 Assist ENGINEER by providing available information when requested pertinent to this Agreement including previous reports and any other available data relative thereto.
- 4.3 Provide access to and make all provisions for ENGINEER to enter upon public and private property under the control of CITY as required for ENGINEER to perform services under this Agreement.

- 4.4 Examine, in a timely manner, all studies, reports, sketches, estimates, Bid Documents, Drawings, proposals and other documents presented by ENGINEER and render in writing decisions pertaining thereto necessary for the completion of this Agreement.
- 4.5 Provide such professional legal, accounting, financial and insurance counseling services as may be required for the Project. The final decision concerning what is required is the CITY and the CITY's alone.
- 4.6 The CITY's relevant departmental director or his assignee shall serve as CITY'S representative with respect to the services to be performed under this Agreement. This role shall include providing instructions, receiving information, and interpreting and defining CITY's policies in respect to materials, equipment, elements, services, and systems to be used in the Project as described in this Agreement and the attached scope of work.
- 4.7 Give prompt written notice to ENGINEER whenever CITY observes or otherwise becomes aware of any defect in the Project.
- 4.8 Furnish all required approvals and permits from governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 4.9 Furnish or direct ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.

#### **SECTION 5 – PERIOD OF SERVICE**

- 5.1 This Agreement shall become effective after signature of all parties as provided for by the City of Branson Municipal Code.
- 5.2 This Agreement shall be applicable to all assignments to ENGINEER authorized by CITY pursuant to the tasks included in this Agreement and the attached scope of work.
- 5.3 Upon mutual agreement of the parties, this Agreement may be extended, renegotiated or terminated.
- 5.4 Performance time for individual assignments shall be agreed upon at the time of authorization. Work shall be started within ten (10) days of authorization of Notice to Proceed.
- 5.5 ENGINEER shall complete the design phase within 240 days from the notice to proceed or February 3, 2020, whichever is later, provided that CITY has met its responsibilities as outlined in Section 4. Construction support will be provided as necessary during the ensuing 240 day construction period for the project which is anticipated to begin February 15, 2021. In the event CITY's review, examination or approval exceeds 30 days, and/or review and approval from all governmental agencies having jurisdiction over the design criteria is not received in a timely manner, both CITY and ENGINEER may agree to renegotiate the completion date herein stated and provide such extension as an amendment to this Agreement to be approved as provided for in the CITY's municipal code. ENGINEER understands that time is of the essence in this Agreement, and failure to perform in accordance with the timelines presented herein result in a material default of this agreement.

## SECTION 6 – PAYMENTS TO ENGINEER

### 6.1 Amount of Payment:

- 6.1.1 For services performed, CITY shall pay ENGINEER the sum of amounts determined as follows: for time spent by personnel, payment at the hourly rates indicated in the Cochran “2019 Hourly Fee Schedule” form, included as Exhibit B, which will remain at provided amounts during the duration of the agreement period outlined in Section 5 - 5.5.
- 6.1.2 Expenses incurred by ENGINEER, such as authorized travel and subsistence including airfare, food, lodging, automobile rental, commercial services, and incidental expenses, shall be included in the not to exceed amount of this Agreement.
- 6.1.3 Reproduction, printing, long-distance telephone calls, company vehicle usage, testing apparatus, computer services and computer-assisted drafting (CAD), amounts will be charged according to the ENGINEER’S standard rates in effect at the time service is provided and shall also be included in the not to exceed cost of this Agreement.
- 6.1.4 Professional services rendered to complete the tasks envisioned in this Agreement and the attached scope of work by others as subcontractor(s) to ENGINEER such as any surveying, real property descriptions, soil borings, subsurface investigations, laboratory testing, field quality control tests, progress photos, or other activities required as provided for in section 4.6 shall be included in the not to exceed cost of this Agreement.

### 6.2 Maximum Amount of Payment

Payment for services rendered under this Agreement shall be subject to the following limitations:

- 6.2.1 Preliminary Design Services, Final Design & Bidding and Construction Phase Services shall be billed on a time and expense basis with total payment to the ENGINEER not to exceed the following maximum fee, without formally amending this Agreement:

Preliminary Design	\$ 6,341.00
Topographic Survey	\$ 7,220.00
Final Design	\$48,184.00
Easement Exhibits & Legal Descriptions	<u>\$ 4,500.00</u>
<b>Total Design</b>	<b>\$66,245.00</b>
Construction Administration Support	<u>\$11,475.00</u>
<b>Total Construction Support</b>	<b>\$11,475.00</b>
<b>Total Not to Exceed</b>	<b>\$77,720.00</b>

- 6.2.2 Additional services and costs may be included in this Agreement as provided for by amendment, as provided for by the CITY’S municipal code.

### 6.3 Method of Billing

- 6.3.1 A monthly statement shall be rendered by the ENGINEER to CITY describing all engineering services performed during that month.

## **6.4 Payment**

- 6.4.1 Payment for engineering services shall be due 30 days after receipt of billing and acceptance of the ENGINEER'S work. CITY may withhold from payment such amount as will, in CITY'S discretion, protect CITY from any loss, damage or default caused by ENGINEER. Making of payments shall not constitute waiver of any claims by CITY.

## **SECTION 7- GENERAL CONSIDERATIONS**

### **7.1 Estimates**

Estimates of construction cost provided for herein shall be made on the basis of ENGINEER'S experience and qualifications and represent its best judgement as a design professional firm familiar with the construction industry, and specifically the costs associated with the Work required for this Project.

- 7.2 ENGINEER shall indemnify, protect and hold CITY harmless from and against any and all claims, demands, liabilities and costs, including attorneys' fees, arising from claims under The Worker's Compensation Law. Claims for contract damages, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the ENGINEER'S employees or of any person other than his employees and from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom, to the extent that any such claims, demands, liabilities and costs are the result of a negligent act, error or omissions of ENGINEER, ENGINEER will defend, indemnify, and hold CITY harmless from claims and demands arising as a result of ENGINEER'S nonprofessional liability which is covered by ENGINEER'S comprehensive general liability insurance policy, and from claims and demands arising out of the award of this contract.

- 7.2.1 ENGINEER assumes full responsibility for relations with any third parties acting as consultants, subcontractors, agents, suppliers or laborers of the ENGINEER, and shall indemnify and hold CITY harmless from and against, any and all liability, suits, claims, damages, costs (including reasonable attorneys' fees), losses, outlays, and expenses in any manner caused by, arising out of or connected with the ENGINEER'S performance of this contract. Prior to engaging any consultant, ENGINEER shall obtain CITY'S consent in writing, which will not be unreasonably withheld if necessary to complete the scope of this Agreement. Final decision on the necessity of such assistance shall be the CITY'S alone.

### **7.3 Termination**

This Agreement may be terminated by either party by seven (7) days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. CITY retains the right to terminate the Agreement without cause upon payment of all authorized services as provided up to that time falling under the terms of this Agreement and the attached scope of work.

### **7.4 Ownership of Documents**

All documents, including original drawings, estimates, specifications, written design criteria and written reports made pursuant to this Agreement are and remain the property of the CITY. The ENGINEER shall furnish to CITY a set of reproducible record prints of drawings and copies of estimates, specifications, written reports, and written design criteria, in consideration of which the CITY will use them fully in connection with the project and will not sell them, reuse or permit the

reuse of said documents by others in connection with another facility. The transfer of ownership of documents shall not constitute the transfer of any ownership or granting of a license in any proprietary rights that the ENGINEER may have in any data, designs, processes or other information incorporated in the documents.

**7.5 Insurance**

The ENGINEER will secure and maintain such insurance as will protect it or any of its employees from claims under any worker's compensation laws, claims for damages because of bodily injury including personal injury, sickness or disease, or death, and from claims for damages because of injury to or destruction of tangible property including loss of use therefrom.

7.5.1 General Liability Insurance. ENGINEER shall maintain General Liability Insurance with a company licensed to do business in the State of Missouri. The policy shall meet the scope or extent of the city's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo (Supp 1995). CITY must be named as an additional insured.

7.5.2 Automobile Liability Insurance. ENGINEER shall maintain Automobile Liability Insurance with a company authorized to do business in the State of Missouri. The policy shall meet the scope or extent of the city's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo (Supp 1995). CITY must be named as an additional insured.

7.5.3 Workers' Compensation Insurance. ENGINEER shall maintain Worker's Compensation Insurance with a company authorized to do business in the State of Missouri having limits not less than One Million Dollars (\$1,000,000.00), including occupational disease provisions for all employees of the Service Provider(s) and Sub-Service Provider(s).

7.5.4 ENGINEER shall maintain Professional Liability Insurance with an Insurer approved by CITY in the amount of at least One Million Dollars (\$1,000,000.00). All deductibles and Self-insured Retention must be paid by ENGINEER.

7.5.5 ENGINEER shall provide Certificate of Insurance in the amounts and terms set forth above at the commencement of this Agreement and at any other time requested by CITY.

7.6 No salaried officer or employee of CITY shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Any federal regulations and applicable provisions in RSMo. Chapter 105 shall not be violated.

7.7 ENGINEER agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of ENGINEER or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

7.8 ENGINEER is an independent contractor and nothing contained herein shall constitute or designate the ENGINEER or any of its agents or employees as agents or employees of the CITY.

7.9 ENGINEER shall not be entitled to any of the benefits established for the employees of the CITY nor be covered by the Workmen's Compensation Program of the CITY.

**7.10 Successor and Assigns**

CITY and ENGINEER each binds himself and its successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of

such other party, in respect to all covenants of this Agreement, except as above, neither CITY nor ENGINEER shall assign, sublet or transfer its interest in the Agreement without the written consent of the other.

**7.11 Notices**

All notices required to be in writing may be given by first-class mail addressed to CITY at 110 W. Maddux, Branson, Missouri, and ENGINEER at 2804 N. Biagio Street, Ozark MO 65721. The date of delivery of any notice shall be the second full day after the date of its mailing.

**7.12 Jurisdiction**

This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Agreement be adjudicated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

**7.13 Extent of Agreement**

This Agreement represents the entire and integrated agreement between CITY and ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both CITY and ENGINEER.

IN WITNESS WHEREOF, the City of Branson, by and through its Mayor, and SW Missouri Engineering LLC, dba Cochran, by its authorized officer have made and executed this Agreement as of the day and year first above written.

**SW Missouri Engineering, LLC  
dba Cochran**

**CITY OF BRANSON, MISSOURI**

By: Chris Lebeck 12/30/19  
(Signature) Date

\_\_\_\_\_  
E. Edd Akers Date  
Mayor

Name: Christopher Boone  
(Printed Name)

ATTEST:

Title: President

Company Name: SW Missouri Engineering, LLC  
DBA Cochran

\_\_\_\_\_  
Lisa K Westfall Date  
City Clerk

Address: 2804 N. Biagio Street  
Ozark, MO 65721

APPROVED AS TO FORM:

Phone: 417-595-4108

E-Mail: Chris@cochraneng.com

CEL #51821 12/15/19  
Chris Lebeck #51821 Date  
City Attorney

Tax ID: 82-2087627

EXHIBIT A TO AGREEMENT  
FOR PROFESSIONAL ENGINEERING SERVICES  
LIFT STATION 17 FORCE MAIN REPLACEMENT SCOPE OF WORK  
CITY OF BRANSON, MO

**ITEM 1: PRELIMINARY DESIGN**

SCOPE OF WORK:

1. Prepare conceptual design for force main alignment options. Cochran will review alignment options with the City and recommend the most feasible force main alignment. The alignment shown in Exhibit 1, attached hereto, will be included in the feasibility analysis.
2. Prepare a preliminary construction cost estimate for each option under consideration.

FEE:

The fees for the professional services outlined in **Item 1** of this proposal shall be paid on a time and expense basis not to exceed \$6,341.00.

**ITEM 2: TOPOGRAPHIC SURVEY**

SCOPE OF WORK:

1. Acquire deeds and plats for all parcels affecting the design corridor as shown on the attached Exhibit 1.
2. Search for and locate monuments (Iron rods, iron pipes, stones, etc.) and evidence of possession.
3. Resolve the parcel lines along the design corridor.
4. Obtain ground elevations to generate contours at 1-foot intervals on the design corridor, roughly 50 foot wide.
5. Locate existing improvements inside of the design corridor.
6. Locate existing public utilities from observed evidence together with markings by "Missouri One Call".
7. Establish a benchmark onsite, (NAVD 1988).
8. Prepare the base drawing in ACAD/Civil 3D format for incorporation into design plans.

FEE:

The fees for the professional services outlined in **Item 2** of this proposal shall be paid on a time and expense basis not to exceed \$7,220.00.

**ITEM 3: FINAL DESIGN**

SCOPE OF WORK

1. Design approximately 3,800 lineal feet of new ductile iron force main. This proposal assumes the new force main will run generally along the alignment shown on Exhibit 1. Actual alignment to be confirmed through Preliminary Design Phase. Hydraulic analysis for sizing of force main and

lift station pump performance will be performed.

2. Prepare 60% and 90% plans for owner review and approval. Plans will be prepared in accordance with Missouri Department of Natural Resources and Owner requirements
3. Permitting of new force main with the Missouri Department of Natural Resources to obtain a Construction Permit. Cochran will prepare the MDNR construction permit application for signature by Owner.
4. Prepare Project Manual for use in bidding and construction. The project manual will contain standard contract documents (front end documents) provided by the City of Branson. Technical specifications and special provisions will be prepared by Cochran.
5. Prepare final engineer's cost estimate.
6. Participate and assist in pre-bid meeting, bid openings, contractor selection, and pre-construction meeting. Cochran will also prepare a bid tabulation and letter of recommendation for awarding the construction contract.

FEE:

The fees for the professional services outlined in **Item 3** of this proposal shall be paid on a time and expense basis not to exceed \$48,184.00.

**ITEM 4: EASEMENT EXHIBITS AND LEGAL DESCRIPTION**

SCOPE OF WORK:

1. Prepare Easement Exhibits and Legal Descriptions for parcels along the new force main for use in legal counsel in preparation of documentation for acquisition of easements. Approximately ten (10) exhibits and legal descriptions will be required.

FEE:

The fees for the professional services in **Item 4** of this proposal shall be paid on a time and expense basis not to exceed \$4,500.00.

**ITEM 5: CONSTRUCTION ADMINISTRATION SUPPORT**

SCOPE OF WORK:

Per the request for proposals, City Staff will handle the daily contract administration, inspection and pay request review. Cochran will be available to provide the following services:

1. Cochran will provide periodic site visits to observe the Contractor's progress and quality of work, and to determine if the work in progress conforms to the contract documents. The Engineer will accompany City representatives on visits to the project site as requested. Cochran will not be performing full time inspection.
2. Review shop drawings and submittals.
3. Respond to RFI's and provide technical support throughout the project.

4. Participate in final inspection and provide Punch List. Provide letter of conformance for all work completed by Contractor upon acceptance of the project.
5. Provide as-built drawings upon completion of the project.

FEE:

The fees for the professional services outlined In **Item 5** of this proposal shall be paid on a time and expense basis not to exceed \$11,475.00.

SERVICES NOT INCLUDED:

1. Architectural Services
2. Environmental/Wetlands/Asbestos Studies or Reports
3. Recording and Permit Fees
4. Construction Inspection/Stakeout
5. ALTA/NSPS Land Title Surveys
6. Boundary Surveys
7. Subdivision or Rezoning of property
8. Design of modifications to Lift Station 17, such as new pumps, controls, emergency storage, etc.
9. Design or modifications to receiving gravity sewer
10. Inflow and Infiltration Studies.

OWNERS RESPONSIBILITY:

1. The Owner shall give prompt and thorough consideration to all sketches, drawings, bid documents and other documents laid before him. Prompt decisions will be required if project is to proceed on schedule.
2. Advertisement and receipt of construction bids.
3. Construction Inspection.

TOTAL FEE:

The fees for the professional services outlined in this proposal shall be paid on a time and expense basis with a not to exceed total fee as summarized in the following table.

ITEM NO. 1 – PRELIMINARY DESIGN	\$ 6,341.00
ITEM NO. 2 – TOPOGRAPHIC SURVEY	\$ 7,220.00
ITEM NO. 3 – FINAL DESIGN	\$48,184.00
ITEM NO. 4 – EASEMENT EXHIBITS & LEGAL DESCRIPTIONS	\$ 4,500.00
<u>ITEM NO. 5 – CONSTRUCTION ADMINISTRATION SUPPORT</u>	<u>\$11,475.00</u>
 TOTAL	 \$77,720.00 (Not to exceed)

**"Exhibit 1"**



Proposed Lift Station Force Main - - - - -



Architecture • Civil Engineering • Land Surveying • Site Development • Geotechnical Engineering • Inspection & Materials Testing

**2019 Hourly Fee Schedule**

The following is a list of hourly rates for our Fee Service Contracts. Effective January 1, 2019, these rates will apply to all projects performed on a time and expense basis.

<u>Title</u>	<u>Charge-Out</u>
Principal	\$ 150.00
Managing Engineer	\$ 140.00
Engineer 1	\$ 130.00
Engineer 2	\$ 120.00
Engineer 3	\$ 105.00
Engineer 4	\$ 95.00
Engineer 5	\$ 85.00
Senior Architect	\$ 140.00
Architect 1	\$ 115.00
Architect 2	\$ 105.00
Architect 3	\$ 95.00
Managing Surveyor	\$ 130.00
Surveyor 1	\$ 120.00
Surveyor 2	\$ 110.00
Surveyor 3	\$ 100.00
Senior Manager	\$ 85.00
Secretary	\$ 55.00
Field Manager	\$ 70.00
Inspector	\$ 70.00
Technician	\$ 50.00
MoDOT Certified Technician	\$ 57.50
Drafter/Survey Tech 1	\$ 95.00
Drafter/Survey Tech 2	\$ 85.00
Drafter/Survey Tech 3	\$ 75.00
Drafter/Survey Tech 4	\$ 60.00
One Man Survey Crew	\$ 110.00

**Note:**

\*Survey Field crew prices will vary depending upon the Survey Tech assigned to the project.  
\*Overtime rate of 1.5 times the regular rate will be charged for hours worked after 8 hours per day, Saturdays, Sundays, or Holidays.

8 East Main Street Wentzville, MO 63385 Phone: 636-332-4574 Fax: 636-327-0760	737 Rudder Road Fenton, MO 63026 Phone: 314-842-4033 Fax: 314-842-5957	530A East Independence Drive Union, MO 63084 Phone: 636-584-0540 Fax: 636-584-0512	534 Maple Valley Drive Farmington, MO 63640 Phone: 573-315-4810 Fax: 573-315-4811	2804 N. Biagio Street Ozark, MO 65721 Phone: 417-595-4108 Fax: 417-595-4109	905 Executive Drive Osage Beach, MO 65065 Phone: 573-525-0299 Fax: 573-525-0298
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www.cochraneng.com

Initials \_\_\_\_\_



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL AUTHORIZING AN AGREEMENT WITH SW MISSOURI ENGINEERING, LLC DBA COCHRAN FOR PROFESSIONAL DESIGN SERVICES TO ENGINEER UPGRADES FOR THE SPRING CREEK WATER AND SEWER SYSTEMS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** UTILITIES DEPARTMENT

**FIRST READING:** JANUARY 14, 2020

**FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- Included in the Request for Proposal to design replacement of the forcemain of Lift Station #17 was a request for engineering firms to also submit their information to engineer upgrades to the water and sewer systems currently serving the Spring Creek Neighborhood, located on Spring Creek Road.
- In 2006, the City provided a water service connection to the Spring Creek Neighborhood after their private well was found to be contaminated. The City also provided sewer service to the same area in 2005 through a single connection to an existing private sewer collection system.
- An arrangement was made between the City and the Spring Creek Property Owners' Association for the water connection, outlining payment and maintenance responsibilities; however, no formal contract was created. The sewer connection was made through an agreement; however, there are no provisions clearly outlining maintenance and repair responsibilities of the existing Spring Creek sewer collection lines.
- The Spring Creek Property Owners' Association allowed their registry to dissolve in 2012 leaving the City with no formal contact to conduct business related to water and sewer issues and no organized group to address and repair water leaks which are occurring on the Spring Creek side of the City connection. These circumstances have lead to leaks that go unrepaired for extended periods and the City has been unable to recover the cost of the lost water. Staff recommends extending new water and sewer mains for improved service to Spring Creek and the surrounding properties.
- Twelve engineering firms submitted proposals in response to the RFP. They were scored and reviewed by an evaluation team. Staff recommends award of an engineering contract to SW Missouri Engineering, LLC dba Cochran to design the Spring Creek water and sewer system upgrades at a not to exceed cost of \$92,647.00.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year's budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

SD

**COMMUNITY PLAN 2030:** El 1.1 Action 1.1.3

**ATTACHED EXHIBITS:**

**ITEM/SUBJECT: READING OF A BILL AUTHORIZING AN AGREEMENT WITH SW MISSOURI ENGINEERING, LLC DBA COCHRAN FOR PROFESSIONAL DESIGN SERVICES TO ENGINEER UPGRADES FOR THE SPRING CREEK WATER AND SEWER SYSTEMS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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**DETAILED ANALYSIS:**

Twelve proposals were received for engineering to upgrade the existing water distribution system and sanitary sewer collection system serving the Spring Creek Subdivision, located on Spring Creek Road.

Spring Creek Water Distribution System

The Spring Creek residential subdivision, which is located outside of and adjacent to the Branson city limits, is currently provided water and sewer service by the City of Branson. In 2004 the groundwater well used to provide the subdivision was found to have bacterial contamination. At that time the property owners' association for this subdivision, along with the Missouri Department of Natural Resources (MDNR), reached out to the City of Branson for the possibility of providing City water to this area.

An arrangement was made in 2006 to extend a 2" domestic water line from a nearby City main to the existing subdivision water distribution system. A master water meter was installed between the systems to measure the total amount of water supplied to the subdivision. The Property Owners Association also installed individual water meters at each residence and the City agreed to read the individual meters monthly for billing purposes. The residents agreed to pay their individual water bills and the Association agreed to pay for any amount of water use through the master meter which exceeded the total sum of water registered through all individual meters. This arrangement worked for a period of time; however, the Association was eventually dissolved leaving no contact for the City to conduct business.

Frequent leaks now occur within the subdivision's private lines. Due to financial constraints, the current homeowners are not able to properly maintain and repair the existing substandard system within the subdivision. Water leaks that form in lines between the City's master meter and the individual customer meters are going unrepaired for long periods of time resulting in substantial water loss and water bills amounting to thousands of dollars which the residents are unable to pay. Water termination to the area was considered; however, the residents are paying for the amount of water consumed through their individual meters.

City Staff researched options to possibly upgrade the existing Spring Creek system. From this preliminary review, it was determined that extending new public water mains through the Spring Creek Subdivision would certainly benefit Spring Creek and in turn, there could be an additional benefit to the Palace View Development, to the west of Spring Creek, by looping existing City water mains in that area thus providing a redundant feed to Palace View. The improvements could also be utilized to supply water to annexed areas to the east of Spring Creek that are currently unserved. With these considerations, the extension of water mains would be a beneficial community project by not only upgrading the system within Spring Creek to meet current City standards for reliable domestic water service and adequate fire protection but at the same time improve water service to other annexed areas of the City.

Staff recommends proceeding with necessary engineering to make the improvements that would correct the previous Spring Creek arrangements and at the same time enhance the overall City water distribution service in the areas near the neighborhood.

**ITEM/SUBJECT: READING OF A BILL AUTHORIZING AN AGREEMENT WITH SW MISSOURI ENGINEERING, LLC DBA COCHRAN FOR PROFESSIONAL DESIGN SERVICES TO ENGINEER UPGRADES FOR THE SPRING CREEK WATER AND SEWER SYSTEMS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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Spring Creek Sanitary Sewer System

The existing sewer lines within the Spring Creek Sanitary Sewer System consist of residential type 4” pipes that are not accessible for City maintenance equipment. The existing Spring Creek system was connected to the City’s central sewer system at a single point of connection through a County funded project in 2005. The intent at that time was for the Spring Creek property owners to maintain the sewers within the subdivision and the City would be responsible to accept the sewer flows for treatment. In the process an existing private sewage lagoon serving Spring Creek, which could not meet regulatory effluent limits, was eliminated.

The sewer agreement that exists does not clearly explain the responsibility of maintenance, no recording was imposed on individual property deeds identifying responsibilities for maintenance and in conjunction, the neighborhood property owners’ association, which would have been responsible for maintenance and repair of the sewer lines in the neighborhood, no longer exists.

Given the fact that the system serves multiple individually owned properties, MDNR will consider the subdivision’s sewer system public and the responsibility for repair will fall on the City when future problems occur. If it is decided to proceed with the design to upgrade the subdivision water system, Staff recommends proceeding with design to replace the existing sewer system within the subdivision at the same time with a public gravity system that meets current City design standards and is easily accessible for maintenance by City crews and equipment.

The steps needed for the design of this project was described in Request for Proposal (RFP) 2493–25. The RFP identified what criteria firms would need to provide for the City to evaluate and select the best qualifying candidate. At least five references were also required of similar work completed within the last five years.

Engineering firms submitting proposals were:

Allgeier, Martin and Associates, Joplin, Missouri  
Bartlett & West, Springfield, Missouri  
CFS Engineers  
CJW Consultants, Springfield, Missouri  
SW Missouri Engineering, LLC, dba Cochran, Union, Missouri  
CPWG, Branson, Missouri  
Great River Engineering, Springfield, Missouri  
McClelland Consulting Engineers, Fayetteville, Arkansas  
MECO, Hannibal, Missouri  
Rose & McCrary Engineering, Grove, Oklahoma  
Rozell Engineering, Branson, Missouri  
Veenstra & Kimm, Liberty, Missouri

Staff formed an evaluation team with members including Utilities Director, Mike Ray, Public Works & Engineering Director, Keith Francis, Utilities Operations and Development Manager, Kendall Powell, and Assistant City Engineer, Matt Filice. The team first scored each proposal

**ITEM/SUBJECT: READING OF A BILL AUTHORIZING AN AGREEMENT WITH SW MISSOURI ENGINEERING, LLC DBA COCHRAN FOR PROFESSIONAL DESIGN SERVICES TO ENGINEER UPGRADES FOR THE SPRING CREEK WATER AND SEWER SYSTEMS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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Individually and then met to compare rankings and opinions. After discussion of opinions, the firm being recommended by Staff for the engineering and design of this project is SW Missouri Engineering, LLC, dba Cochran Engineering as the top ranking firm for this project.

Cochran's proposal was very detailed and is, in the Staff's opinion, the most comprehensive in discussion to project approach. The firm is also highly experienced in the type of work to be performed. Comments from references provided by Cochran indicate the firm is an extremely interactive company that builds strong working relationships with their clients.

On August 28, 2019 Staff submitted the proposal evaluation information to the Capital Improvements Committee. After review and discussion of the information the Committee unanimously agreed with the evaluation team's selection and voted to direct Staff to negotiate a contract with Cochran Engineering for consideration by the Board of Aldermen.

Staff met with representatives of Cochran Engineering to form a detailed Scope of Work outlining tasks that Cochran will perform for design of the improvements and the ensuing construction. A price to perform the work was negotiated at a not-to-exceed cost of \$92,647.00. This amount is within Staff's cost estimate and the percentage of engineering cost that is considered acceptable, under the Qualifications Based Selection (QBS) guidelines for professional services, when compared to the construction cost estimate.

Funds are available in the 2020 fiscal budget for this expense.

BILL NO. 5774

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING AN AGREEMENT WITH SW MISSOURI ENGINEERING LLC, DBA COCHRAN, FOR PROFESSIONAL DESIGN SERVICES TO ENGINEER UPGRADES FOR THE SPRING CREEK WATER AND SEWER SYSTEMS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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**WHEREAS**, the City Branson received proposals for design of the Spring Creek water and sewer system upgrades; and

**WHEREAS**, a contract to perform the necessary design with SW Missouri Engineering LLC, dba Cochran, has been recommended for approval by Staff; and

**WHEREAS**, the Board of Aldermen desires to award the contract for Spring Creek water and sewer system designs.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, AS FOLLOWS:**

Section 1: The Board of Aldermen hereby executes an Agreement with SW Missouri Engineering LLC, dba Cochran, for design of Spring Creek water and sewer system upgrades with a not-to-exceed amount of \$92,647.00 and authorizes the Mayor to execute the easements attached hereto as Exhibit "1".

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_ day of \_\_\_\_\_, 2020.

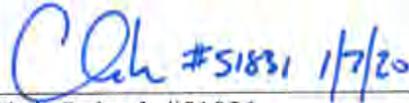
Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K. Westfall  
City Clerk

 #51831 1/7/20  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

<b>ROUTING ORDER</b>		<b>(1) CONTRACT MGMT.</b>	<b>(2) CITY ATTORNEY</b>
		<b>(3) CITY ADMINISTRATOR</b>	<b>(4) ORIGINATING DEPT. (5) CONSULTANT</b>
EFFECTIVE DATE	TERMINATION DATE	CONTRACT NUMBER:	
<input checked="" type="checkbox"/> NEW CONTRACT		<input type="checkbox"/> RENEWAL OF CONTRACT No. _____	
<b>CITY</b>		<b>CONSULTANT</b>	
CITY OF BRANSON 110 W. MADDUX, SUITE 310 BRANSON, MO 65616 PHONE: (417) 243-2740 FAX: (417) 334-9519 CONTRACT ADMINISTRATOR: MIKE RAY, DIRECTOR DEPT: UTILITIES		NAME: SW MISSOURI ENGINEERING, LLC DBA COCHRAN ADDRESS: 2804 N. BIAGIO STREET, OZARK MO 65721 PHONE: 417-595-4108 FAX: 417-595-4109 ATTN: CHRIS BOONE, P.E. SSN/EIN: 82-2087027	

**AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES**

WHEREAS, the City of Branson requires professional engineering services in connection with engineering design of the Spring Creek Neighborhood Water & Sewer System Upgrade. This Agreement is made as of the 30 day of December, 2019, by and between the City of Branson, Missouri (hereinafter referred to as CITY) and SW Missouri Engineering LLC, dba Cochran, specializing in consulting engineering services (hereinafter referred to as ENGINEER).

WHEREAS, CITY and ENGINEER, in consideration of their mutual covenants agree as follows: ENGINEER shall serve as CITY's professional engineering consultant per the assignments delineated in writing in this Agreement and the attached scope of work, and shall give consultation and advice to CITY during the performance of its services. All services shall be performed under the direction of a professional engineer registered in the State of Missouri, and qualified in a field relevant to the services required by the scope of this Agreement.

Neither ENGINEER nor any of its agents shall act on behalf of, or in the name of CITY, except as provided in this Agreement.

**SECTION I – AUTHORIZATION OF SERVICES & STANDARD OF CARE**

- 1.1 Services on any assignment shall be undertaken only upon written authorization of CITY and agreement of ENGINEER pursuant to this Agreement and the scope of work.
- 1.2 Assignments are delineated in this Agreement and the attached scope of work. CITY shall not

compensate ENGINEER for items outside of these parameters.

- 1.3 The standard of care for ENGINEER under this Agreement shall be the care and skill used by members of the engineering profession practicing the best and most current engineering practices for municipalities in the United States of America.

## **SECTION 2 – BASIC SERVICES OF ENGINEER**

### **2.1 General**

- 2.1.1 ENGINEER shall perform professional engineering services in connection with the specifically authorized Project as provided for in this Agreement and Scope of Work attached hereto as Exhibit “A” to this Agreement and named as Spring Creek Neighborhood Water & Sewer System Upgrade.
- 2.1.2 Except as provided in this Agreement all communication between ENGINEER and any Contractor or Subcontractor shall only be through CITY.
- 2.1.3 ENGINEER understands that time is of the essence in this Agreement, and services shall be rendered promptly to not delay CITY or any applicable Contractor.
- 2.1.4 ENGINEER shall be responsible to CITY for costs of errors or omissions by ENGINEER or its consultant.
- 2.1.5 ENGINEER shall coordinate the services of all design consultants for the Project, including any design consultants retained by CITY.

### **2.2 Final Design Phase**

- 2.2.1 ENGINEER shall furnish to CITY such documents and design data as may be required for, and assist in the preparation of the required documents so that CITY may secure approval from Missouri Department of Natural Resources, US Corps of Engineers, Missouri Dept. of Conservation and such other governmental authorities as have jurisdiction over design criteria applicable to the Project.
- 2.2.2 ENGINEER shall advise CITY of adjustments in excess of ten percent of the construction cost estimate for the Project caused by changes in scope, design requirements of construction costs and furnish a revised construction cost estimate for the Project based on the final Contract Drawings and Bid Documents.
- 2.2.3 ENGINEER shall furnish three approval copies of the final Contract Drawings and Bid Documents for the improvements.
- 2.2.4 All plans, specifications, estimates, drawings and documents prepared or furnished by the ENGINEER shall conform to federal and state laws and CITY ordinances.
- 2.2.5 ENGINEER shall furnish one (1) set of full size (24” X 36”) wetsealed approved final Contract Drawings and one (1) set of wetsealed approved final contract Specifications. Engineer shall also provide the final approved drawings in pdf format and the final approved specifications in Word format.

### **2.3 Bidding and Construction Phase**

- 2.3.1 ENGINEER shall answer questions from bidders during bidding process.
- 2.3.2 ENGINEER shall assist CITY in preparation of Contract Addenda.
- 2.3.3 ENGINEER shall attend Bid Opening and provide a bid tabulation and recommendation.
- 2.3.4 ENGINEER shall attend Preconstruction Conference.
- 2.3.5 ENGINEER shall provide technical support throughout the project as requested and as provided for in this Agreement and the attached scope of work.
- 2.3.6 ENGINEER shall assist CITY and contractor during startup operations as provided in this Agreement and the attached scope of work.
- 2.3.7 ENGINEER shall attend construction related meetings during the construction of the project when requested to do so in writing by CITY.
- 2.3.8 ENGINEER shall review submittals and shop drawings when requested in writing by CITY provided by the Contractor for compliance with the plans and specifications.
- 2.3.9 ENGINEER shall complete a final inspection and record any deficiencies not complying with the plans and specifications.
- 2.3.10 ENGINEER shall furnish to CITY record drawings which include all revisions made during construction. Deliverables shall be 1 (one) full size (24" X 36") set of drawings as well as a flash drive or CD with the record drawing AutoCAD DWG files.
- 2.3.11 Engineer shall provide a letter to the city stating the project was constructed in substantial conformance to the project contract documents and design intent.

### **SECTION 3 – ADDITIONAL SERVICES OF ENGINEER**

- 3.1 Services outside the scope of this Agreement will be agreed to by CITY and ENGINEER, and provided for in an amendment to this Agreement, approved as required by CITY's municipal code.
- 3.1.1 ENGINEER shall serve as a witness and be prepared to serve as a witness for the CITY in any litigation or other proceedings involving the Project.

### **SECTION 4 – RESPONSIBILITIES OF CITY**

- 4.1 Within a reasonable time CITY, to facilitate the authorized activities of ENGINEER, shall provide information in the CITY's possession to meet the requirements of this Project.
- 4.2 Assist ENGINEER by providing available information when requested pertinent to this Agreement

- including previous reports and any other available data relative thereto.
- 4.3 Provide access to and make all provisions for ENGINEER to enter upon public and private property under the control of CITY as required for ENGINEER to perform services under this Agreement.
  - 4.4 Examine, in a timely manner, all studies, reports, sketches, estimates, Bid Documents, Drawings, proposals and other documents presented by ENGINEER and render in writing decisions pertaining thereto necessary for the completion of this Agreement.
  - 4.5 Provide such professional legal, accounting, financial and insurance counseling services as may be required for the Project. The final decision concerning what is required is the CITY and the CITY's alone.
  - 4.6 The CITY's relevant departmental director or his assignee shall serve as CITY'S representative with respect to the services to be performed under this Agreement. This role shall include providing instructions, receiving information, and interpreting and defining CITY's policies in respect to materials, equipment, elements, services, and systems to be used in the Project as described in this Agreement and the attached scope of work.
  - 4.7 Give prompt written notice to ENGINEER whenever CITY observes or otherwise becomes aware of any defect in the Project.
  - 4.8 Furnish all required approvals and permits from governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
  - 4.9 Furnish or direct ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.

#### **SECTION 5 – PERIOD OF SERVICE**

- 5.1 This Agreement shall become effective after signature of all parties as provided for by the City of Branson Municipal Code.
- 5.2 This Agreement shall be applicable to all assignments to ENGINEER authorized by CITY pursuant to the tasks included in this Agreement and the attached scope of work.
- 5.3 Upon mutual agreement of the parties, this Agreement may be extended, renegotiated or terminated.
- 5.4 Performance time for individual assignments shall be agreed upon at the time of authorization. Work shall be started within ten (10) days of authorization of Notice to Proceed.
- 5.5 ENGINEER shall complete the design phase within 240 days from the notice to proceed or February 3, 2020, whichever is later, provided that CITY has met its responsibilities as outlined in Section 4. Construction support will be provided as necessary during the ensuing 240 day construction period for the project which is anticipated to begin February 15, 2021. In the event CITY's review, examination or approval exceeds 30 days, and/or review and approval from all governmental agencies having jurisdiction over the design criteria is not received in a timely

manner, both CITY and ENGINEER may agree to renegotiate the completion date herein stated and provide such extension as an amendment to this Agreement to be approved as provided for in the CITY's municipal code. ENGINEER understands that time is of the essence in this Agreement, and failure to perform in accordance with the timelines presented herein result in a material default of this agreement.

**SECTION 6 – PAYMENTS TO ENGINEER**

**6.1 Amount of Payment:**

- 6.1.1 For services performed, CITY shall pay ENGINEER the sum of amounts determined as follows: for time spent by personnel, payment at the hourly rates indicated in the Cochran "2019 Hourly Fee Schedule" form, included as Exhibit B, which will remain at provided amounts during the duration of the agreement period outlined in Section 5 - 5.5.
- 6.1.2 Expenses incurred by ENGINEER, such as authorized travel and subsistence including airfare, food, lodging, automobile rental, commercial services, and incidental expenses, shall be included in the not to exceed amount of this Agreement.
- 6.1.3 Reproduction, printing, long-distance telephone calls, company vehicle usage, testing apparatus, computer services and computer-assisted drafting (CAD), amounts will be charged according to the ENGINEER'S standard rates in effect at the time service is provided and shall also be included in the not to exceed cost of this Agreement.
- 6.1.4 Professional services rendered to complete the tasks envisioned in this Agreement and the attached scope of work by others as subcontractor(s) to ENGINEER such as any surveying, real property descriptions, soil borings, subsurface investigations, laboratory testing, field quality control tests, progress photos, or other activities required as provided for in section 4.6 shall be included in the not to exceed cost of this Agreement.

**6.2 Maximum Amount of Payment**

Payment for services rendered under this Agreement shall be subject to the following limitations:

- 6.2.1 Preliminary Design Services, Final Design & Bidding and Construction Phase Services shall be billed on a time and expense basis with total payment to the ENGINEER not to exceed the following maximum fee, without formally amending this Agreement:

Water System Upgrade:

Preliminary Design	\$ 6,044.00
Topographic Survey	\$ 5,222.00
Final Design	\$31,912.00
Easement Exhibits & Legal Descriptions	<u>\$ 7,650.00</u>
<b>Total Design</b>	<b>\$50,828.00</b>
Construction Administration Support	<u>\$ 6,900.00</u>
<b>Total Construction Support</b>	<b>\$ 6,900.00</b>

**Water System** **\$57,728.00**

Sewer System Upgrade:

Preliminary Design	\$ 3,400.00
Topographic Survey	\$ 2,938.00
Final Design	\$17,950.00
Easement Exhibits & Legal Descriptions	<u>\$ 6,750.00</u>
<b>Total Design</b>	<b>\$31,038.00</b>

Construction Administration Support	<u>\$ 3,881.00</u>
<b>Total Construction Support</b>	<b>\$ 3,881.00</b>

**Sewer System** **\$34,919.00**

**Total Contract Not to Exceed** **\$92,647.00**

6.2.2 Additional services and costs may be included in this Agreement as provided for by amendment, as provided for by the CITY's municipal code.

**6.3 Method of Billing**

6.3.1 A monthly statement shall be rendered by the ENGINEER to CITY describing all engineering services performed during that month.

**6.4 Payment**

6.4.1 Payment for engineering services shall be due 30 days after receipt of billing and acceptance of the ENGINEER'S work. CITY may withhold from payment such amount as will, in CITY'S discretion, protect CITY from any loss, damage or default caused by ENGINEER. Making of payments shall not constitute waiver of any claims by CITY.

**SECTION 7- GENERAL CONSIDERATIONS**

**7.1 Estimates**

Estimates of construction cost provided for herein shall be made on the basis of ENGINEER'S experience and qualifications and represent its best judgement as a design professional firm familiar with the construction industry, and specifically the costs associated with the Work required for this Project.

7.2 ENGINEER shall indemnify, protect and hold CITY harmless from and against any and all claims, demands, liabilities and costs, including attorneys' fees, arising from claims under The Worker's Compensation Law. Claims for contract damages, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the ENGINEER'S employees or of any person other than his employees and from claims for damages because of injury to or

destruction of tangible property including loss of use resulting therefrom, to the extent that any such claims, demands, liabilities and costs are the result of a negligent act, error or omissions of ENGINEER, ENGINEER will defend, indemnify, and hold CITY harmless from claims and demands arising as a result of ENGINEER'S nonprofessional liability which is covered by ENGINEER'S comprehensive general liability insurance policy, and from claims and demands arising out of the award of this contract.

- 7.2.1 ENGINEER assumes full responsibility for relations with any third parties acting as consultants, subcontractors, agents, suppliers or laborers of the ENGINEER, and shall indemnify and hold CITY harmless from and against, any and all liability, suits, claims, damages, costs (including reasonable attorneys' fees), losses, outlays, and expenses in any manner caused by, arising out of or connected with the ENGINEER'S performance of this contract. Prior to engaging any consultant, ENGINEER shall obtain CITY'S consent in writing, which will not be unreasonably withheld if necessary to complete the scope of this Agreement. Final decision on the necessity of such assistance shall be the CITY's alone.

**7.3 Termination**

This Agreement may be terminated by either party by seven (7) days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. CITY retains the right to terminate the Agreement without cause upon payment of all authorized services as provided up to that time falling under the terms of this Agreement and the attached scope of work.

**7.4 Ownership of Documents**

All documents, including original drawings, estimates, specifications, written design criteria and written reports made pursuant to this Agreement are and remain the property of the CITY. The ENGINEER shall furnish to CITY a set of reproducible record prints of drawings and copies of estimates, specifications, written reports, and written design criteria, in consideration of which the CITY will use them fully in connection with the project and will not sell them, reuse or permit the reuse of said documents by others in connection with another facility. The transfer of ownership of documents shall not constitute the transfer of any ownership or granting of a license in any proprietary rights that the ENGINEER may have in any data, designs, processes or other information incorporated in the documents.

**7.5 Insurance**

The ENGINEER will secure and maintain such insurance as will protect it or any of its employees from claims under any worker's compensation laws, claims for damages because of bodily injury including personal injury, sickness or disease, or death, and from claims for damages because of injury to or destruction of tangible property including loss of use therefrom.

- 7.5.1 General Liability Insurance. ENGINEER shall maintain General Liability Insurance with a company licensed to do business in the State of Missouri. The policy shall meet the scope or extent of the city's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo (Supp 1995). CITY must be named as an additional insured.

- 7.5.2 Automobile Liability Insurance. ENGINEER shall maintain Automobile Liability Insurance with a company authorized to do business in the State of Missouri. The policy shall meet the scope or extent of the city's tort liability as a governmental entity as described in Section 537.600 through

- 537.650 RSMo (Supp 1995). CITY must be named as an additional insured.
- 7.5.3 Workers' Compensation Insurance. ENGINEER shall maintain Worker's Compensation Insurance with a company authorized to do business in the State of Missouri having limits not less than One Million Dollars (\$1,000,000.00), including occupational disease provisions for all employees of the Service Provider(s) and Sub-Service Provider(s).
- 7.5.4 ENGINEER shall maintain Professional Liability Insurance with an Insurer approved by CITY in the amount of at least One Million Dollars (\$1,000,000.00). All deductibles and Self-insured Retention must be paid by ENGINEER.
- 7.5.5 ENGINEER shall provide Certificate of Insurance in the amounts and terms set forth above at the commencement of this Agreement and at any other time requested by CITY.
- 7.6 No salaried officer or employee of CITY shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Any federal regulations and applicable provisions in RSMo. Chapter 105 shall not be violated.
- 7.7 ENGINEER agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of ENGINEER or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- 7.8 ENGINEER is an independent contractor and nothing contained herein shall constitute or designate the ENGINEER or any of its agents or employees as agents or employees of the CITY.
- 7.9 ENGINEER shall not be entitled to any of the benefits established for the employees of the CITY nor be covered by the Workmen's Compensation Program of the CITY.
- 7.10 **Successor and Assigns**  
CITY and ENGINEER each binds himself and its successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement, except as above, neither CITY nor ENGINEER shall assign, sublet or transfer its interest in the Agreement without the written consent of the other.
- 7.11 **Notices**  
All notices required to be in writing may be given by first-class mail addressed to CITY at 110 W. Maddux, Branson, Missouri, and ENGINEER at 2804 N. Biagio Street, Ozark MO 65721. The date of delivery of any notice shall be the second full day after the date of its mailing.
- 7.12 **Jurisdiction**  
This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Agreement be adjudicated, venue shall be proper only in the Circuit Court of Taney County, Missouri.
- 7.13 **Extent of Agreement**  
This Agreement represents the entire and integrated agreement between CITY and ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both CITY and ENGINEER.

IN WITNESS WHEREOF, the City of Branson, by and through its Mayor, and SW Missouri Engineering LLC, dba Cochran, by its authorized officer have made and executed this Agreement as of the day and year first above written.

**SW Missouri Engineering, LLC  
dba Cochran**

**CITY OF BRANSON, MISSOURI**

By: Chris L Boone 12/30/19  
(Signature) Date

\_\_\_\_\_  
E. Edd Akers Date  
Mayor

Name: Christopher Boone  
(Printed Name)

ATTEST:

Title: President

Company Name: SW Missouri Engineering, LLC  
dba Cochran

\_\_\_\_\_  
Lisa K Westfall Date  
City Clerk

Address: 2804 N. Biagio Street  
Ozark, MO 65721

APPROVED AS TO FORM:

Phone: 417-595-4108

Chris # 51821 12/13/19  
Date

E-Mail: Chris@cochraneng.com

Chris Lebeck #51821  
City Attorney

Tax ID: 82-2087027

EXHIBIT A TO AGREEMENT  
FOR PROFESSIONAL ENGINEERING SERVICES  
SPRING CREEK NEIGHBORHOOD WATER AND SEWER SYTEM UPGRADE  
SCOPE OF WORK  
CITY OF BRANSON, MO

**ITEM 1A: PRELIMINARY DESIGN – WATER MAIN**

SCOPE OF WORK:

1. Prepare conceptual design for water main alignment options. Cochran will review alignment options with the City and recommend the most feasible alignment. The alignment shown in Exhibit 1, attached hereto, will be included in the feasibility analysis.
2. Prepare a preliminary construction cost estimate for each water main option under consideration.

FEE:

The fees for the professional services outlined in **Item 1A** of this proposal shall be paid on a time and expense basis not to exceed \$6,044.00.

**ITEM 2A: TOPOGRAPHIC SURVEY – WATER MAIN**

SCOPE OF WORK:

1. Acquire deeds and plats for all parcels affecting the design corridor as shown on the attached Exhibit 1.
2. Search for and locate monuments (Iron rods, iron pipes, stones, etc.) and evidence of possession.
3. Resolve the parcel lines along the design corridor.
4. Obtain ground elevations to generate contours at 1-foot intervals on the design corridor, roughly 50 foot wide.
5. Locate existing improvements inside of the design corridor.
6. Locate existing public utilities from observed evidence together with markings by "Missouri One Call".
7. Establish a benchmark onsite, (NAVD 1988).
8. Prepare the base drawing in ACAD/Civil 3D format for incorporation into design plans.

FEE:

The fees for the professional services outlined in **Item 2A** of this proposal shall be paid on a time and expense basis not to exceed \$5,222.00.

**ITEM 3A: FINAL DESIGN – WATER MAIN**

## SCOPE OF WORK

1. Design approximately 3,000 lineal feet of new water main. This proposal assumes the new water main will run generally along the alignment shown on Exhibit 1. Actual alignment to be confirmed through Preliminary Design Phase. PRV Design is included.
2. Prepare 60% and 90% plans for owner review and approval. Plans will be prepared in accordance with Missouri Department of Natural Resources and Owner requirements
3. Permitting of new water main with the Missouri Department of Natural Resources (MDNR) to obtain a Construction Permit. Cochran will prepare the MDNR construction permit application for signature by Owner.
4. Prepare Project Manual for use in bidding and construction. The project manual will contain standard contract documents (front end documents) provided by the City of Branson. Technical specifications and special provisions will be prepared by Cochran.
5. Prepare final engineer's cost estimate.
6. Participate and assist in pre-bid meeting, bid openings, contractor selection, and pre-construction meeting. Cochran will also prepare a bid tabulation and letter of recommendation for awarding the construction contract.

### FEE:

The fees for the professional services outlined in **Item 3A** of this proposal shall be paid on a time and expense basis not to exceed \$31,912.00.

## **ITEM 4A: EASEMENT EXHIBITS AND LEGAL DESCRIPTIONS-WATER MAIN**

### SCOPE OF WORK:

1. Prepare Easement Exhibits and Legal Descriptions for parcels along the new water main for use in legal counsel in preparation of documentation for acquisition of easements. Approximately seventeen (17) exhibits and legal descriptions will be required.

### FEE:

The fees for the professional services in **Item 4A** of this proposal shall be paid on a time and expense basis not to exceed \$7,650.00.

## **ITEM 5A CONSTRUCTION ADMINISTRATION SUPPORT – WATER MAIN**

### SCOPE OF WORK:

Per the request for proposals, City Staff will handle the daily contract administration, inspection and pay request review. Cochran will be available to provide the following services:

1. Cochran will provide periodic site visits to observe the Contractor's progress and quality of work,

and to determine if the work in progress conforms to the contract documents. The Engineer will accompany City representatives on visits to the project site as requested. Cochran will not be performing full time inspection.

2. Review shop drawings and submittals.
3. Respond to RFI's and provide technical support throughout the project.
4. Participate in final inspection and provide Punch list. Provide letter of conformance for all work completed by Contractor upon acceptance of the project.
5. Provide as-built drawings upon completion of the project.

FEE:

The fees for the professional services outlined in **Item 5A** of this proposal shall be paid on a time and expense basis not to exceed \$6,900.00.

**FEE: WATER MAIN**

The fees for the professional services outlined in this proposal shall be paid on a time and expense basis with a not to exceed fee as summarized in the following table.

ITEM NO. 1A – PRELIMINARY DESIGN	\$ 6,044.00
ITEM NO. 2A – TOPOGRAPHIC SURVEY	\$ 5,222.00
ITEM NO. 3A – FINAL DESIGN	\$31,912.00
ITEM NO. 4A – EASEMENT EXHIBITS & LEGAL DESCRIPTIONS	\$ 7,650.00
ITEM NO. 5A – CONSTRUCTION ADMINISTRATION SUPPORT	\$ 6,900.00
TOTAL	\$57,728.00 (Not to exceed)

**ITEM 1B: PRELIMINARY DESIGN – GRAVITY SEWER**

SCOPE OF WORK:

1. Prepare conceptual design for gravity sewer alignment options. Cochran will review alignment options with the City and recommend the most feasible alignment. The alignment shown in Exhibit 1, attached hereto, will be included in the feasibility analysis.
2. Prepare a preliminary construction cost estimate for each sanitary sewer option under consideration.

FEE:

The fees for the professional services outlined in **Item 1B** of this proposal shall be paid on a time and expense basis not to exceed \$3,400.00.

**ITEM 2B: TOPOGRAPHIC SURVEY – GRAVITY SEWER**

SCOPE OF WORK:

1. Acquire deeds and plats for all parcels affecting the design corridor as shown on the attached Exhibit 2.

2. Search for and locate monuments (iron rods, iron pipes, stones, etc.) and evidence of possession.
3. Resolve the parcel lines along the design corridor.
4. Obtain ground elevations to generate contours at 1-foot intervals on the design corridor, roughly 50 foot wide.
5. Locate existing improvements inside of the design corridor.
6. Locate existing public utilities from observed evidence together with markings by "Missouri One Call".
7. Establish a benchmark onsite, (NAVD 1988).
8. Prepare the base drawing in ACAD/Civil 3D format for incorporation into design plans.

FEE:

The fees for the professional services outlined in **Item 2B** of this proposal shall be paid on a time and expense basis not to exceed \$2,938.00.

**ITEM 3B: FINAL DESIGN – GRAVITY SEWER**

SCOPE OF WORK

1. Design approximately 1,700 lineal feet of new gravity sewer main. This proposal assumes the new sewer main will run generally along the alignment shown on Exhibit 2. Actual alignment to be confirmed through Preliminary Design Phase.
2. Prepare 60% and 90% plans for owner review and approval. Plans will be prepared in accordance with Missouri Department of Natural Resources and Owner requirements.
3. Permitting of new sanitary sewer main with the Missouri Department of Natural Resources (MDNR) to obtain a Construction Permit. Cochran will prepare the MDNR construction permit application for signature by Owner.
4. Prepare Project Manual for use in bidding and construction. The project manual will contain standard contract documents (front end documents) provided by the City of Branson. Technical specifications and special provisions will be prepared by Cochran.
5. Prepare final engineer's cost estimate.
6. Participate and assist in pre-bid meeting, bid openings, contractor selection, and pre-construction meeting. Cochran will also prepare a bid tabulation and letter of recommendation for awarding the construction contract.

FEE:

The fees for the professional services outlined in **Item 3B** of this proposal shall be paid on a time and expense basis not to exceed \$17,950.00.

**ITEM 4B: EASEMENT EXHIBITS AND LEGAL DESCRIPTIONS-GRAVITY SEWER**

SCOPE OF WORK:

1. Prepare Easement Exhibits and Legal Descriptions for parcels along the new gravity sewer for use in legal counsel in preparation of documentation for acquisition of easements. Approximately fifteen (15) exhibits and legal descriptions will be required.

FEE:

The fees for the professional services in **Item 4B** of this proposal shall be paid on a time and expense basis not to exceed \$6,750.00.

**ITEM 5B CONSTRUCTION ADMINISTRATION SUPPORT-GRAVITY SEWER**

SCOPE OF WORK:

Per the request for proposals, City Staff will handle the daily contract administration, inspection and pay request review. Cochran will be available to provide the following services:

1. Cochran will provide periodic site visits to observe the Contractor's progress and quality of work, and to determine if the work in progress conforms to the contract documents. The Engineer will accompany City representatives on visits to the project site as requested. Cochran will not be performing full time inspection.
2. Review shop drawings and submittals.
3. Respond to RFI's and provide technical support throughout the project.
4. Participate In final inspection and provide Punch list. Provide letter of conformance for all work completed by Contractor upon acceptance of the project.
5. Provide as-built drawings upon completion of the project.

FEE:

The fees for the professional services outlined In **Item 5B** of this proposal shall be paid on a time and expense basis not to exceed \$3,881.00.

**FEE: GRAVITY SEWER**

The fees for the professional services outlined in this proposal shall be paid on a time and expense basis with a not to exceed fee as summarized in the following table.

ITEM NO. 1 – PRELIMINARY DESIGN	\$ 3,400.00
ITEM NO. 2 – TOPOGRAPHIC SURVEY	\$ 2,938.00
ITEM NO. 3 – FINAL DESIGN	\$17,950.00
ITEM NO. 4 – EASEMENT EXHIBITS & LEGAL DESCRIPTIONS	\$ 6,750.00
ITEM NO. 5 – CONSTRUCTION ADMINISTRATION SUPPORT	\$ 3,881.00
TOTAL	\$34,919.00 (Not to exceed)

SERVICES NOT INCLUDED:

(All of which can be provided under a separate proposal.)

1. Architectural Services
2. Environmental/Wetlands/Asbestos Studies or Reports
3. Recording and Permit Fees
4. Construction Inspection/Stakeout
5. ALTA/NSPS Land Title Surveys
6. Boundary Surveys
7. Subdivision or Rezoning of property
8. Inflow and Infiltration Studies.

OWNERS RESPONSIBILITY:

1. The Owner shall give prompt and thorough consideration to all sketches, drawings, bid documents and other documents laid before him. Prompt decisions will be required if project is to proceed on schedule.
2. Advertisement and receipt of construction bids.
3. Construction Inspection.

TOTAL FEE

The fees for the professional services outlined in this proposal shall be paid on a time and expense basis with a not to exceed fee as summarized in the following table.

WATER MAIN	\$57,728.00
GRAVITY SEWER	\$34,919.00
TOTAL	\$92,647.00 (Not to exceed)

*Exhibit 1*



Legend

Proposed Water System	—
Existing Water Main System	—
Proposed PRV	■

**"Exhibit 2"**



**Legend**

Proposed Sewer System ————

Existing Sewer Main System ————



Architecture • Civil Engineering • Land Surveying • Site Development • Geotechnical Engineering • Inspection & Materials Testing

**2019 Hourly Fee Schedule**

The following is a list of hourly rates for our Fee Service Contracts. Effective January 1, 2019, these rates will apply to all projects performed on a time and expense basis.

<u>Title</u>	<u>Charge-Out</u>
Principal	\$ 150.00
Managing Engineer	\$ 140.00
Engineer 1	\$ 130.00
Engineer 2	\$ 120.00
Engineer 3	\$ 105.00
Engineer 4	\$ 95.00
Engineer 5	\$ 85.00
Senior Architect	\$ 140.00
Architect 1	\$ 115.00
Architect 2	\$ 105.00
Architect 3	\$ 95.00
Managing Surveyor	\$ 130.00
Surveyor 1	\$ 120.00
Surveyor 2	\$ 110.00
Surveyor 3	\$ 100.00
Senior Manager	\$ 85.00
Secretary	\$ 55.00
Field Manager	\$ 70.00
Inspector	\$ 70.00
Technician	\$ 50.00
MoDOT Certified Technician	\$ 57.50
Drafter/Survey Tech 1	\$ 95.00
Drafter/Survey Tech 2	\$ 85.00
Drafter/Survey Tech 3	\$ 75.00
Drafter/Survey Tech 4	\$ 60.00
One Man Survey Crew	\$ 110.00

**Note:**

\*Survey Field crew prices will vary depending upon the Survey Tech assigned to the project.  
\*Overtime rate of 1.5 times the regular rate will be charged for hours worked after 8 hours per day, Saturdays, Sundays, or Holidays.

8 East Main Street Wentzville, MO 63385 Phone: 636-332-4574 Fax: 636-327-0760	737 Rudder Road Fenton, MO 63026 Phone: 314-842-4033 Fax: 314-842-5957	530A East Independence Drive Union, MO 63084 Phone: 636-584-0540 Fax: 636-584-0512	534 Maple Valley Drive Farmington, MO 63640 Phone: 573-315-4810 Fax: 573-315-4811	2804 N. Biagio Street Ozark, MO 65721 Phone: 417-595-4108 Fax: 417-595-4109	905 Executive Drive Osage Beach, MO 65065 Phone: 573-525-0299 Fax: 573-525-0298
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www.cochraneng.com

Initials\_\_\_\_\_



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL AMENDING APPENDIX A OF THE BRANSON MUNICIPAL CODE PERTAINING TO UTILITIES FEE SCHEDULE.

**INITIATED BY:** UTILITIES DEPARTMENT

**FIRST READING:** JANUARY 14, 2020

**FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- This item is first reading of a bill amending the Utilities Fee Schedule regarding the City of Branson’s monthly water rates.
- For fiscal year 2020 staff recommended a 2% water rate adjustment. An ordinance document with rate amounts incorrectly reflecting a 5% increase was attached by error to the water rate adjustment staff report for the November 12, 2019 Board of Aldermen meeting agenda.
- This error was not identified until after final approval of the bill and signing of the document.
- This correction will lower the water rate amounts to the 2% increase which was requested and approved by the Board of Aldermen upon final reading on November 26, 2019.
- The water rate adjustment outlined in the attached corrected ordinance will become effective upon the first billing period in January 2020.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year’s budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** EI-1.2

**ATTACHED EXHIBITS:**

1 **BILL NO. 5775**

**ORDINANCE NO. \_\_\_\_\_**

2  
3  
4 **AN ORDINANCE AMENDING APPENDIX A OF THE BRANSON MUNICIPAL CODE**  
5 **PERTAINING TO UTILITIES FEE SCHEDULE.**  
6

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7  
8  
9 **NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE**  
10 **CITY OF BRANSON, MISSOURI, THE FOLLOWING:**

11  
12 Section 1: It is the intention of the Board, and it is hereby ordained, that the provisions of this  
13 ordinance shall become and be made a part of the Branson Municipal Code, and the  
14 sections of this ordinance may be renumbered to accomplish such intention.

15  
16 Section 2: That Appendix A – FEE SCHEDULE of the Branson Municipal Code is hereby  
17 amended to read as follows:  
18

19 **Appendix A - FEE SCHEDULE**

Code Section	Description	Fee
90-33	Water service charges, per month	
	(1) Basic monthly rate for all water consumers:	
	• Basic	
	5/8-inch	<del>40.39</del> <b>10.10</b>
	3/4-inch	<del>40.39</del> <b>10.10</b>
	1-inch	<del>47.37</del> <b>16.87</b>
	1.5-inch	<del>34.63</del> <b>33.65</b>
	2-inch	<del>55.45</del> <b>53.87</b>
	3-inch	<del>104.01</del> <b>101.04</b>
	4-inch	<del>173.40</del> <b>168.45</b>
	6-inch	<del>346.71</del> <b>336.80</b>
	*Within city limits:	
	Residential customer eleemosynary and governmental water service charges ( in addition to basic monthly charge):	
	• Up to 2,000 gallon	0

	<ul style="list-style-type: none"> <li>Per 1,000 gallons or fraction thereof over 2,000 gallons</li> </ul>	<del>2.67</del> <b><u>2.59</u></b>
	Commercial and industrial water service charges (in addition to basic monthly charge):	
	<ul style="list-style-type: none"> <li>Up to 2,000 gallons</li> </ul>	0
	<ul style="list-style-type: none"> <li>Per 1,000 gallons or fraction thereof over 2,000 gallons</li> </ul>	<del>3.96</del> <b><u>3.85</u></b>
	Outside city limits, residential eleemosynary, governmental, industrial and commercial water service charges:	
	Up to 2,000 gallons-as a percentage of basic charge applicable inside city limits	250%
	Per 1,000 or fraction thereof over 2,000 gallons-as a percentage of use rates for inside city limits	250%

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NOTE: LANGUAGE WHICH IS BOLD, UNDERLINED HAS BEEN ADDED; LANGUAGE WHICH IS [BRACKETED, STRICKEN] HAS BEEN REMOVED.

Section 3: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_ day of \_\_\_\_\_, 2020.

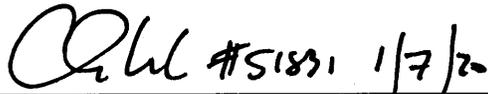
Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri on this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney



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# 2020 MARKETING PLAN

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# 2020 PRIMARY GOALS

- Position Branson as the top choice in consumer consideration set for wholesome vacations
- Grow quality and continuity of re-positioned brand messages
- Continue to improve customer perception of Branson
- Grow Branson's position as a multi-season vacation destination by putting specific focus on empty nesters in the shoulder season
- Convert consumers with a casual interest in Branson to overnight visitors
- Return on investment
- Identify potential revenue streams
- Increase the number of first-time visitors
- Continue exploring new digital and social opportunities
- Outreach to community leaders and partners
- Expand regional partnerships



# DIGITAL & SOCIAL MEDIA

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- Use digital media to inspire, inform and convert Branson visitors.
- Continue to refine and improve the user experience on ExploreBranson.com
- Optimize robust digital marketing dashboard
- Optimize and maximize our investment of time and resources in social channels by analyzing engagement and reach
- Grow newsletter list by 10,000 subscribers
- Continue seeking opportunities to overlay digital and traditional
- Continue to produce more video content in-house
- Provide ongoing customer service and engagement thru digital channels
- Continue to invest in content creation to inspire visitation



# PUBLIC RELATIONS

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- Generate \$22 million in ad equivalency as evaluated by national monitoring services (Vocus/Cision, Meltwater and TVEyes), representing a 44:1 ROI
- Recruit more professional media conferences to Branson.
- Generate positive print, radio and TV coverage, both nationally and regionally, working with Mindy Bianca PR, whose network of media contacts enables first-hand access to story placement in Branson's primary market cities and media outlets in New York, Los Angeles, Chicago and Dallas.
- Capitalize on media interest in Silver Dollar City's new Mystic River Falls, Aquarium at the Boardwalk, Wonderworks and more to promote the plethora of travel stories to Branson.



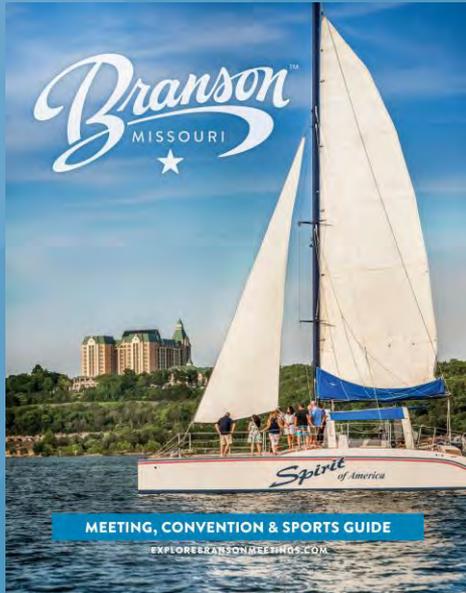
# LEISURE GROUP SALES

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- Hosting Travel Alliance Partners-TAP Dance Conference in 2020.
- Sponsorship at ABA and SYTA-”The Branson Ice Cream Social” and hosted Dine Around. These are four-day sales events which feature 25-35 Branson Partners.
- Continue to re-engage the community regarding the Student & Youth Travel market.
- Partner with Branson businesses to grow overall leisure groups to Branson.
- Texas Music Educators Association trade show and Dine Around.



# MEETINGS & CONVENTIONS

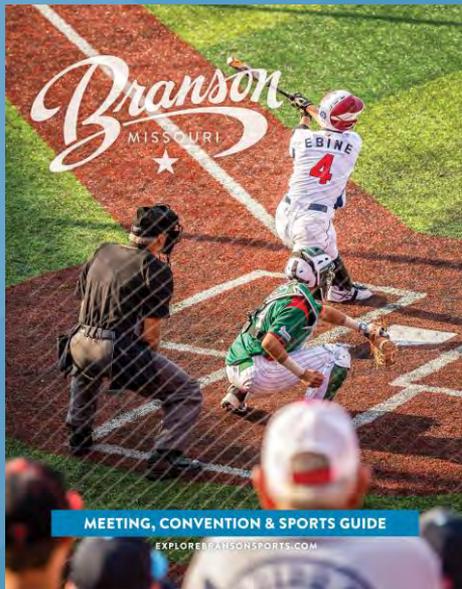


- Increase the number of meetings and conventions by increasing qualified RFP's and site visits by 10% over 2019
- Influence and engage meeting planners through sponsorships at the leading industry tradeshows and conferences (i.e. Connect Marketplace and MPI's World Education Congress).
- First ever display and retargeting campaign that will run using cutting edge meeting planner targeting throughout 2020 with a focus on geofencing specific tradeshows where Branson wants an increased presence.
- Continue to develop fresh digital content to tell the Branson Meeting & Convention story to influencers and decision makers.



# SPORTS MARKETING & DEVELOPMENT

- Attract sporting events and conventions that best fit the Branson/Lakes Area facilities; showcasing the indoor and outdoor offerings available in our community and supporting shoulder season growth.
- Continue working with area venues to identify dark dates and strategically place events that provide expanded economic impact
- Increase incremental travel through sporting events hosted in Branson to achieve the Branson CVB sports tourism mission.
- Increase awareness of sports events hosted in Branson by both outside and local event organizers to grow participation and spectator attendance.
- Continue to work with the BCVB Sports Committee and member of the Sports Facility Advisory Task Force on the long-term strategic plan presented in 2019 to help close shoulder season gaps.
- Define and begin implementation of long-term strategic plan for golf tourism.





QUESTIONS?



# STAFF REPORT

**ITEM/SUBJECT:** A RESOLUTION APPROVING THE MARKETING BUDGET OF THE BRANSON/LAKES AREA CHAMBER OF COMMERCE AND CONVENTION & VISITORS BUREAU FROM JANUARY 1, 2020 TO DECEMBER 31, 2020.

**INITIATED BY:** FINANCE DEPARTMENT

**FIRST READING:** JANUARY 28, 2020

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**EXECUTIVE SUMMARY:**

- The City approved the contract with the Branson Lakes Area Chamber of Commerce and Convention & Visitors Bureau on January 8, 2019.
- The contract requires the Chamber to submit a proposed budget to the Board of Aldermen for approval and has been reviewed by staff.

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**FINANCIAL IMPACT:**

- No impact/Not applicable  
 Budgeted in the current year's budget  
 Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended  
 Not Recommended  
 Neutral/None

A handwritten signature in black ink, appearing to be the initials "JD", is written to the right of the "Not Recommended" option.

**COMMUNITY PLAN 2030:** Increase and/or reallocate marketing funds to attract the highest growth potential visitor segments.

**ATTACHED EXHIBITS:**

**A RESOLUTION APPROVING THE MARKETING BUDGET OF THE BRANSON/LAKES AREA CHAMBER OF COMMERCE AND CONVENTION & VISITORS BUREAU FROM JANUARY 1, 2020 TO DECEMBER 31, 2020.**

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**WHEREAS**, the City of Branson entered into a contract with the Branson/Lakes Area Chamber of Commerce and Convention & Visitors Bureau (“CVB”) for tourism marketing and promotion; and

**WHEREAS**, the contract requires the CVB to submit a proposed budget to the Board of Aldermen for approval; and

**WHEREAS**, the Board of Aldermen desires to approve the CVB’s marketing budget for the period of January 1, 2020 through December 31, 2020.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, THE FOLLOWING:**

Section 1: The Board of Aldermen of the City of Branson, Missouri hereby approves the marketing budget of the Branson/Lakes Area Chamber of Commerce and Convention & Visitors Bureau from January 1, 2020 to December 31, 2020 attached hereto as Exhibit “1”.

Section 2: This resolution shall be in full force and effect after its passage and approval.

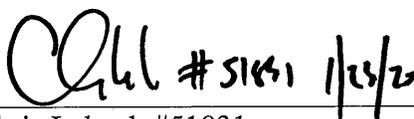
**ADOPTED** by the Board of Aldermen of the City of Branson, Missouri, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

**Branson/Lakes Area CVB/DMO  
2020 TOURISM TAX MARKETING BUDGET**

CODE	DEPT	REVENUE DETAIL	CY 2019 BUDGET AMOUNT	CY 2020 BUDGET AMOUNT
4300	700	TT TOURISM TAX	\$ 2,570,020	\$ 2,324,462
4300	700	ROLLOVER	\$ 729,980	\$ 382,978
<b>TOTAL</b>			<b>\$3,300,000</b>	<b>\$2,707,440</b>

CODE	DEPT	EXPENDITURE DETAIL	CY 2017 BUDGET AMOUNT	CY 2018 BUDGET AMOUNT
6570	700	TT HISTORIC DOWNTOWN PROGRAMS	\$75,000.00	\$75,000.00
6950	700	TT VETERAN'S PROGRAMS	\$50,000.00	\$50,000.00
7010	700	TT ADVERTISING	\$2,414,000.00	\$1,850,000.00
7011	700	TT CREATIVE SERVICES	\$300,000.00	\$188,940.00
7015	700	TT ADVERTISING TV PRODUCTION/DUBS	\$20,000.00	\$7,000.00
7018	700	TT PHOTOGRAPHY	\$110,000.00	\$75,000.00
7020	716	TT WEBSITE	\$100,000.00	\$120,000.00
7021	717	TT SOCIAL MARKETING & OUTREACH	\$100,000.00	\$160,000.00
7022	717	TT CONTENT & DISTRIBUTION	\$100,000.00	\$150,000.00
7160	703	TT SPONSORSHIPS - STUDENT	\$1,000.00	\$1,500.00
7490	700	TT CONFERENCE/TRADE SHOW	\$30,000.00	\$30,000.00
			<b>\$3,300,000.00</b>	<b>\$2,707,440.00</b>



# STAFF REPORT

**ITEM/SUBJECT:** DISCUSSION ON ADDITIONAL MARKETING STUDY.

**INITIATED BY:** ADMINISTRATION DEPARTMENT

**DATE:** JANUARY 28, 2020

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**EXECUTIVE SUMMARY:**

- A request was submitted to seek costs for a market study involving the current practices.
- The item is currently unfunded and Staff is requesting guidance from the Board as to a direction or action on the RFP.

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**FINANCIAL IMPACT:**

- No impact/Not applicable  
 Budgeted in the current year's budget  
 Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended  
 Not Recommended  
 Neutral/None

**COMMUNITY PLAN 2030:** T-1: Branson Brand

**ATTACHED EXHIBITS:**

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# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL AMENDING THE ADOPTED 2019 BUDGET FOR THE CITY OF BRANSON, TO ADJUST MONIES FOR THE TOURISM AND CAPITAL PROJECTS FUNDS.

**INITIATED BY:** FINANCE DEPARTMENT

**FIRST READING:** NOVEMBER 26, 2019      **FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- The Public Works/Engineering Department has been communicating with utility companies for the Highway 76 Utility Undergrounding of Segment 3 from Presley’s Theater to the Branson Ferris Wheel property. The combined estimate for the reimbursement to the utility companies for the undergrounding of the utility lines in this segment of Hwy. 76 is \$1,900,000.00. A budget amendment is needed for \$1,500,000.00 for the 2019 fiscal year.
- If the Board of Aldermen elects to appropriate these funds, the fund balance in the Tourism Fund will be lowered to cover these amounts.

**UPDATE:**

- This item was postponed during its Final Reading at the January 14, 2020 Regular Board of Aldermen meeting. It is in need of a motion, second and a vote.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year’s budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

SD

**COMMUNITY PLAN 2030:** Accountability and Financial Stewardship: We will ensure the efficient and appropriate use of public funds by being good financial stewards on behalf of our residents and businesses.

**ATTACHED EXHIBITS:**

BILL NO. 5732

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING THE ADOPTED 2019 BUDGET FOR THE CITY OF BRANSON, TO ADJUST MONIES FOR THE TOURISM AND CAPITAL PROJECTS FUNDS.**

**WHEREAS**, Section 2-418 of the Branson Municipal code states that any increase in appropriation within a budgeted fund shall require the approval of the Board of Aldermen; and

**WHEREAS**, it is necessary to adjust monies for the Tourism Fund and Capital Projects Fund in the 2019 budget.

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, THAT THE 2019 BUDGET FOR THE CITY OF BRANSON IS HEREBY AMENDED AS FOLLOWS:**

Section 1: The following amendment is authorized to transfer funds within the 2019 budget of the Tourism Fund and Capital Projects Fund.

**Tourism Fund**

	<b><u>Increase</u></b>
240-1095-510-9140 EN1902 (Transfer to Capital Projects Fund)	\$1,500,000
Unreserved Fund Balance (Tourism Fund)	(\$1,500,000)

**Capital Projects Fund**

140-0000-499-1240 EN1902 (Transfer in from Tourism)	(\$1,500,000)
140-5010-510-9011 EN1902 (Capital Projects Fund)	\$1,500,000

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Read, this second time, passed and truly agreed to by the Board of Aldermen of City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

 # 51831 11/18/17  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING AN AGREEMENT BETWEEN CENTURYLINK COMMUNICATIONS, LLC AND THE CITY OF BRANSON RELATING TO RELOCATION COSTS OF CENTURYLINK TELECOMMUNICATION FACILITIES RELATING TO THE HIGHWAY 76 COUNTRY BOULEVARD IMPROVEMENTS PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** PUBLIC WORKS/ENGINEERING DEPARTMENT

**FIRST READING:** OCTOBER 22, 2019

**FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- The Highway 76 Country Boulevard Improvements project will require all affected utility companies to relocate and/or bury the overhead utility lines. As the project moves forward, the utility companies will be incurring costs to implement the utility relocations and these companies need assurances that the city will reimburse these expenses.
- This Agreement is with CenturyLink Communications, LLC and is related to the engineering costs for the relocation of the utility lines on Highway 76 for Segment 3 from East of Rosalee Street to West of Harvey Lane (Presley’s Theater to the Ferris Wheel property) in the amount of \$17,551.84.

**UPDATE:**

- This item was postponed during its Final Reading at the January 14, 2020 Regular Board of Aldermen meeting. It is in need of a motion, second and a vote.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year’s budget
- Other (see additional explanation)

**COMMUNITY PLAN 2030:** EI 1.6.1

**ATTACHED EXHIBITS:**

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**ITEM/SUBJECT: READING OF A BILL APPROVING AN AGREEMENT BETWEEN CENTURYLINK COMMUNICATIONS, LLC AND THE CITY OF BRANSON RELATING TO RELOCATION COSTS OF CENTURYLINK TELECOMMUNICATION FACILITIES RELATING TO THE HIGHWAY 76 COUNTRY BOULEVARD IMPROVEMENTS PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

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**DETAILED ANALYSIS:**

A budget amendment will be presented at this meeting amending the adopted 2019 budget for the City of Branson to adjust monies for the Tourism funds in the amount of \$1,500,000. These funds will be used for the reimbursements to the utility companies for the relocation costs by the various utility companies to relocate the utility lines on this segment of Highway 76.

BILL NO. 5676

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN CENTURYLINK COMMUNICATIONS, LLC AND THE CITY OF BRANSON RELATING TO RELOCATION COSTS OF CENTURYLINK TELECOMMUNICATION FACILITIES RELATING TO THE HIGHWAY 76 COUNTRY BOULEVARD IMPROVEMENTS PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

**WHEREAS**, Centurylink Communications, LLC will incur engineering design costs in conjunction with the burying of overhead electric lines in the vicinity of East of Rosalee Street to West of Harvey Lane; and

**WHEREAS**, the costs incurred are due to the Hwy. 76 Country Boulevard Improvements project; and

**WHEREAS**, the Board of Aldermen desires to approve the Agreement between CenturyLink Communications, LLC relating to engineering design costs of undergrounding of CenturyLink Communications, LLC telecommunication facilities in the vicinity East of Rosalee Street to West of Harvey Lane.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, AS FOLLOWS:**

Section 1: The Board of Aldermen hereby authorizes the Mayor to execute the Agreement with CenturyLink Communications, LLC in the amount of \$17,551.84 pertaining to the engineering design costs incurred as part of the undergrounding of the utilities East of Rosalee Street to West of Harvey Lane in the form attached as Exhibit "A".

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_ day of \_\_\_\_\_, 2019.

Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

CLC #51831 10/17/19  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney



**Via Email Delivery. This Agreement supersedes previously dated Agreements regarding relocation of the Facilities.**

7/8/2019

Keith A. Francis, P.E.  
 City of Branson  
 616 W Pacific St  
 Branson, MO 65616  
 kfrancis@bransonmo.gov

**Re: Relocation of CenturyLink Telecommunications Facilities – Hwy 76 from East of Rosalee St to West of Lane Branson, MO (“Address”)**

Dear Keith A. Francis, P.E.,

City of Branson (the “Requestor”) has contacted the below referenced affiliate(s) of CenturyLink, Inc. regarding relocation, protection and/or adjustment of CenturyLink’s telecommunications facilities, including those facilities as set forth in Exhibit A, (the “Facilities”), located in the vicinity of Hwy 76 from East of Rosalee St to West of Lane, City of Branson, Taney, Missouri, for the benefit of a site development project.

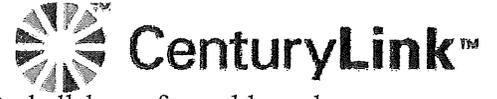
The current location of the Facilities is set forth in the description attached hereto as Exhibit A. To avoid all identified conflicts between the Facilities and the Requestor’s project, CenturyLink will adjust, protect and/or relocate its Facilities as further described in Exhibit B, subject to the following terms and conditions:

- (1) The government or private entity owning or otherwise controlling the underlying property whereupon the Facilities are located or are to be relocated, if so required, first grant to CenturyLink the complete authority to perform the work described in Exhibit B.
- (2) CenturyLink will coordinate and perform all relocation work (the “Work”) described in Exhibit B. CenturyLink will use reasonable efforts to perform all Work from within the area where the Facilities are located or are to be relocated, however, where CenturyLink is required to perform the Work from a third party's property, CenturyLink will endeavor to do so, at Requestor’s sole cost and expense. In addition, Requestor shall obtain any necessary permission for CenturyLink to perform the Work. CenturyLink will use reasonable efforts to minimize the impact of such Work.
- (3) Requestor will first provide CenturyLink with a check in the amount of **\$17,551.84** prior to the relocation Work beginning for the estimated cost of the Work as set forth in Exhibit C. The check should be made out to CenturyLink Communications, LLC and sent to the address listed in Exhibit C below.
- (4) **UPON COMPLETION, REQUESTOR ACCEPTS THE WORK "AS IS." CENTURYLINK MAKES NO WARRANTIES OR**



**REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, WITH RESPECT TO THE WORK OR AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.**

- (5) In the event that circumstances arise that cause the cost and expense of performing the Work to exceed the estimate, CenturyLink will make an adjustment to the estimate. Requestor will pay such additional amounts within thirty (30) days of written notice from CenturyLink. A failure to pay such amount shall cause same to bear interest from the due date until payment is received at a rate of one and one half percent (1 1/2%) per month, compounded annually.
- (6) Requestor will indemnify and defend CenturyLink, its affiliates, employees, invitees, contractors, subcontractors, agents, representatives and servants from and against any loss, cost, damage, and expense of whatever kind, including, but not limited to, the cost of obtaining any authorizations required to relocate the Facilities (collectively "Claims"), arising directly or indirectly from (a) the Work, (b) the use or occupancy of the New Facility Location, or (c) Requestor's failure to perform under this Agreement. This indemnification will be limited to such claims or damages that arise from the sole or partial negligence, actions, or inaction of the Requestor or Requestor's affiliates, employees, invitees, contractors, subcontractors, agents, representatives, and servants. Such Claims shall include attorneys' fees and court costs. The provisions of this paragraph (6) shall survive the performance of the Work and any termination of this Agreement.
- (7) Each party shall obtain and maintain during the course of the Work, the following insurance: (a) Commercial General Liability (for bodily injury) with combined single limit of not less than \$5,000,000.00 each occurrence or its equivalent; (b) Worker's Compensation in amounts required by applicable law and Employer's Liability with a limit of at least \$1,000,000.00 each accident; and (c) Automobile Liability including coverage for owned/leased, non-owned or hired automobiles with combined single limit of not less than \$1,000,000.00 each accident.
- (8) The execution of this Agreement by the parties' representatives and their performance hereunder (a) has been duly authorized by requisite action, (b) will not require any additional approval on the part of the parties, and (c) will not violate any provision of law, any regulation or any contract or other obligation.
- (9) This Agreement constitutes the complete legal, valid, and binding obligation of the parties hereto with regard to the Work and relocation of the Facilities and is enforceable against the parties in accordance with the terms hereof. Except to the extent herein provided, no amendment, supplement,



modification, or termination of this Agreement shall be enforceable unless executed in writing by both parties.

- (10) If any part of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, the court shall interpret the terms hereof to give the greatest effect to the parties' intentions in entering into this Agreement.
- (11) This Agreement shall be construed under the laws of the State in which the Facilities are located.
- (12) This Agreement shall become effective on the date signed by Requestor.

Please acknowledge your acceptance of the foregoing terms and conditions by signing this Agreement and delivering a check in the amount set forth above to the undersigned. CenturyLink will countersign this Agreement and thereafter work with underlying property owner or governing locality to coordinate a construction start date and the times for performing the Work.

Sincerely,

Derek Broeker  
 RELO PM  
 Dept: Relocations  
 1025 Eldorado Blvd.  
 Broomfield, CO 80021-8254  
 Derek.broeker@centurylink.com

APPROVED AND AGREED TO:  
 CenturyLink Communications, LLC

APPROVED AND AGREED TO:  
 City of Branson

Name: Jason Johns  
 Signature: [Signature]  
 Title: City Manager Relocations  
 Date: 8/8/19

\_\_\_\_\_  
 E. Edd Akers, Mayor  
 Date: \_\_\_\_\_

ATTEST:  
 \_\_\_\_\_  
 Lisa K Westfall, City Clerk

APPROVED AS TO FORM:  
[Signature] #51831 8/5/19  
 Chris Lebeck #51831, City Attorney

Exhibit A

(Current Location of Facilities in ROW)



### Exhibit B

Plan for protection, adjustment or relocation of facilities to be determined once CenturyLink engineering is complete.

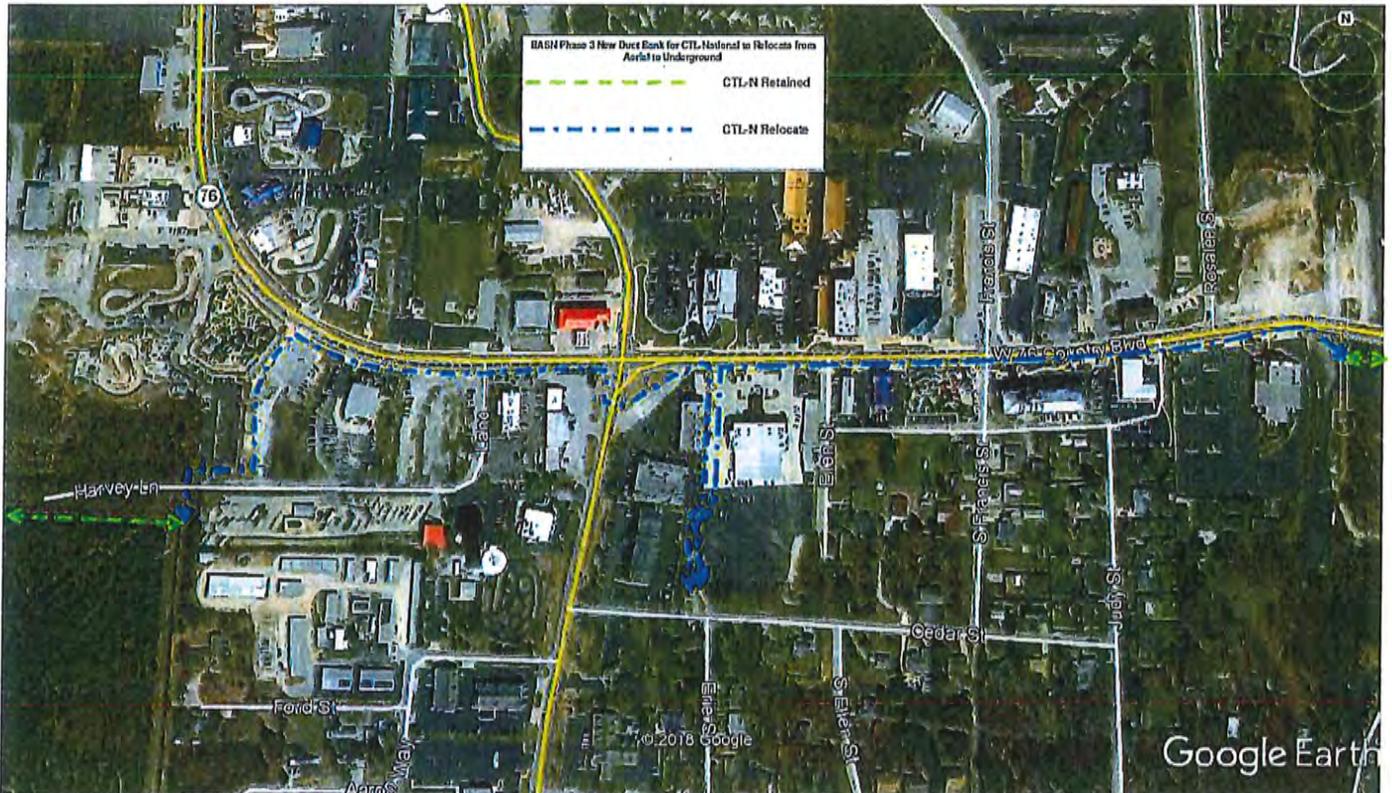


Exhibit C

(Cost Breakdown and Remittance Information)

 <b>CenturyLink®</b>	<b>Relocation Project Cost Estimate - URA</b>
<b>Relocation Project Tracking #:</b>	<b>151234</b>
<b>FW Project Name:</b>	<b>RELO GL 151234 MO: 76 Corridor (Branson, MO)</b>
<b>Customer Name:</b>	<b>City of Branson</b>
<b>Internal Project Code</b>	<b>N.575363.C.28</b>
<b>GL Code:</b>	<b>82422200</b>
<b>Construction Netbuild #:</b>	<b>N515113</b>
<b>Legacy Network Builder:</b>	<b>CenturyLink Communications LLC</b>
<b>RELO PM Contact Info:</b>	<b>Derek Broeker; 636-887-4747</b>
<b>Invoice Number:</b>	<b>To Be Determined</b>
<b>Customer Number:</b>	
<b>Description</b>	<b>Cost</b>
<b>Outside Plant Construction / Materials</b>	<b>\$0.00</b>
<b>Engineering / Inspection</b>	<b>\$13,460.00</b>
<b>Fiber Optic Cable Purchased</b>	<b>\$0.00</b>
<b>Fiber Optic Testing / Splicing</b>	<b>\$0.00</b>
<b>Special Permits / RR / Traffic Control</b>	
<b>Subtotal:</b>	<b>\$13,460.00</b>
<b>Internal Cost Percentage</b>	<b>30.40%</b>
<b>CenturyLink Internal G&amp;A Cost</b>	<b>\$4,091.84</b>
<b>Total payment due:</b>	<b>\$17,551.84</b>

**General instructions for requestor:**

1. Agreement must be scanned back in color to RELO PM – via email for counter execution.
2. Please do not mail agreement as I am remote, and this may delay your project timeline in final execution.
3. Either the CenturyLink or Level 3, W-9 is included as page 2 of the invoice for your Accounts Payable team use and check payable info.
4. Please scan/email a copy of your check to derek.broeker@centurylink.com RELO PM, before mailing.
5. Please remit copy of this invoice with your payment. Place both into a UPS letter envelope, affix provided prepaid label and drop at any UPS collection site.

**Remit copy of invoice with payment via prepaid UPS return service label to:**

CenturyLink Communications  
 Attn: Ashley Tran; 4000-41C-301 / RELO  
 1025 Eldorado Blvd.  
 Broomfield, CO 80021



**Via Email Delivery. This Agreement supersedes previously dated Agreements regarding relocation of the Facilities.**

7/8/2019

Keith A. Francis, P.E.  
 City of Branson  
 616 W Pacific St  
 Branson, MO 65616  
 kfrancis@bransonmo.gov

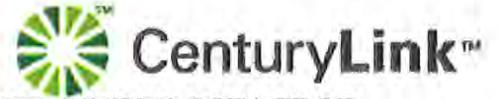
**Re: Relocation of CenturyLink Telecommunications Facilities – Hwy 76 from East of Rosalee St to West of Lane Branson, MO ("Address")**

Dear Keith A. Francis, P.E.,

City of Branson (the "Requestor") has contacted the below referenced affiliate(s) of CenturyLink, Inc. regarding relocation, protection and/or adjustment of CenturyLink's telecommunications facilities, including those facilities as set forth in Exhibit A, (the "Facilities"), located in the vicinity of Hwy 76 from East of Rosalee St to West of Lane, City of Branson, Taney, Missouri, for the benefit of a site development project.

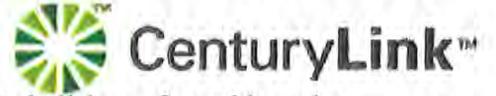
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- (1) The government or private entity owning or otherwise controlling the underlying property whereupon the Facilities are located or are to be relocated, if so required, first grant to CenturyLink the complete authority to perform the work described in Exhibit B.
- (2) CenturyLink will coordinate and perform all relocation work (the "Work") described in Exhibit B. CenturyLink will use reasonable efforts to perform all Work from within the area where the Facilities are located or are to be relocated, however, where CenturyLink is required to perform the Work from a third party's property, CenturyLink will endeavor to do so, at Requestor's sole cost and expense. In addition, Requestor shall obtain any necessary permission for CenturyLink to perform the Work. CenturyLink will use reasonable efforts to minimize the impact of such Work.
- (3) Requestor will first provide CenturyLink with a check in the amount of **\$17,551.84** prior to the relocation Work beginning for the estimated cost of the Work as set forth in Exhibit C. The check should be made out to CenturyLink Communications, LLC and sent to the address listed in Exhibit C below.
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**REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, WITH RESPECT TO THE WORK OR AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.**

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- (6) Requestor will indemnify and defend CenturyLink, its affiliates, employees, invitees, contractors, subcontractors, agents, representatives and servants from and against any loss, cost, damage, and expense of whatever kind, including, but not limited to, the cost of obtaining any authorizations required to relocate the Facilities (collectively "Claims"), arising directly or indirectly from (a) the Work, (b) the use or occupancy of the New Facility Location, or (c) Requestor's failure to perform under this Agreement. This indemnification will be limited to such claims or damages that arise from the sole or partial negligence, actions, or inaction of the Requestor or Requestor's affiliates, employees, invitees, contractors, subcontractors, agents, representatives, and servants. Such Claims shall include attorneys' fees and court costs. The provisions of this paragraph (6) shall survive the performance of the Work and any termination of this Agreement.
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- (8) The execution of this Agreement by the parties' representatives and their performance hereunder (a) has been duly authorized by requisite action, (b) will not require any additional approval on the part of the parties, and (c) will not violate any provision of law, any regulation or any contract or other obligation.
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Sincerely,

Derek Broeker  
 RELO PM  
 Dept: Relocations  
 1025 Eldorado Blvd.  
 Broomfield, CO 80021-8254  
 Derek.broeker@centurylink.com

APPROVED AND AGREED TO:  
 CenturyLink Communications, LLC

APPROVED AND AGREED TO:  
 City of Branson

Name: Jason Johns  
 Signature: [Handwritten Signature]  
 Title: SR Manager Relocations  
 Date: 8/8/15

\_\_\_\_\_  
 E. Edd Akers, Mayor  
 Date: \_\_\_\_\_

ATTEST:  
 \_\_\_\_\_  
 Lisa K Westfall, City Clerk

APPROVED AS TO FORM:  
CLCL #51831 8/5/15  
 Chris Lebeck #51831, City Attorney

**Exhibit A**

(Current Location of Facilities in ROW)

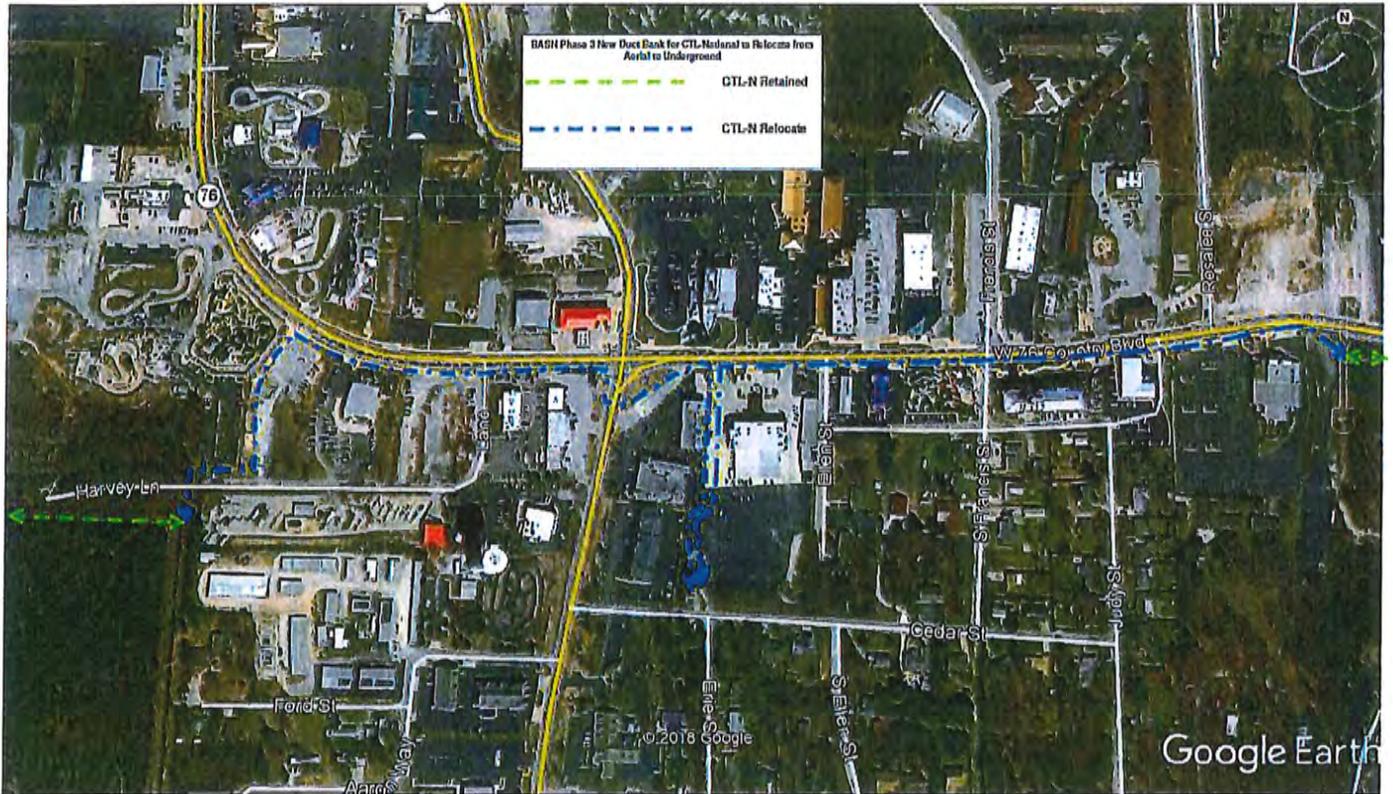




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<b>Special Permits / RR / Traffic Control</b>	
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4. Please scan/email a copy of your check to derek.broeker@centurylink.com RELO PM, before mailing.
5. Please remit copy of this invoice with your payment. Place both into a UPS letter envelope, affix provided prepaid label and drop at any UPS collection site.

**Remit copy of invoice with payment via prepaid UPS return service label to:**

CenturyLink Communications  
 Attn: Ashley Tran; 4000-41C-301 / RELO  
 1025 Eldorado Blvd.  
 Broomfield, CO 80021



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING A SPECIAL CONSTRUCTION PROPOSAL BETWEEN CENTURYLINK AND THE CITY OF BRANSON RELATING TO ENGINEERING DESIGN COSTS OF CENTURYLINK RELATING TO THE HIGHWAY 76 COUNTRY BOULEVARD IMPROVEMENTS PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** PUBLIC WORKS/ENGINEERING DEPARTMENT

**FIRST READING:** OCTOBER 22, 2019                      **FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- The Highway 76 Country Boulevard Improvements project will require all affected utility companies to relocate and/or bury the overhead utility lines. As the project moves forward, the utility companies will be incurring costs to implement the utility relocations and these companies need assurances that the City will reimburse these expenses.
- This Special Construction Proposal Job #N.578208 is with CenturyLink and is related to the engineering design costs for the relocation of the undergrounding of utilities (CenturyLink facilities) near the junction of Hwy. 165 and Hwy. 76 running approximately from Presley’s Theater to the Branson Ferris Wheel in the amount of \$10,807.00.

**UPDATE:**

- This item was postponed during its Final Reading at the January 14, 2020 Regular Board of Aldermen meeting. It is in need of a motion, second and a vote.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year’s budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** EI 1.6.1

**ATTACHED EXHIBITS:**

**ITEM/SUBJECT: READING OF A BILL APPROVING A SPECIAL CONSTRUCTION PROPOSAL BETWEEN CENTURYLINK AND THE CITY OF BRANSON RELATING TO ENGINEERING DESIGN COSTS OF CENTURYLINK RELATING TO THE HIGHWAY 76 COUNTRY BOULEVARD IMPROVEMENTS PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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**DETAILED ANALYSIS:**

A budget amendment will be presented at this meeting amending the adopted 2019 budget for the City of Branson to adjust monies for the Tourism funds in the amount of \$1,500,000. These funds will be used for the reimbursements to the utility companies for the relocation costs by the various utility companies to relocate the utility lines on this segment of Highway 76.

BILL NO. 5677

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING A SPECIAL CONSTRUCTION PROPOSAL BETWEEN CENTURYLINK AND THE CITY OF BRANSON RELATING TO ENGINEERING DESIGN COSTS OF CENTURYLINK RELATING TO THE HIGHWAY 76 COUNTRY BOULEVARD IMPROVEMENTS PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

**WHEREAS**, CenturyLink will incur engineering design costs in conjunction with the burying of overhead electric lines near the junction of Hwy. 165 and Hwy. 76 from Presley’s Theater to the Branson Ferris Wheel property; and

**WHEREAS**, the costs incurred are due to the Hwy. 76 Country Boulevard Improvements project; and

**WHEREAS**, the Board of Aldermen desires to approve the Special Construction Proposal Job #N.578208 between CenturyLink relating to engineering design costs of undergrounding of CenturyLink facilities near the junction of Hwy. 165 and Hwy. 76.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, AS FOLLOWS:**

Section 1: The Board of Aldermen hereby authorizes the Mayor to execute the Special Construction Proposal Job #N.578208 with CenturyLink in the amount of \$10,807.00 pertaining to the engineering design costs incurred as part of the undergrounding of the utilities near the junction of Hwy. 165 and Hwy. 76 from Presley’s Theater to the Branson Ferris Wheel property in the form attached as Exhibit “A”.

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

*Call #51831 10/17/19*  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney



Contract No No \_\_\_\_\_  
Job Authorization No: N578208  
CTL Affiliate: CenturyTel of SW. Missouri

Special Construction Proposal

Exhibit A

Date: 8/3/2019	
Billing Address:	Work Location:
Customer: City of Branson	West Highway 76
Attention: Roger Clark	County TANEY
110 West Maddux St Suite 310	BRANSON, MO
Branson, MO 65616	

This Special Construction Proposal ("Proposal") is governed by the terms and conditions set forth herein as well as any applicable state or federal tariffs and/or rates and services schedules on file with the applicable regulatory authorities. Description and/or specifications of work, along with the bill amount, of work to be performed by an operating affiliate of CenturyLink, Inc. ("CenturyLink") under this Proposal ("Work") is as follows:

This is for the engineering costs only, for the design of the Hwy 76 Undergrounding Phase 1A, undergrounding of utilities (Centurylink facilities) near the junction of Hwy 165 and Hwy 76. Running approximately from Presley's theater to the Branson Ferris Wheel. Killion Communications is the vendor. When complete, Centurylink job # N.578208 will provide an estimate for the relocation costs.

Advance Payment (required before work begins): \$10,807.00

Total Charges: Ten Thousand Eight Hundred Seven Dollars and 00/100

This Proposal may be withdrawn by CenturyLink if not accepted by the Customer within 30 days. Upon execution by both parties, this Proposal and the terms and conditions of any applicable tariffs and/or rates and services schedules on file with the applicable regulatory authorities shall constitute a binding agreement upon the parties. In no event will the terms and conditions of a nother document, including but not limited to a purchase order, be construed to in any way govern the Work or otherwise bind the parties to this Proposal. The parties acknowledge and agree that the terms and conditions set forth in this Proposal and the applicable tariffs and/or applicable rates and services schedules shall be the only controlling terms and conditions binding the parties for the Work and that commencement of Work by CenturyLink is conditioned upon agreement in writing to these terms.

For the Work performed hereunder, Customer will be responsible for the above charges only, unless (i) the above-stated amount is expressed as an estimate; (ii) otherwise stated above; or (iii) a change order is signed by both parties. All charges shall be paid prior to commencement of the Work ("Advance Payment") unless an alternative payment method is set forth above. All past due undisputed accounts will be assessed a late fee at 14% APR. Where applicable, and notwithstanding the foregoing, Customer shall also be responsible for foreign, federal, state and local taxes assessed in connection with the Work, including, without limitation, all use, sales, value added, surcharges, excise, franchises, commercial, gross receipts, license, privilege or other similar charges, whether charged to or against CenturyLink or Customer, but excluding any taxes based on CenturyLink's net income.

\*Note If applicable, the Work proposed here is separate from any work that may be performed pursuant to any other order or agreement, including but not limited to a Pre-Service Request for cell site provisioning.

For Governmental Customers only, CenturyLink will submit an invoice of charges upon completion of the Work, payable within forty five (45) days of receipt. Past due undisputed amounts will be assessed a late fee of 14% APR or such lesser amount if required under applicable state and/or federal law.

CenturyLink  
Authorized Signature: Devia Kilgore  
Name Printed/Typed: Devia Kilgore  
Title: SL Manager CNF  
Date: 8-15-19

Customer  
Authorized Signature: \_\_\_\_\_  
Name Printed/Typed: E. Edd Akers  
Title: Mayor  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

[Signature] #5182 8/15/19



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING A MEMORANDUM OF UNDERSTANDING PERTAINING TO A DONATION OF A LIGHTHOUSE MEMORIAL MONUMENT FOR OLD SCHOOL PARK AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** PARKS AND RECREATION DEPARTMENT

**FIRST READING:** SEPTEMBER 11, 2018      **FINAL READING:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- Recently the Board of Realtors contacted the City of Branson regarding the donation of a Lighthouse Memorial Monument to honor the victims of the recent boating accident on July 18, 2018. Upon further conversation, it was recommended that a Lighthouse Memorial Monument be placed in a prominent location that would allow citizens and visitors to have easy access to the area. As the area around Old School Park, located at 1515 W. Highway 76, has been further developed and improved, this location appears to be a suitable area that will meet the needs of the community.
- In discussions with the Board of Realtors, they plan to provide a 9 ft. tall, Lighthouse Memorial Monument, that will include the names of the deceased engraved. A natural stone circular wall will surround the lighthouse and be filled with decorative rock. A gravel pathway with flat rock stepping stones will be placed around the rock wall to allow access around the entire monument. Three stone benches will be placed around the path. A flat rock pathway will be added to define access to the parking lot.
- The Board of Realtors has agreed to pay for the project in its entirety with no financial commitment from the city. The Board of Realtors has provided a picture of a Lighthouse Memorial Monument and a conceptual drawing of the park improvements to ensure that the monument will be high in quality and provide a strong visual appearance. This bill approves a Memorandum of Understanding to accept the donation of a Lighthouse Memorial Monument and improvements from the Board of Realtors and outlines the City's responsibilities.

**UPDATE:**

- This item was postponed during its Final Reading at the January 8, 2019 Regular Board of Aldermen meeting. It is in need of a motion, second and a vote.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year's budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** Open Space, Parks & Recreation 1.3.7 – Continue to invest in the maintenance of public parks.

**ATTACHED EXHIBITS:**

**AN ORDINANCE APPROVING A MEMORANDUM OF UNDERSTANDING PERTAINING TO A DONATION OF A LIGHTHOUSE MEMORIAL MONUMENT FOR OLD SCHOOL PARK AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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**WHEREAS**, the City of Branson was contacted by a citizen and expressed interest in donating a Lighthouse Memorial Monument; and

**WHEREAS**, the Lighthouse Memorial Monument would be located at Old School Park to allow citizens and visitors public access; and

**WHEREAS**, the Board of Aldermen desires to accept this gift and approve a Memorandum of Understanding outlining the details of the donation and the donor’s responsibility.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:**

Section 1: The Board of Aldermen approves a Memorandum of Understanding pertaining to a donation of a Lighthouse Memorial Monument for Old School Park attached hereto as Exhibit “1” and authorizes the Mayor to execute the contract.

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read this first time on this \_\_\_\_ day of \_\_\_\_\_, 2018.

Read this second time, passed, and truly agreed to by the Board of Aldermen of the City of Branson, Missouri, on this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Karen Best  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
William T. Duston  
City Attorney

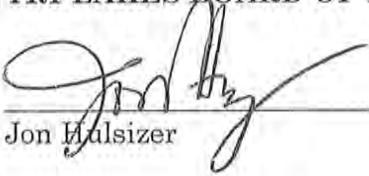
MEMORANDUM OF UNDERSTANDING

This memorandum is to enshrine an understanding between the City of Branson (Hereafter City) and the Tri-Lakes Board of Realtors (Hereafter TLBOR) concerning a Lighthouse Memorial Monument located at the City's "Old School Park" (Hereafter Park) located generally at 1515 West State Highway 76.

- A. The TLBOR shall contract for and have placed in Park a Lighthouse Memorial Monument designed generally as found in Exhibit A to this MOU. The TLBOR's vendor shall provide liability insurance coverage for said placement with the City named as an additional insured. The TLBOR shall pay for all expenses for the placement and the Lighthouse Memorial Monument itself.
- B. The TLBOR shall contract for and have placed in Park landscaping generally as represented in Exhibit A landscaping at their own cost, with no financial obligation for the City. The TLBOR's vendor shall provide liability insurance coverage for said placement with the City named as an additional insured. There will not be any water features in the Lighthouse Memorial Monument.
- C. The City agrees to operate and maintain the grounds in a manner consistent with other City parks and recreational spaces. The City shall enshrine its intention on this matter via ordinance, as approved by the Board of Alderman.

**THIS MEMORANDUM OF UNDERSTANDING** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Branson, Missouri and the Tri-Lakes Board of Realtors.

TRI-LAKES BOARD OF REALTORS

  
Jon Hulsizer

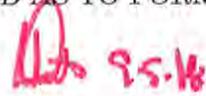
CITY OF BRANSON, MISSOURI

\_\_\_\_\_  
Karen Best  
Mayor

ATTEST:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
William T. Duston  
City Attorney

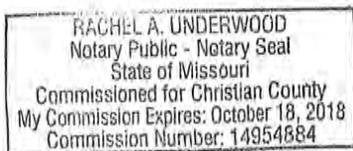
STATE OF MISSOURI     )  
  ) SS  
COUNTY OF TANEY     )

On this 5<sup>th</sup> day of September, 2018 before me Rachel A. Underwood, a Notary Public, came **Jon Hulsizer** who is known to me to be the same person who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at my office in Branson, Taney Co. MO on the day and year first above written.

  
\_\_\_\_\_  
Notary Public

My commission expires: 10/18/18





# LIGHTHOUSE MEMORIAL MONUMENT

## OLD SCHOOL PARK

### PROJECT DESCRIPTION

#### **Structures:**

9 ft Granite Lighthouse with Stainless Steel Top with solar lights and copper plaque at base

A 9 ft radius, 1 ft deep circular wall around the Lighthouse filled with decorative rock

3 ft wide flat rock and river gravel walkway encircling the wall with 2 ft wide pathway to parking lot

Three 48 in curved granite or stone benches encircling on the outside

One pedestal with plaque stating donors and 7/19/2018 Memorial at the top located on path

Various landscaping bushes

#### **Details:**

Names of Victims will be engraved in the spiral pattern up to the lighthouse. Quote on the plaque at the base of the lighthouse:

**"Look to the lighthouse of the Lord. There is no fog so dense, no night so dark, no gale so strong, no mariner so lost but what its beacon light can rescue. It beckons through the storms of life. It calls, "This way to safety; this way to home."**

Thomas S Monson

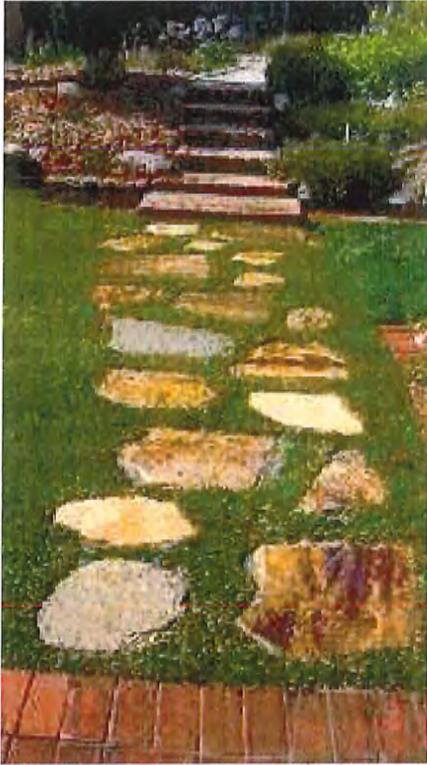


## LIGHTHOUSE MEMORIAL

OVERHEAD RENDERING OF MEMORIAL



LIGHTHOUSE MEMORIAL DEPICTION EXCEPT NO WATER



Pathway to street



Rock and gravel around memorial



3 Benches surrounding the memorial and flat rock path



DEPICTION OF THE NATURAL STONE TO SURROUND THE  
LIGHTHOUSE MEMORIAL MONUMENT  
WITH DECORATIVE STONE IN PLACE OF THE WATER



# STAFF REPORT

**ITEM/SUBJECT:** A RESOLUTION CONSENTING TO THE ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN BALLPARKS OF AMERICA, LLC AND CEDAR RAPIDS BANK AND TRUST COMPANY AS ATTORNEY-IN-FACT FOR BALLPARKS OF BRANSON, LLC.

**INITIATED BY:** LEGAL DEPARTMENT

**DATE:** JANUARY 28, 2020

**EXECUTIVE SUMMARY:**

- This item is associated with the Ground Lease Agreement for Ballparks of America, LLC and Facility Use Agreement for Sports Force Park also on the agenda.
- In order for Ballparks of America, LLC to assume Ballparks of Branson, LLC interest the City must consent to allow this assignment.
- This Resolution formalizes the City’s consent to the assignment and assumption by Ballparks of America, LLC and authorizes the Mayor to execute the related documents.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year’s budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** LU-3. - Infill and Redevelopment. Future growth will focus on infill development and revitalization before growing outward in order to maximize the use of existing infrastructure and efficiently utilize the land resources.

**ATTACHED EXHIBITS:**

**A RESOLUTION CONSENTING TO THE ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN BALLPARKS OF AMERICA, LLC AND CEDAR RAPIDS BANK AND TRUST COMPANY AS ATTORNEY-IN-FACT FOR BALLPARKS OF BRANSON, LLC.**

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**WHEREAS**, a lease agreement with Ballparks of Branson, LLC was approved in May 2014 to build a baseball tournament venue with an initial capacity of six fields and on-site dormitory lodging at the old Factory Merchant Mall location; and

**WHEREAS**, the lease stipulates the City of Branson must consent to any Assignment of Lease by the tenant; and

**WHEREAS**, Ballparks of Branson, LLC assigned its rights under the lease to Cedar Rapids Bank and Trust in 2015; and

**WHEREAS**, the interest of Ballparks of Branson, LLC has been assumed by Ballparks of America, LLC as Assignee of Killian Construction Co.; and

**WHEREAS**, the Board of Aldermen desires to see continued sports facility operations at this establishment and therefore consents to the assignment and assumption of lease.

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI AS FOLLOWS:**

Section 1: The Board of Aldermen hereby consents to the Assignment and Assumption Agreement between Ballparks of America, LLC and Cedar Rapids Bank and Trust Company as attorney-in-fact for Ballparks of Branson, LLC and authorizes the Mayor to execute the consent attached hereto as Exhibit "1".

Section 2: This Resolution shall be in full force and effect from and after its passage and approval by the Board of Aldermen.

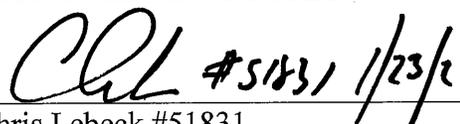
**ADOPTED** by the Board of Aldermen of the City of Branson, Missouri, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

\_\_\_\_\_  
Lisa K. Westfall  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

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(Space above reserved for Recorder of Deeds certification)

**Title of Document:** ASSIGNMENT AND ASSUMPTION AGREEMENT

**Date of Document:** \_\_\_\_\_, 2020

**Grantor:** CEDAR RAPIDS BANK AND TRUST COMPANY, as attorney-in-fact  
for Ballparks of Branson, LLC

**Grantee:** BALLPARKS OF AMERICA, LLC, a Missouri limited liability  
company

**Grantee's Mailing Address:** 2950 W. Oakhaven Lane  
Springfield, Missouri 65810

**Legal Description:** See Exhibit A (Page 6)

**Reference Book & Page:** None

This cover page is attached solely for the purpose of complying with the requirements stated in §§ 59.310.2; 59.313.2 RSMo 2001 of the Missouri Recording Act. The information provided on this cover page shall not be construed as either modifying or supplementing the substantive provisions of the attached Assignment and Assumption Agreement. In the event of a conflict between the provisions of the attached Assignment and Assumption Agreement and the provisions of this cover page, the attached Assignment and Assumption Agreement shall prevail and control.

The terms "Grantor" and "Grantee" as used in this Document Cover Sheet are for recording and indexing purposes only. The instrument itself refers to the parties by other designations.

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") is made as of \_\_\_\_\_, 2020 (the "Effective Date"), by and between CEDAR RAPIDS BANK AND TRUST COMPANY, as attorney-in-fact for Ballparks of Branson, LLC ("Assignor"), and BALLPARKS OF AMERICA, LLC, a Missouri limited liability company, as the assignee of Killian Construction Co. ("Assignee").

### RECITALS

A. The City of Branson Missouri, as landlord ("City"), and Ballparks of Branson, LLC ("Ballparks"), as Tenant, entered into a Lease Agreement dated May 23, 2014, as amended by the First Amended Lease dated October 13, 2015, and further amended by the Second Amended Lease dated March 10, 2016 (collectively, "Lease"), under which the City, as the owner of the real property described on Exhibit A attached hereto ("Property"), leased the Property to Ballparks for the development and operation of a baseball facility and related improvements on the Property.

B. Ballparks and Assignor entered into an Agreement and Release dated September 20, 2019 under which Ballparks authorized Assignor, as the attorney-in-fact of Ballparks, to sell all of Ballparks' interest in the Property, including without limitation an assignment of the Lease.

C. Under the terms of a Purchase Agreement between Assignor and Killian Construction Co. ("Killian") dated November 14, 2019 ("Purchase Agreement"), Assignor agreed to sell and assign to Killian, and Killian agreed to purchase from Assignor, all of Assignor's interest in the Property and Lease.

D. Under the terms of an Assignment and Assumption Agreement dated December 13, 2019, Killian assigned all of its interest in the Purchase Agreement, and Assignee assumed all of Killian's obligations as purchaser under the Purchase Agreement.

E. Under the terms of the Lease, Assignor may not assign the Lease to Assignee without the City's consent, and the City has agreed to provide such consent so long as, among other things, Assignor and Assignee enter into this Agreement.

## ASSIGNMENT AND ASSUMPTION AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. Assignor, as attorney-in-fact for Ballparks, hereby assigns, transfers, and conveys to Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to the Property and Lease, to have and to hold the same unto Assignee and its successors and assigns, from and after the Effective Date, for the rest and remainder of the Lease term and renewal terms, if any, thereof, subject to the covenants and conditions and other provisions contained in the Lease, and certain permitted exceptions as more particularly described on Exhibit B.

2. Assignee hereby assumes the obligations of Assignor under the Lease arising from and after the Effective Date and shall defend, indemnify and hold harmless Assignor from and against any liability, damages, causes of action, expenses, and attorney fees incurred by Assignor by reason of the failure of Assignee to fulfill, perform, discharge, and observe its obligations with respect to the Lease

arising on and after the Effective Date. Assignor shall defend, indemnify and hold harmless Assignee from and against any liability, damages, causes of action, expenses, and attorney fees incurred by Assignee by reason of the failure of Ballparks to fulfill, perform, discharge and observe its obligations with respect to the Lease arising before the Effective Date.

3. Assignor and Assignee each agree to execute, acknowledge (where appropriate) and deliver such other or further instruments of transfer or assignment as the other party may reasonably require to confirm the foregoing assignment and assumption, or as may be otherwise reasonably requested by Assignee or Assignor to carry out the intent and purposes hereof.

4. This Agreement may be executed in any number of counterparts, each of which counterparts, once executed and delivered, shall be deemed to be an original and all of which counterparts taken together, shall constitute but one and the same Agreement.

5. This Agreement shall be construed in accordance with the internal laws, and not the conflict of laws provisions, of the State of Missouri, provided that the rights and remedies provided to the parties in this Agreement shall be enforceable by the parties notwithstanding the fact that such rights and remedies may be inconsistent with or not addressed by Missouri law.

6. This Agreement constitutes the entire agreement of the parties, and its terms may not be waived or modified in any manner without the consent of all parties hereto. This Agreement shall be binding upon and inures to the benefit of the undersigned and their assigns and successors. If any provision of this Agreement or the application thereof to any person is held invalid or unenforceable for any reason, the other provisions of this Agreement and their application shall be unaffected thereby and shall remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

EXECUTED as of the Effective Date.

CEDAR RAPIDS BANK AND TRUST  
COMPANY, attorney-in-fact for Ballparks  
of Branson, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF IOWA  
COUNTY OF LINN ss:

The above was acknowledged before me on \_\_\_\_\_, 2020, by \_\_\_\_\_  
as the \_\_\_\_\_ of Cedar Rapids Bank and Trust Company, as attorney-in-fact for Ballparks  
of Branson, LLC.

\_\_\_\_\_  
Notary Public in and for said State

BALLPARKS OF AMERICA, LLC, as  
assignee of Killian Construction Co.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MISSOURI  
COUNTY OF GREENE ss:

The above was acknowledged before me on \_\_\_\_\_, 2020, by  
\_\_\_\_\_ as the \_\_\_\_\_ of Ballparks of America, LLC.

\_\_\_\_\_  
Notary Public in and for said State



EXHIBIT A  
LEGAL DESCRIPTION – LEASED PREMISES

PARCEL I

A PART OF THE SOUTHEAST QUARTER OF SECTION 35 ALSO BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 23 NORTH, RANGE 22 WEST, BRANSON, TANEY COUNTY, MISSOURI. BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36 BEING MARKED BY AN EXISTING 1/2" IRON PIN; THENCE SOUTH 88 DEGREES 13 MINUTES 11 SECONDS EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER 685.90 FEET TO AN EXISTING IRON PIN; THENCE SOUTH 23 DEGREES 29 MINUTES 24 SECONDS WEST DEPARTING SAID LINE 774.17 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF GRETNA ROAD AS NOW LOCATED; THENCE ALONG A 369.99 FOOT RADIUS CURVE TO THE RIGHT AND SAID RIGHT-OF-WAY 50.67 FEET, SAID CURVE HAVING A CHORD BEARING OF SOUTH 81 DEGREES 52 MINUTES 12 SECONDS WEST; THENCE SOUTH 85 DEGREES 47 MINUTES 36 SECONDS WEST ALONG SAID RIGHT-OF-WAY 289.69 FEET; THENCE ALONG A 300.00 FOOT RADIUS CURVE TO THE LEFT AND SAID RIGHT-OF-WAY 385.28 FEET, SAID CURVE HAVING A CHORD BEARING OF SOUTH 27 DEGREES 57 MINUTES 43 SECONDS WEST; THENCE SOUTH 08 DEGREES 49 MINUTES 45 SECONDS EAST ALONG SAID RIGHT-OF-WAY 26.28 FEET; THENCE ALONG A 200.00 FOOT RADIUS CURVE TO THE RIGHT AND SAID RIGHT-OF-WAY 284.95 FEET, SAID CURVE HAVING A CHORD BEARING OF SOUTH 31 DEGREES 59 MINUTES 11 SECONDS WEST TO A POINT ON THE SOUTH LINE OF SECTION 35; THENCE NORTH 87 DEGREES 44 MINUTES 52 SECONDS WEST DEPARTING SAID RIGHT-OF-WAY AND ALONG SAID SOUTH LINE 938.37 FEET TO AN EXISTING IRON PIN STAMPED JMARK; THENCE NORTH 04 DEGREES 40 MINUTES 31 SECONDS EAST DEPARTING SAID LINE 592.54 FEET TO AN EXISTING IRON PIN STAMPED PLS 2214; THENCE NORTH 85 DEGREES 46 MINUTES 26 SECONDS WEST 300.02 FEET TO EXISTING 1/2" IRON PIN; THENCE NORTH 00 DEGREES 17 MINUTES 04 SECONDS EAST 200.13 FEET TO AN EXISTING IRON PIN STAMPED PLS 2115; THENCE NORTH 23 DEGREES 01 MINUTE 24 SECONDS EAST 534.31 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 35; THENCE SOUTH 89 DEGREES 06 MINUTES 30 SECONDS EAST 713.78 FEET TO AN EXISTING IRON PIN STAMPED PLS LC0000003; THENCE CONTINUING ALONG SAID LINE SOUTH 89 DEGREES 24 MINUTES 29 SECONDS EAST 529.91 FEET TO THE POINT OF BEGINNING CONTAINING 46.32 ACRES MORE OR LESS.

SUBJECT TO A 80.00 FOOT ROAD EASEMENT BEING DESCRIBED AS FOLLOWS: A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, BEING IN SECTION 35, TOWNSHIP 23 NORTH, RANGE 22 WEST, BRANSON, TANEY COUNTY, MISSOURI. BEING MORE PARTICULARLY DESCRIBED AS A ROAD EASEMENT BEING 80.00 FEET IN WIDTH LYING 40 FEET EACH SIDE OF THE CENTERLINE HEREIN DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHWEST CORNER OF SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35; THENCE SOUTH 89 DEGREES 06 MINUTES 30 SECONDS EAST ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER 1328.10 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED CENTERLINE; THENCE SOUTH 14 DEGREES 36 MINUTES 39 SECONDS WEST DEPARTING SAID NORTH LINE AND ALONG SAID PROPOSED CENTERLINE 509.48 FEET TO AN EXISTING IRON PIN STAMPED PLS 2115 MARKING THE POINT OF TERMINUS OF THE HEREIN DESCRIBED CENTERLINE; SIDELINES

OF DESCRIBED EASEMENT TO BE LENGTHENED AND SHORTENED AT THE APPROPRIATE LINES. SUBJECT TO ANY AND ALL ENCUMBRANCES AND RIGHTS RECORDED OR UNRECORDED.

PARCEL II

A PART OF THE SOUTHWEST QUARTER AND SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 23 NORTH, RANGE 22 WEST, BRANSON, TANEY COUNTY, MISSOURI. COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36 BEING MARKED BY AN EXISTING 1/2" IRON PIN; THENCE NORTH 89 DEGREES 24 MINUTES 29 SECONDS WEST ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 35 A DISTANCE OF 529.91 FEET TO AN EXISTING IRON PIN STAMPED PLS LC0000003; THENCE NORTH 89 DEGREES 06 MINUTES 30 SECONDS WEST ALONG SAID LINE 713.78 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 23 DEGREES 01 MINUTE 24 SECONDS WEST DEPARTING SAID LINE 534.31 FEET TO AN EXISTING IRON PIN STAMPED PLS 2115; THENCE SOUTH 71 DEGREES 39 MINUTES 15 SECONDS WEST 309.66 FEET TO AN EXISTING "X" CHISELED IN CONCRETE; THENCE NORTH 85 DEGREES 45 MINUTES 46 SECONDS WEST 699.83 FEET TO AN EXISTING IRON PIN STAMPED PLS 1533; THENCE SOUTH 64 DEGREES 39 MINUTES 59 SECONDS WEST 250.61 FEET; THENCE SOUTH 51 DEGREES 49 MINUTES 27 SECONDS WEST 141.85 FEET; THENCE NORTH 24 DEGREES 04 MINUTES 00 SECONDS WEST 57.57 FEET; THENCE NORTH 02 DEGREES 06 MINUTES 00 SECONDS EAST 90.00 FEET; THENCE SOUTH 80 DEGREES 56 MINUTES 21 SECONDS WEST 115.02 FEET TO AN EXISTING 1/2" IRON PIN; THENCE NORTH 02 DEGREES 06 MINUTES 08 SECONDS EAST 637.48 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH 88 DEGREES 18 MINUTES 41 SECONDS EAST 240.93 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE SOUTH 89 DEGREES 06 MINUTES 30 SECONDS EAST ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER 1408.57 FEET TO THE POINT OF BEGINNING CONTAINING 20.92 ACRES MORE OR LESS.

SUBJECT TO A 80.00 FOOT ROAD EASEMENT BEING DESCRIBED AS FOLLOWS: A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, BEING IN SECTION 35, TOWNSHIP 23 NORTH, RANGE 22 WEST, BRANSON, TANEY COUNTY, MISSOURI. BEING MORE PARTICULARLY DESCRIBED AS A ROAD EASEMENT BEING 80.00 FEET IN WIDTH LYING 40 FEET EACH SIDE OF THE CENTERLINE HEREIN DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHWEST CORNER OF SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35; THENCE SOUTH 89 DEGREES 06 MINUTES 30 SECONDS EAST ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER 1328.10 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED CENTERLINE; THENCE SOUTH 14 DEGREES 36 MINUTES 39 SECONDS WEST DEPARTING SAID NORTH LINE AND ALONG SAID PROPOSED CENTERLINE 509.48 FEET TO AN EXISTING IRON PIN STAMPED PLS 2115 MARKING THE POINT OF TERMINUS OF THE HEREIN DESCRIBED CENTERLINE; SIDELINES OF DESCRIBED EASEMENT TO BE LENGTHENED AND SHORTENED AT THE APPROPRIATE LINES. SUBJECT TO ANY AND ALL ENCUMBRANCES AND RIGHTS RECORDED OR UNRECORDED.

PARCEL III

A PART OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 23 NORTH, RANGE 22 WEST, BRANSON, TANEY COUNTY, MISSOURI. COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35; THENCE SOUTH 01 DEGREE 12 MINUTES 09 SECONDS WEST 842.51 FEET; THENCE NORTH 88 DEGREES 47 MINUTES 51 SECONDS WEST 189.15 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 26 DEGREES 22 MINUTES 44 SECONDS EAST 7.07 FEET; THENCE SOUTH 54 DEGREES 59 MINUTES 03 SECONDS WEST 39.45 FEET; THENCE NORTH 26 DEGREES 22 MINUTES 44 SECONDS WEST 7.07 FEET; THENCE NORTH 54 DEGREES 59 MINUTES 03 SECONDS EAST 39.45 FEET TO THE POINT OF BEGINNING CONTAINING 275 SQUARE FEET MORE OR LESS. SUBJECT TO ANY AND ALL ENCUMBRANCES AND RIGHTS RECORDED OR UNRECORDED.

**EXHIBIT B**  
**PERMITTED EXCEPTIONS**

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed after the Effective Date of this Assignment and Assumption Agreement.
2. Rights or claims of parties in possession not shown by the public records.
3. Easements or claims of easements, not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
5. Any lien or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Taxes or special assessments which are not shown as existing liens by the public records.
7. City taxes and/or special assessments, if any.
8. Taxes for the year 2020 and subsequent years.
9. Easements, setbacks, rights-of-way and other matters dedicated, evidenced, noted or disclosed and shown on Survey by Schultz Surveying & Engineering, Project #003238, dated March 8, 2016, recorded in Plat Book/Slide K, at Page 630.
10. 80' Roadway Easement which is shown on Survey recorded in Book K, at Page 630, Recorder's Office, Taney County, Missouri.
11. Easement for Water Line granted to Tri-States Utility Company, recorded in Book 199, at Page 159, Recorder's Office, Taney County, Missouri.
12. Easement granted to The Empire District Electric Company, recorded in Book 261, at Page 213, Recorder's Office, Taney County, Missouri.
13. Road Easement, recorded in Warranty Deed in Book 262, at Page 650, Recorder's Office, Taney County, Missouri.
14. Easement granted to The Empire District Electric Company, recorded in Book 296, at Page 208, Recorder's Office, Taney County, Missouri.
15. Any claim or adverse matter arising from the Lease Agreement, recorded in Book 315, at Page 243, Recorder's Office, Taney County, Missouri.
16. Easement granted to The Empire District Electric Company, recorded in Book 320, at Page 5464, Recorder's Office, Taney County, Missouri.
17. Easement granted to The Empire District Electric Company, recorded in Book 321, at Page 5357, Recorder's Office, Taney County, Missouri.
18. Easement granted to The Empire District Electric Company, recorded in Book 337, at Page 8192, Recorder's Office, Taney County, Missouri.
19. Terms and provisions of Second Amended Lease by and between Branson, Missouri, a Missouri Municipal Corporation and Ballparks of Branson, LLC, recorded March 24, 2016, in Book 2016, at Page 9065, Recorder's Office, Taney County, Missouri.
20. The past or future consequences of any change in the boundary of the premises herein described and referred to as Northerly right-of-way of Gretna Road as now located.
21. Tenancy rights, either as month to month, or by virtue of written leases of persons now in possession of any part of the subject property.



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL AMENDING THE ADOPTED 2020 BUDGET FOR THE CITY OF BRANSON TO ADJUST MONIES FOR THE GENERAL FUND.

**INITIATED BY:** FINANCE DEPARTMENT

**FIRST READING:** JANUARY 28, 2020      **FINAL READING:** FEBRUARY 11, 2020

**EXECUTIVE SUMMARY:**

- The budget amendment is necessary for the contract approval for new development of the city’s Airport Lease property, now Ballparks of America.
- The amendment is for a total of \$50,000. \$25,000 for an upfront landscaping contribution; annual landscaping contributions of \$15,000 must be approved in future year budgets. The city will also contribute up to an additional \$25,000 for the cost of filling and resurfacing facility parking lots.
- If the Board of Aldermen elect to appropriate these funds, the unreserved fund balance in the General Fund will be lowered to cover these amounts.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year’s budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

20

**COMMUNITY PLAN 2030:** Accountability and Financial Stewardship: We will ensure the efficient and appropriate use of public funds by being good financial stewards on behalf of our residents and businesses.

**ATTACHED EXHIBITS:**

BILL NO. 5776

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING THE ADOPTED 2020 BUDGET FOR THE CITY OF BRANSON, TO ADJUST MONIES FOR THE GENERAL FUND.**

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**WHEREAS**, Section 2-418 of the Branson Municipal code states that any increase in appropriation within a budgeted fund shall require the approval of the Board of Aldermen; and

**WHEREAS**, it is necessary to adjust monies for the General Fund in the 2020 budget.

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, THAT THE 2020 BUDGET FOR THE CITY OF BRANSON IS HEREBY AMENDED AS FOLLOWS:**

Section 1: The following amendment is authorized to transfer funds within the 2020 budget of the General Fund.

**General Fund**

	<b><u>Increase</u></b>
101-1095-510-2099 (General Fund-Contractual Other)	\$50,000
Unreserved Fund Balance (General Fund)	(\$50,000)

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

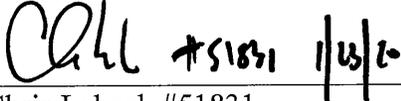
Read, this second time, passed and truly agreed to by the Board of Aldermen of City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE GROUND LEASE AGREEMENT BETWEEN THE CITY OF BRANSON AND BALLPARKS OF AMERICA LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** LEGAL DEPARTMENT

**FIRST READING:** JANUARY 28, 2020

**FINAL READING:** FEBRUARY 11, 2020

**EXECUTIVE SUMMARY:**

- Ballparks of Branson, LLC entered into a ground lease agreement with the City of Branson in May of 2014 for part of the property known as the Old Branson Airport for the purpose of creating a baseball facility.
- In 2019, Ballparks of Branson, LLC were placed in default by Cedar Rapids Bank and Trust regarding financing taken out against the improvements on the property.
- Cedar Rapids Bank and Trust began searching for a new suitor for their interest and has entered into an agreement with a local investment group formed as Ballparks of America, LLC.
- This ordinance consists of a new ground lease agreement with Ballparks of America, LLC who assumed the lease interest of Ballparks of Branson, LLC from Cedar Rapids Bank and Trust.
- Ballparks of America, LLC is currently in negotiations with a national operator to manage the facility.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year's budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

5)

**COMMUNITY PLAN 2030:** LU-3: Infill & Redevelopment. Future growth will focus on infill development and revitalization before growing outward in order to maximize the use of existing infrastructure and efficiently utilize the land resources.

ED-3: Development Incentives. The City will offer and be receptive to a variety of development incentives that encourage desired growth but that do not put the City, or other community entities at financial risk.

**ATTACHED EXHIBITS:**

**ITEM/SUBJECT: READING OF A BILL APPROVING THE GROUND LEASE AGREEMENT BETWEEN THE CITY OF BRANSON AND BALLPARKS OF AMERICA LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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**DETAILED ANALYSIS:**

The City of Branson owns property consisting of approximately 120 acres front West Highway 76, known as the Old Branson Airport and leased 31 acres to the Factory Merchant Mall between 1987 and 2011. In late 2011, the Board of Aldermen voted to assume the assets and structures on the lease formerly held by the Factory Merchant Mall.

At the time of the assumption the Board of Aldermen wished to see this property developed in a manner that contributes to the overall economic activity of the area, supports nearby businesses, and reinforces the Branson brand of family entertainment. As a result, the City entered into a Lease with Ballparks of Branson, LLC in May 2014 for the development of a sports tournament venue that supports the development aims of the Board and in October 2015 the City approved the sale of all the buildings on the property to Ballparks of Branson, LLC. In May 2016, the City consented to an Assignment of Ground Lease by Tenant by Ballparks of Branson, LLC to Cedar Rapids Bank and Trust Company so that Ballparks of Branson, LLC could secure financing for improvements to their sports tournament venue.

In 2019 Ballparks of Branson, LLC entered into arrears with their arraignment with Cedar Rapids Bank and Trust Company and Cedar Rapid Banks and Trust Company began searching for a purchaser for Ballparks of Branson, LLC interest. Cedar Rapids Bank and Trust Company has executed a new Assignment and Assumption Agreement with Ballparks of America, LLC.

In late 2019, the City of Branson entered into negotiations with both Ballparks of America, LLC to negotiate a new ground lease agreement for the property. From those negotiations the attached ground lease is for the Board for consideration.

The substantive changes to note for the Ground Lease from the previous version with Ballparks of Branson, LLC are as follows:

- A. Involves both Tract One and Tract Two of the property.
- B. New Term of thirty-five (35) years
- C. Rent abatement provided for direct costs of improvements made the property by Ballparks of America, LLC
- D. Upfront landscaping contribution of \$25,000 and annual landscaping contribution of \$15,000 paid by the City of Branson.
- E. Both parties will split the cost of filling and resurfacing the parking lots with the City of Branson contributing no more than \$25,000.
- F. Any subtenants that are not directly related to sports or owned by Ballparks of America, LLC will go before the Board of Aldermen for approval and be required to remit 3.75% of all gross receipts to the City of Branson.
- G. The prohibition of operating an onsite lodging establishment has been removed along with the continuous occupancy penalty.
- H. City of Branson will assist with tax abatement and community improvement district financing as permitted by law.

**AN ORDINANCE APPROVING THE GROUND LEASE AGREEMENT BETWEEN THE CITY OF BRANSON AND BALLPARKS OF AMERICA LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the City of Branson owns property consisting of approximately 120 acres front West Highway 76, known as the Old Branson Airport and leased 31 acres to the Factory Merchant Mall between 1987 and 2011; and

**WHEREAS**, the Board of Aldermen voted in late 2011 to assume the assets and structures present on the lease formerly held by Factory Merchant Mall; and

**WHEREAS**, the Board of Aldermen wished to see this property developed in a manner that contributes to the overall economic activity of the area, supports nearby businesses, and reinforces the Branson brand of family entertainment; and

**WHEREAS**, the City entered into a Lease with Ballparks of Branson, LLC in May 2014 for the development of a sports tournament venue that supports the development aims of the Board; and

**WHEREAS**, the City approved in October of 2015 the sale of all buildings on the property formerly held by Factory Merchant Mall; and

**WHEREAS**, the City consented in May 2016 to an Assignment of Ground Lease by Tenant by Ballparks of Branson, LLC to Cedar Rapids Bank and Trust Company so that Ballparks of Branson, LLC could secure financing for improvements to their sports tournament venue; and

**WHEREAS**, in 2019 Ballparks of Branson, LLC entered into arrears with their arraignment with Cedar Rapids Bank and Trust Company and Cedar Rapid Banks and Trust Company began searching for a purchaser for Ballparks of Branson, LLC interest in the lease; and

**WHEREAS**, Cedar Rapids Bank and Trust Company as attorney-in-fact for Ballparks of Branson, LLC is executing a new Assignment and Assumption Agreement with a new group Ballparks of America, LLC; and

**WHEREAS**, the City of Branson entered into negotiations with Ballparks of America, LLC for a new Ground Lease of the property; and

**WHEREAS**, the Board of Aldermen desires to see this property continued as a sports recreational facility that contributes to the overall economic activity of the area, supports nearby businesses, and reinforces the Branson brand of family entertainment.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:**

Section 1: The Board of Aldermen hereby approves the Ground Lease Agreement between the City of Branson and Ballparks of America, LLC and authorizes the Mayor to execute the contract in the form attached as Exhibit "1".

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

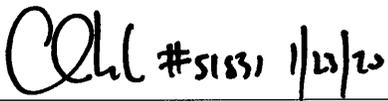
Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

## GROUND LEASE AGREEMENT

This Ground Lease Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2020, by and between Branson, Missouri, a Missouri Municipal Corporation (hereinafter "Lessor") and Ballparks of America, LLC, a Missouri limited liability company (hereinafter "Lessee").

### WITNESSETH:

**WHEREAS**, pursuant to a Lease Agreement dated May 23, 2014, Lessor, as the owner of the real property described on Exhibit "A" attached hereto ("Property"), leased to Ballparks of Branson, LLC, Tract One of the Property for the development and operation of certain improvements on the Property.

**WHEREAS**, in 2016, Lessor by Bill of Sale sold to Ballparks of Branson, LLC the buildings located on Tract One.

**WHEREAS**, in 2016, Ballparks of Branson, LLC and Cedar Rapids Bank and Trust Company entered into an Assignment of Ground Lease with Landlord Consent on to secure financing for construction of additional improvements to Tract One.

**WHEREAS**, Ballparks of Branson, LLC notified Lessor on July 3, 2019 that they were exercising their option pursuant to the Lease Agreement dated May 23, 2014, to lease Tract Two of the Property.

**WHEREAS**, Ballparks of Branson, LLC subsequently defaulted on their loan with Cedar Rapids Bank and Trust Company ("CRBT") and, as a result, CRBT has exercised the enforcement of its rights under the loan documents between CRBT and Ballparks of Branson, LLC, to sell and convey to Lessee, by power of attorney, the interest of Ballparks of Branson, LLC in the buildings, lease agreement, and other assets related to the Property, pursuant to a Purchase Agreement between CRBT and Lessee dated November 14, 2019, as amended ("Purchase Agreement")

**WHEREAS**, Lessor desires to enter into a new Ground Lease Agreement with Lessee for both Tract One and Tract Two as a result of their purchase of Ballparks of Branson LLC's interest in the lease and building pursuant to the Purchase Agreement.

**NOW THEREFORE**, the parties hereby agree to the following Ground Lease Agreement of Tract One and Tract Two of the Property as described on Exhibit "A" as follows:

- A. **PREMISES.** Lessor hereby leases to Lessee, and Lessee takes and hires from Lessor, the premises as follows:
  - a. Tract One, consisting of 46.285 acres more or less and having located on them thereon a variety of buildings which Lessee has obtained pursuant to the Purchase Agreement; and
  - b. Tract Two, consisting of 19.936 acres more or less.

- B. **RENT.** On the effective date of the commencement of the lease term, the annual rent payable to Lessor by Lessee shall be \$100,000 payable in equal monthly installments on the first day of the month. In the event that the effective commencement date shall be other than the first day of the month, then the rent for the balance of the first partial month shall be pro-rated. Lease payments shall be adjusted in accordance with the provisions of paragraph C of this Lease Agreement.
- C. **RENT ABATEMENT FOR IMPROVEMENTS.** Provided that Lessee is not then in default under the Lease, beyond the expiration of any applicable notice and grace periods outlined below, Lessor agrees to provide Lessee an abatement of the annual rent to offset the direct cost of capital improvements made to the Property (collectively, the "Capital Improvements") as follows:
- a. For years one (1) to five (5) of this Lease Agreement an amount up to and including \$100,000 annually;
  - b. For years six (6) to (8) of this Lease Agreement an amount up to and including \$75,000 annually;
  - c. For years nine (9) to twelve (12) of this Lease Agreement an amount up to and including \$50,000 annually.
- Lessee shall provide an accounting to Lessor of the direct cost of the Capital Improvements made to the Property as they are completed. Any direct costs for specific Capital Improvements made to the Property by Lessee over and above the maximum rent abatement for the year shall be carried over to subsequent years.
- D. **TERM.** The initial term of this Lease shall be for a period of thirty-five (35) years commencing on the execution by the parties of this lease and terminating on December 31, 2055.
- E. **LANDSCAPING.** Lessor agrees to reimburse in year one (1) of this Lease Agreement, upon the approval of plans submitted by Lessee to Lessor and a final audit of the work done under the plans by Lessor, \$25,000 towards labor and materials for landscaping of the Property. For each subsequent year, Lessor agrees, upon the approval of plans submitted by Lessee to Lessor and a final audit of the work done under the plans by Lessor, \$15,000 towards labor and materials for landscaping of the Property.
- F. **PARKING LOT IMPROVEMENTS.** The parties agree to split the cost of repair and resurfacing of the parking lot on the Property. Within the first five (5) months of this Lease Agreement, Lessor will provide the labor, materials and equipment to complete the repairs and resurfacing. Within thirty (30) days of completion of the repair and resurfacing, Lessee will pay half of the cost of the repair and resurfacing not to exceed \$25,000. If the labor, materials and equipment are not available to

complete the repairs, Lessor agrees to use the competitive bidding process to obtain such repair and resurfacing.

- G. **ASSIGNMENT AND SUBLETTING.** Lessee shall have no right to assign this lease, or sublet any part of the premises, without prior written consent of the Board of Aldermen. If the premises are sublet by Lessee, any sublessee of Lessee: (1) whose primary business is not directly related to baseball or any other sport; or (2) that Lessee or any of its Members does not have a majority ownership interest in shall pay as a condition of their sublease a percentage rent of three and three-quarter percent (3.75%) of the sublessee's gross receipts to Lessor. This percentage rent requirement will begin in the first full month following the completion of the first twelve months of this Lease Agreement.

Any sublease of Lessee shall provide that Lessor may at Lessor's own expense during business hours, inspect, examine and audit the financial books, records and tax returns covering admissions and income generated on the leased premises by the sublessee and that sublessee agrees to install and maintain a record system accurately reflecting all receipts from said admissions and keep same on file at its offices at all times.

- H. **TAXES.** It is specifically understood and agreed that Lessee shall be solely responsible for and shall pay any taxes assessed on and derived from the use of the leased premises by Lessee. Lessor makes no representation to Lessee as to the amount of said taxes or the method to be employed by the Taney County Assessor in arriving at the amount of same. All of said taxes should be timely paid, and Lessee shall protect and indemnify Lessor regarding the payment of said taxes and any penalties assessed as a consequence of Lessee's failure to timely pay said taxes. Lessor agrees to work with Lessee as permitted by law to seek abatement of any taxes.

- I. **INSURANCE.** Lessee must have and maintain, at the Lessee's expense, adequate liability to protect the City and the general public against any loss, damage and/or expense related to the Lessee's use of the Property. All sub-lessees of Lessee shall be required to obtain and maintain the same insurance coverage or be covered by Lessee's policies. The insurance coverage shall include, but need not be limited to, the following coverage's in the amounts specified. Such insurance must indemnify the City to the fullest extent possible under the laws of the State of Missouri.

1. General Liability Insurance with a company authorized to do business in the State of Missouri with limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injuries (including death) and property damage, and Two Million Dollars (\$2,000,000.00) aggregate. The City of Branson must be named as an additional insured.

Automobile Liability Insurance with a company authorized to do business in the State of Missouri having limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injuries (including death). The City of Branson must be named as an additional insured.

2. Workers' Compensation Insurance. Lessee shall maintain Worker's Compensation Insurance with a company authorized to do business in the State of Missouri having limits not less than one million dollars (\$1,000,000.00), including occupational disease provisions for all employees of the Lessee(s) and Sub-Lessee(s).
3. Lessor shall be named as an additional insured and a loss payee of all above-described policies, and verification of said policies, in force, shall be provided to Lessor by Lessee or Lessee's insurance carrier prior to Lessee taking possession of the leased premises. Failure to maintain said above-described policies of insurance or to provide proof of same to Lessor shall constitute a breach of this Lease by Lessee. In addition to maintaining said above-described policies of insurance, Lessee covenants and agrees to protect, indemnify and hold Lessor harmless from any liability, loss or damages arising on the leased premises or any activity occurring on the leased premises or any claim of injury or damages resulting from any accident or activity of Lessee during the term of this Lease.
4. Lessor covenants and agrees to protect, indemnify and hold Lessee harmless from any liability, loss or damages arising on the leased premises or any activity occurring on the leased premises or any claim of injury or damages resulting from any accident or activity of Lessor, its agents or third-party lessees (other than Lessee) during the term of this Lease.

J. **UTILITIES.** Lessee shall be solely responsible and shall promptly pay all charges for water, gas, sewer, electricity or other utilities or services used on or attributable to the leased premises.

K. **ALTERATIONS/IMPROVEMENTS/ADDITIONS.** Lessee shall supply Lessor with written plans, drawings and specifications regarding any alterations, improvements or additions it desires to make to the leased premises. Repairs and maintenance of existing improvements will not require submission of plans, drawings, or specifications except as required by Branson Municipal Code. No such alterations, improvements or additions shall be commenced without the required permitting by Lessor as required by its applicable ordinances. All alterations, improvements and additions shall be constructed in accordance with all city and any other applicable building codes, and all such plans for same shall bear the seal of an engineer licensed to practice in the State of Missouri. Lessor's approval of such alterations, improvements, and/or additions to the leased premises shall not be unreasonably withheld.

- L. **ENCUMBRANCE OF THE LEASEHOLD.** Lessor shall have the right to mortgage its lease hold interest in the leased premises and any, improvements, structures, and buildings presently located thereon or any structures or improvements subsequently constructed on the leased premises by Lessee. However, any such mortgage shall be subordinate and subject to the fee simple ownership by Lessor of the land.
- M. **TRANSPORTATION DEVELOPMENT DISTRICT.** The parties mutually agree to work toward the creation a Transportation Development District (“TDD”) for the purpose of generating a one percent sales tax on all sales occurring within the leased premises. However, neither Lessor nor Lessee makes any express promise or representation with regard to future construction of any entrance to Shepherd of the Hills Expressway or other use for such TDD.
- N. **COMMUNITY IMPROVEMENT DISTRICT.** The parties mutually agree to work toward the creation of a Community Improvement District (“CID”) for the purpose of constructing and maintaining public improvements. However, the parties mutually agree that future Board of Aldermen cannot be obligated by this Ground Lease Agreement to the formation of a CID.
- O. **HANDICAPPED ACCESS.** Lessee shall be responsible for maintaining the leased premises or any changes necessary in the leased premises to the extent that such premises are required to comply with any federal or local disability discrimination laws and regulations. Lessee agrees to protect, indemnify and hold Lessor harmless against all claims and liability for Lessee’s failure to comply with Title III of the Americans with Disabilities Act with respect to the leased premises.
- P. **CARE OF PREMISES.** Lessee shall not perform any acts or carry out any practices which damage any improvements on the leased premises or constitute a nuisance or menace to invitees on the leased premises or any adjoining property owners; and, shall keep the leased premises under its control, including sidewalks both within and adjoining the leased premises, clean and free from snow, ice, dirt and debris at all times. Lessee shall arrange for the regular removal of ice and snow from any publicly used sidewalks and parking areas or any areas open and available to invitees and the general public. Lessee shall maintain all lawns, landscaping, shrubs and trees on the leased premises and the median within Pat Nash Drive adjacent to Tract Two in an aesthetically pleasing condition. Lessor and Lessee acknowledge that Tract Two, other than the median within Pat Nash Drive, is currently undeveloped and no landscaping, mowing, or trimming will be required on Tract Two unless and until improvements are added to Tract Two. All improvements on the property shall be timely and appropriately painted, tuckpointed, or repaired in any manner as may be required by the materials from which the improvements are constructed. Lessee shall be permitted to place landscaping on the Pat Nash Drive Median. Lessee shall keep the leased premises

in a clean and sanitary condition in accordance with the laws and regulations of the City of Branson, at the sole cost and expense of Lessee, except as otherwise provided in this Lease Agreement.

- Q. **ACCESS TO PREMISES.** Lessor reserves the right to enter upon the leased premises at all reasonable hours for the purpose of inspecting the same for compliance with the terms of this Lease; and to exhibit the leased premises to prospective tenants, purchasers or others, without hindrance or molestation by Lessee. The exercise by Lessor of its rights under this paragraph shall not be deemed an eviction or disturbance of Lessee's use and possession of the lease premises.
- R. **WAIVER.** The failure of either party to this Lease to insist, in any one or more instances, on the performance of any term or condition of this Lease shall not operate as a waiver of future performance of that term or condition.
- S. **CORPORATE AUTHORITY.** Lessee represents to Lessor that it is a Missouri Limited Liability Company, legally organized and existing, in good standing, under the laws of the State of Missouri; and that it has the legal power and authority to execute, deliver and perform its obligations under this Lease.
- T. **GOVERNING LAW.** Notwithstanding the place where the parties execute this Lease, the laws of Missouri shall govern the formation and construction of the terms and provisions of this Lease.
- U. **HEADINGS.** The headings used in this Lease appear strictly for the parties' convenience in identifying the provisions of this Lease and shall not affect the construction or interpretation of the provisions of this Lease.
- V. **AMENDMENTS.** No change or amendment to this Lease shall be or become effective or binding on the parties hereto unless agreed to in writing and executed by both Lessee and Lessor.
- W. **NO LIABILITY OF LESSOR.** The Lessor shall not have any liability to Lessee or to any other person or entity for any damage to any person or property caused by or attributed to (a) the presence, use, installation or removal of any equipment, fixtures, systems, improvements or structures of any kind on the property during the lease term or (b) the Lessee's failure to keep the leased property and all improvements located thereon in good repair unless said damage is judicially determined to be caused by Lessor's gross negligence.
- X. **LESSOR'S REMEDIES.** In the event of any default or breach by Lessee, Lessor may at any time thereafter, with or without notice or demand, and without limiting

Lessor in the exercise of any other right or remedy which Lessor may have under this Lease by reason of such default or breach:

1. Using any and all lawful means, reenter the leased premises, terminate Lessee's right to possession of the leased premises, and terminate this Lease, in which event Lessee shall immediately surrender the leased premises to Lessor. In such an event, Lessor shall be entitled to recover from Lessee damages incurred by Lessor by reason of Lessee's default.
2. From time to time, without terminating this Lease, but after taking possession of the leased premises, re-let the leased premises, or any part thereof, for Lessee's account, for such terms, and such rents, and upon such other conditions as Lessor may deem advisable, providing such re-letting shall be at a reasonable rent. Rent received from such re-letting shall be applied, first to the payment of rent, next to any other charges due and unpaid hereunder, and then to the payment of any cost of such re-letting. Should such rent received from such re-letting during any month be less than the rent agreed to be paid during that month by Lessee hereunder, Lessee shall pay such deficiency (which shall be calculated and paid monthly) to Lessor. Lessee shall also pay to Lessor, as soon as ascertained, the costs and expenses incurred by Lessor in such re-letting;
3. Maintain Lessee's right to possession, in which case, this Lease shall continue in effect, whether or not Lessee shall have abandoned the premises; in such event Lessor shall be entitled to enforce all other obligations of Lessee under this Lease, including the obligation of Lessee to pay rent and other sums as and when they become due hereunder;
4. Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State of Missouri.
5. Lessor shall provide written notice of any default under this agreement. Lessee shall have 90 days to cure such default. Within 30 days of said initial cure period, Lessee shall furnish Lessor with a reasonable, realistic plan to cure said default. Based upon said plan, the Lessor, at its sole option and discretion, may extend said cure period for an additional 30 days.

Y. **ALL COVENANTS RUN WITH THE LAND.** All covenants, conditions and agreements herein contained shall run with the premises hereby leased and shall be binding upon and inure to the parties hereto and their respective successors and assigns. If any provision of this Lease shall be held invalid, the validity of the remaining provisions of this Lease shall not be thereby affected.

Z. **CONSTRUCTION OF LEASE OR TERMS.** This lease expresses the mutual interests and agreements of the parties, all of which have been arrived at through

arms' length negotiations and, therefore, it is mutually agreed and understood that any rule of construing an agreement against the drafting party shall have no application to this lease.

AA. **ENTIRE AGREEMENT.** This Lease constitutes the entire agreement of the parties with regard to Tract One and Tract Two of Exhibit "A" only and replaces and supersedes all other written and/or statements of the parties relating to the Lease of Tract One and Tract Two of Exhibit A.

BB. **NOTICE.** Regarding any notice required by the terms of this Lease, the sending party shall deliver or address the notice to the other party by certified mail, facsimile telecopy, or nationally recognized overnight delivery service to the following person or office:

Lessor:                      Currently serving Mayor of the city of Branson, Missouri  
   110 W. Maddux  
   Branson, MO 65616  
   Fax (417) 334-6095

Lessee:                      Ballparks of America, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CC. **CONDEMNATION/EMINENT DOMAIN.** In the event that any of the real estate leased to Lessee shall be taken by a governmental authority by the process of eminent domain or condemnation, the parties agree that a distribution of any proceeds will be determined under the Missouri Statutes dealing with eminent domain or condemnation.

DD. **CASUALTY LOSS.** Lessees agrees that when a casualty loss occurs, regardless of whether insurance proceeds are paid as a consequence of such casualty loss, Lessee shall make any necessary repairs and reconstruction to the leased premises.

EE. **SUBORDINATION/ATTORNMENT/NON-DISTRUBANCE.** The obligations and benefits of subordination and attornment of Lessor and Lessee are strictly limited by the terms of this Lease. Non-Disturbance shall be governed by the provisions Section Q of this Lease.

FF. **CONDITION OF BUILDINGS, FOUNDATIONS AND APPURTENANCES.** Lessee acknowledges that it has had adequate time and opportunity to inspect the leased premises including any foundations, paved areas or other appurtenances. Lessee acknowledges it is accepting all of the above in their "as is" condition and



## EXHIBIT "A"

### Tract One

Description of boundary containing the building and sign structures.

Beginning at the Southwest corner of Section 36, Township 23 North, Range 22 West, within the City of Branson; Taney County Missouri; thence, North 01° 9' 0" East, along the West line of said Section 36, a distance of 514.25' to the North Right-of-Way line of Gretna Road, and also the Point of Beginning; thence, along a non-tangent curve to the right with a chord bearing of North 63° 37' 07" East, an arc length of 96.066' and a radius of 279.879', along the North Right-of-Way line of Gretna Road; thence, North 85° 25' 50.67" East, a distance of 295.517'; thence, North 73° 23' 21.37" East, a distance of 15.523'; thence, North 22° 54' 38.46" East, a distance of 414.852'; thence, North 23° 13' 47.4" East, a distance of 346.395'; thence, North 88° 31' 53.3" West, a distance of 677.973'; thence, North 01° 08' 56.436" East, a distance of 31.163'; thence, North 89° 30' 14.8" West, a distance of 1243.68'; thence, South 21° 21' 11.8" West, a distance of 465.095'; thence, South 33° 08' 32.45" East, a distance of 98.789'; thence, South 01° 45' 43.67" West, a distance of 193.108'; thence, South 85° 38' 6.27" East, a distance of 186.098'; thence, South 03° 13' 33.49" West, a distance of 596.069'; thence, South 88° 50' 37.1" East, a distance of 1000.404' to the North Right-of-Way line of Gretna Road; thence, along a non-tangent curve to the left with a chord bearing of North 22° 33' 38" East, an arc length of 252.179' and a radius of 202.903'; thence, along a tangent curve to the right with an arc length of 329.4' and a radius of 279.879' to the Point of Beginning; containing 46.274 acres more or less.

And also; an area of land located in the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 35, Township 23 North, Range 22 West, within the City of Branson, Taney County, Missouri; the area being more particularly described as follows:

Beginning at the Southwest corner of said Section 35, Township 23 North, Range 22 West; thence South 88° 50' 30" East, along the South line of Section 35, a distance of 2,460.75 ft, to the East right-of-way line of Missouri West State Highway 76 ; thence Northerly, along the East right-of-way line of Missouri West State Highway 76, North 02° 30' 00" West, a distance of 16.60 ft; thence, continuing along said East right-of-way line along a tangent curve to the left, having a radius of 1,000 ft, and an arc length of 422.5 ft, to the Point of Beginning. Thence, North 65° 0' 0" East, a distance of 60 ft; thence, North 25° 0' 0" West, a distance of 8 ft; thence, South 65° 0' 0" West, a distance of 60 ft; thence, South 25° 0' 0" East, a distance of 8 ft, to the Point of Beginning; area of land containing 480 sq ft.

### Tract Two

Beginning at the Southwest corner of Section 36, Township 23 North, Range 22 West, within the City of Branson; Taney County Missouri; thence, North 01° 9' 0" East, along the West line of said Section 36, a distance of 1,333.395'; thence, North 89° 30' 14.8" West, a distance of 1,363.996' to the Point of Beginning; thence, North 89° 30' 14.8" West, a distance of 1,546.393'; thence, South 01° 11' 47.21" West, a distance of 619.059'; thence, North 80° 0' 0" East, a distance of 114.081'; thence, South 01° 10' 0" East, a distance of 90'; thence, South 25° 02' 41.12" East, a distance of 66.356'; thence, North 46° 44' 19.2" East, a distance of 46.994'; thence, along a tangent curve to the right with an arc length of 433.549'

and a radius of 537.711'; thence, South 87° 03' 51.97" East, a distance of 227.257'; thence, South 85° 32' 35.1" East, a distance of 358.71'; thence, North 71° 14' 18.5" East, a distance of 256.597'; thence, North 17° 32' 27.8" East, a distance of 540.306' to the Point of Beginning; containing 19.936 acres more or less.



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL AMENDING CHAPTER 58 OF THE BRANSON MUNICIPAL CODE PERTAINING TO PERSONS UNDER 21 YEARS OF AGE PROHIBITED FROM THE PURCHASE OF TOBACCO PRODUCTS AND PROHIBITING THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE.

**INITIATED BY:** LEGAL DEPARTMENT

**FIRST READING:** JANUARY 28, 2020

**FINAL READING:** FEBRUARY 11, 2020

**EXECUTIVE SUMMARY:**

- This ordinance will prohibit persons under twenty-one years of age from purchasing or possessing tobacco products, alternative nicotine products or vapor products and prohibit the sale or distribution of tobacco products, alternative nicotine products or vapor products to persons under 21 years of age.
- On December 20, 2019, President Donald Trump signed the H.R. 1865 – Further Consolidated Appropriations Act into law. That Appropriations Act included an amendment to 21 U.S.C. 387f(d) making it unlawful any retailer to sell a tobacco product to any person younger than 21 years of age.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year’s budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

SD

**COMMUNITY PLAN 2030:** C-1: Public Safety

**ATTACHED EXHIBITS:**

2  
3  
4 AN ORDINANCE AMENDING CHAPTER 58 OF THE BRANSON MUNICIPAL CODE  
5 PERTAINING TO PERSONS UNDER 21 YEARS OF AGE PROHIBITED FROM THE PURCHASE  
6 OF TOBACCO PRODUCTS AND PROHIBITING THE SALE OF TOBACCO PRODUCTS TO  
7 PERSONS UNDER 21 YEARS OF AGE.  
8

---

9  
10  
11 NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF  
12 BRANSON, MISSOURI, THE FOLLOWING:

13  
14 Section 1: It is the intention of the Board, and it is hereby ordained, that the provisions of this ordinance  
15 shall become and be made a part of the Branson Municipal Code, and the sections of this  
16 ordinance may be renumbered to accomplish such intention.

17  
18 Section 2: That Article VIII – *Other Nuisances*; Division 2 – *Smoke-Free*; Section 58-331 – *Definitions*;  
19 Section 58-342 – *Minors Prohibited from Purchase or Possession of Tobacco Products,*  
20 *Alternative Nicotine Products or Vapor Products - Penalties*; Section 58-343 – *Distribution or*  
21 *Sale of Tobacco Products, Alternative Nicotine Products or Vapor Products to Minors*  
22 *Prohibited* of the Branson Municipal Code is hereby amended to read as follows:  
23

24 **ARTICLE VIII. - OTHER NUISANCES**  
25 **DIVISION 2. - SMOKE-FREE**

26  
27 Sec. 58-342. - [~~Minors~~] **Persons Under 21 Years of Age** Prohibited from Purchase or Possession of  
28 Tobacco Products, Alternative Nicotine Products or Vapor Products - Penalties.

- 29  
30 (a) No person less than [~~18~~] **21** years of age shall purchase, attempt to purchase or possess  
31 tobacco products, alternative nicotine products or vapor products unless such person is an employee  
32 of a seller of cigarettes, tobacco products, alternative nicotine products or vapor products and is in  
33 such possession to effect a sale in the course of employment or an employee of the Division of  
34 Alcohol and Tobacco Control for enforcement purposes pursuant to subsection (5) of RSMo  
35 407.934.  
36  
37 (b) Any person less than [~~18~~] **21** years of age shall not misrepresent his age to purchase cigarettes,  
38 tobacco products, and alternative nicotine products or vapor products.  
39  
40 (c) Any person who violates the provisions of this section shall be penalized as follows:  
41  
42 (1) For the first violation, in addition to the penalties set forth Section 1-13, the person shall have  
43 any cigarettes, tobacco products, alternative nicotine products or vapor products confiscated.  
44  
45 (2) For a second violation and any subsequent violations, in addition to the penalties set forth in  
46 Section 1-13, the person shall have any cigarettes, tobacco products, alternative nicotine  
47 products or vapor products confiscated and shall complete a tobacco education or smoking  
48 cessation program, if available.  
49

50 Sec. 58-343. - Distribution or Sale of Tobacco Products, Alternative Nicotine Products or Vapor Products  
51 to [~~Minors~~] **Persons under 21 Years of Age** Prohibited.  
52

53 It shall be unlawful for any person to sell, provide or distribute by any means tobacco products,  
54 alternative nicotine products or vapor products to persons under [~~18~~] 21 years of age.  
55

56  
57 NOTE: LANGUAGE WHICH IS **BOLD, UNDERLINED** HAS BEEN ADDED; LANGUAGE WHICH  
58 IS [~~BRACKETED, STRICKEN~~] HAS BEEN REMOVED.  
59

60 Section 3: This ordinance shall be in full force and effect from and after its passage by the Board of  
61 Aldermen and approval by the Mayor.  
62

63 Read, this first time on this \_\_\_\_ day of \_\_\_\_\_, 2020.  
64

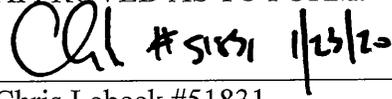
65 Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson,  
66 Missouri on this \_\_\_\_ day of \_\_\_\_\_, 2020.  
67

68  
69 \_\_\_\_\_  
70 E. Edd Akers  
71 Mayor

72 ATTEST:

73  
74 \_\_\_\_\_  
75 Lisa K Westfall  
76 City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING A CONTRACT WITH DON BROWN CHEVROLET PERTAINING TO PURCHASE OF A 2020 CHEVY TAHOE PPV FOR THE POLICE DEPARTMENTS K9 UNIT AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** POLICE DEPARTMENT

**FIRST READING:** JANUARY 28, 2020      **FINAL READING:** FEBRUARY 11, 2020

**EXECUTIVE SUMMARY:**

- The police department is in need of a replacement K9 vehicle as the current vehicle has reached the end of its service life. A 2020 Chevy Tahoe PPV was selected to replace Unit 300.
- The City of Branson is allowed to utilize the Missouri State Bid for purchasing municipal vehicles.
- Local dealers had the opportunity to participate in the Missouri State Bid, but Don Brown Chevrolet was the lowest bidder as determined by the Missouri State Contract CC190367001 for this 2020 Chevy Tahoe PPV with a price of \$36,199.00
- The total cost of this contract is not to exceed \$36,199.00. Funds are budgeted in the 2020 Police Department operational budget.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in this year's budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** C-1 Public Safety.

**ATTACHED EXHIBITS:**

BILL NO. 5779

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING THE CONTRACT WITH DON BROWN CHEVROLET PERTAINING TO PURCHASE OF A 2020 CHEVY TAHOE PPV FOR THE POLICE DEPARTMENTS K9 UNIT AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, in accordance with the State of Missouri's purchasing procedures, the City of Branson is allowed to utilize the state bids for purchasing municipal vehicles; and

**WHEREAS**, Don Brown Chevrolet is the low bidder as determined by Missouri State Contract CC190367001 for a vehicle needed by the City of Branson and identified in the police department's 2020 operational budget plan; and

**WHEREAS**, the Board of Aldermen desires to approve the contract.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI AS FOLLOWS:**

Section 1: The Board of Aldermen hereby approves the contract with Don Brown Chevrolet pertaining to the purchase of one (1) 2020 Chevy Tahoe PPV in the amount not to exceed \$36,199.00 and authorizes the Mayor to execute the contract in the form attached as Exhibit "1".

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

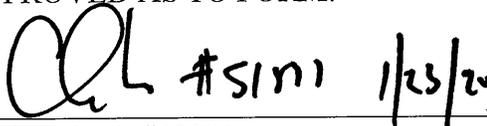
Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

Master Contract Number: \_\_\_\_\_

## PURCHASE OF COMMODITIES CONTRACT

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Branson, Missouri (the "City") and **Don Brown Chevrolet** ("Seller").

WHEREAS, the City of Branson desires to purchase and the Seller agrees to sell to the City certain commodities more particularly described in **Exhibit A** (bid); and

WHEREAS, the Seller made certain representations and statements to the City with respect to the provision of such commodities and the City has accepted the Seller's proposal;

The City and the Seller agree as follows:

- 1. Item(s) and dates of Purchase.** The City agrees to purchase and the Seller agrees to sell the following item(s): **2020 Chevrolet Tahoe 4WD Pursuit Option, from a date beginning on the execution date of this contract to a date ending July 1, 2020.**
- 2. Quantities to be Purchased and Purchase Price.**
  - a. The City agrees to purchase and the Seller agrees to sell the following quantities/amounts for the purchase price(s) listed: **See Exhibit A.**
  - b. The City assumes no obligations for articles or materials shipped in excess in the quantity ordered. Any unauthorized quantity is subject to the City's rejection and may be returned at the Seller's expense.
  - c. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Seller under the terms of this contract exceed the sum of **Thirty Six Thousand One Hundred Ninety Nine Dollars (\$36,199.00), all of which is dependent upon budget appropriations.**
- 3. Delivery and Shipment.**
  - a. The Seller is responsible for the costs of shipment.
  - b. Time is of the essence with respect to each shipment.
  - c. If deliveries are not made **upon demand**, the City reserves the right to cancel this contract, purchase the commodities elsewhere, and hold the Seller liable for any re-procurement costs.
  - d. Deliveries are to be made to: **2244 S. Kingshighway Blvd., St. Louis, MO 63110.**

4. **Invoices.** An original and three copies of the invoice shall be submitted by the Seller to the City, showing the purchase order number or contract number and containing a full description of the commodities furnished.
5. **Inspection and Acceptance.**
  - a. No goods received by the City pursuant to this contract shall be deemed accepted until the City has had reasonable opportunity to inspect said goods.
  - b. All goods discovered to be defective (at any time) or which do not conform to any bid specifications or to any warranty of the Seller may be returned at the Seller's expense for full refund or replacement.
  - c. The City's right to return defective and/or non-conforming goods does not bar any other legal, equitable or contractual remedies the City may have against the Seller.
6. **Warranty.**
  - a. Seller expressly warrants that all articles, materials and work covered by this contract conform to each and every specification, drawing, sample or other description which is furnished to or is adopted by the City and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect.
  - b. Such warranty shall not be deemed waived either by reason of the City's acceptance of said material or goods or by payment for them.
  - c. Any implied warranties are not altered by this written contract.
  - d. Additional terms: N/A.
7. **Patents.** Seller guarantees that the sale or use of the articles described herein will not infringe upon any U.S. or foreign patent and Seller covenants that he will, at his own expense, defend every suit which may be brought against the City, or those selling or using City's product for any alleged infringement of any patent by reason of the sale or use of such articles and Seller agrees that he will pay all costs, damages and profits recoverable in any such suit.
8. **Bankruptcy or Insolvency.** In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of Seller, or in the event of breach of any of the terms hereof including in the warranties of the Seller, City may cancel this contract or affirm the contract and hold Seller responsible in damages.
9. **Compliance with Applicable Laws.** The Seller warrants it has complied with all Applicable laws, rules and ordinances of the United States, or any state, municipality or any other governmental authority or agency in the manufacture or sale of the items

covered by this contract, including but not limited to all provisions of the Fair Labor Standard Act of 1938, as amended.

- 10. Conflicts.** Any bidder or signee of this contract shall disclose any financial relationship (direct or indirect) to salaried officer, employee of the City or member of the City Board of Aldermen in writing at the time of the execution of this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Seller covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work to be performed under this contract. The Seller further covenants that in the performance of this contract no person having such interest shall be employed.
- 11. Interpretation of Contract and Assignments.** The contract shall be construed according to the laws of the State of Missouri. Seller hereunder may not assign the contract, or any rights, obligations or duties without City's written consent or any attempted assignment without such consent shall be void.
- 12. Termination of Contract.** The City reserves the right to terminate the contract at any Time if any of the provisions of the contract are violated by the Seller, in the sole judgment and discretion of The City. In the event of such termination, the Seller shall be liable for any excess costs incurred by the City. If the contract is terminated, the City may purchase upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to the good identified in this contract; the Seller will be liable for any excess costs occasioned thereby.
- 13. Non-discrimination in Employment.** In connection with the furnishing of supplies or performances or work under this contract, the Seller agrees to comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable federal and state laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder. The Seller agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Seller or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- 14. Provisions by Law Deemed Inserted.** Each and every provision of the law and clauses required by law to be inserted in this contract will be deemed to be inserted herein and will be read and enforced as though it were included herein, and if through mistake, or otherwise any such provision is not inserted, then upon the application of either party the contract will be physically amended to make such insertion or correction.
- 15. Tax-Exempt.** The City of Branson is exempt from Sales Tax and Federal Excise Tax.
- 16. Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.



Contract Number: CC190367001

Contractor: Don Brown Chevrolet

**Line Item 1**

UNSPSC Code: 25101702

**MAKE/MODEL: 201920 Chevrolet Tahoe 2WD 9C1 Pursuit Utility Vehicle****PRICE: \$32,293.00****roll-over extension until 12/31/19****EQUIPMENT INCLUDED IN PRICE**

- V-8 type, 5.3 liter gasoline engine with engine oil cooler
- Rear wheel drive
- 3.08 to 1 Rear Axle Ratio
- Six (6) speed automatic transmission, heavy-duty for police operation with auxiliary oil cooler.
- Electric power steering
- Tilt steering wheel
- Heavy-duty fade resistant four wheel anti-lock disc brakes with power booster
- Heavy-duty suspension for police usage. Front independent torsion bar & rear multi-link coil spring suspension system.
- Five (5) tires, P265/60R17 BSW, "V" speed rated (includes full size spare)
- Five 17" x 8" heavy duty steel wheels (includes full spare)
- Bolt-on center caps
- 170 ampere alternator
- Heavy-duty 720 c.c.a. battery
- 730 c.c.a. auxiliary battery
- Speed Control
- Air conditioning system with integral heater and defroster
- Electric rear window defroster
- Police type certified 0-150 mph speedometer
- AM/FM MyLink Radio with Apple Car Play
- Manufacturer's standard air bags.
- Radio noise suppression devices included.
- Power windows and door locks, rear power window operable from rear seat and driver's seat, rear window lockout switch controllable from driver's position
- Rear inside door locks and handles fully operable.
- Driver front door and lift gate lock cylinders.
- Heavy-duty cloth 40/20/40 split bench style seating without center 20% section. Center section must be deleted. Power driver & front passenger seat adjusters.
- Heavy-duty cloth 60/40 split folding bench second row seat – third row seating deleted
- Full color keyed carpeting
- Manufacturer's standard floor mats
- Front license bracket
- Spotlight provision, left hand (driver side) with 6" halogen spotlight
- Factory installed red/white overhead high intensity auxiliary dome lamp
- Power adjustable heated outside rear view mirrors
- Manufacturer's standard OnStar system with Bluetooth hands-free connectivity.
- Grill lamp/siren speaker wiring for connection to agency furnished equipment.
- Horn/Siren wiring circuit for connection of agency furnished switch.
- Manufacturer's standard rear vision camera
- Rear park assist with audible warning
- Deep tinted glass, all windows except windshield & front door windows which shall be a light tinted glass.
- Single key locking system with minimum of two (2) keyless entry key fobs. Each vehicle keyed differently.
- Keyless entry system
- Standard Production Solid Color Exterior (black, white, silver ice, tungsten, blue velvet, satin steel, pepperdust) and Standard Interior Trim
- Factory installed trailering equipment, to include hitch & wiring
- Manufacturer installed under body shield package.
- Fleet and Free Maintenance Credits applied

**AVAILABLE OPTIONS  
(for line item 1)**

**Line Item 2 – 4WD 9C1 Pursuit Option** \$2,973.00  
(Includes 2-speed electronic Autotrac transfer case with rotary controls)

**Line item 3 – Complete 40/20/40 cloth front bench seating** NO CHARGE  
**\*must state when ordering**

**Line Item 4 – Additional Keyless entry transmitters** \$69.00  
(package of six (6) transmitters)  
(6 additional keys) \$40.00

**Line Item 6 – Black vinyl floor covering** \$161.00  
(delete carpet and carpeted floor mats) (credit)

**DELIVERY:** 80 days ARO

**WARRANTY:** 3 years or 36,000 miles (bumper to bumper)  
5 years or 100,000 miles (drive train)

**PREPARATION COST FOR COOPERATIVE PROCUREMENT MEMBERS & OTHER STATE AGENCIES**

**(fee pertains to line item 1)**

**Line Item 8 – Preparation Cost**

**\$985.00 per vehicle**

Other State agencies and Cooperative Procurement members may purchase vehicles off this contract. The total vehicle preparation cost stated for the vehicles processed through the contractors dealership is charged per vehicle.

Vehicles will be delivered from St. Louis, Missouri.



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE CONTRACT WITH CLIFTON LARSON ALLEN LLP PERTAINING TO AUDITING SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** FINANCE DEPARTMENT

**FIRST READING:** JANUARY 28, 2020      **FINAL READING:** FEBRUARY 11, 2020

**EXECUTIVE SUMMARY:**

- Services provided by auditors are exempt under public competitive bidding requirements, however the department seeks to do due diligence to select the best auditing firm at the best rate/value. Therefore, the City advertised for proposals for auditing services due October 10, 2019. Four proposals were received.
- The City received proposals from the firms of KPM; Allen, Gibbs & Houlik; CliftonLarsonAllen; and Cochran, Head & Vick.
- Staff reviewed the references of the bidders and selected the firm of CliftonLarsonAllen due to their extensive governmental auditing experience. Additionally, while the firm appears to be the second-to-highest bidder, actual rates per hour were the second-to-lowest:
  - CliftonLarsonAllen bid a total of 470 hours at \$62,000 or \$131.91 per hr;
  - KPM bid 283 hours at \$51,815 or \$183.09 per hr;
  - Cochran Head & Vic bid 370 hours at \$49,700 or \$134.32 per hr;
  - Allen, Gibbs & Houlik bid 741 hours at \$82,251 or \$111 per hr;
- The term of the engagement is for one year and up to four additional terms. Each additional term must be approved by the Board.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the current year's budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

JD

**COMMUNITY PLAN 2030:** Develops sustainable fiscal and operational policies and fosters trust and transparency by ensuring accountability, efficiency, integrity, innovation and responsiveness in all operations.

**ATTACHED EXHIBITS:**

BILL NO. 5780

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING THE CONTRACT WITH CLIFTON LARSON ALLEN LLP PERTAINING TO AUDITING SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the City of Branson advertised for proposals for bids for auditing services for the City; and

**WHEREAS**, of the proposals received, Clifton Larson Allen LLP has been recommended for approval based on evaluation by staff; and

**WHEREAS**, the Board of Aldermen desires to approve the contract for auditing services for fiscal year ending December 31, 2019.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:**

Section 1: The Board of Aldermen hereby approves the contract with Clifton Larson Allen LLP for auditing in the amount not to exceed \$62,000.00 and authorizes the Mayor to execute the contract in the form attached as Exhibit "1".

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

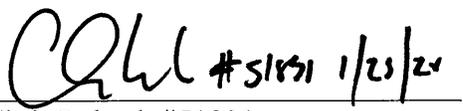
Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney



CLA (CliftonLarsonAllen LLP)  
12721 Metcalf Avenue, Suite 104  
Overland Park, KS 66213  
913-491-6655 | fax 913-491-0429  
CLAconnect.com

December 16, 2019

Board of Aldermen and Management  
City of Branson  
110 West Maddux St.  
Branson, MO 65616

Dear Board of Aldermen and Management:

We are pleased to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the audit and nonaudit services CliftonLarsonAllen LLP ("CLA," "we," "us," and "our") will provide for City of Branson ("you," "your," or "the entity") for the year ended December 31, 2019.

Harold Ray, CPA is responsible for the services provided to you. He will be assisted by Jason Moses, CPA who is responsible for the performance of the audit engagement.

#### **Audit services**

We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements of the City of Branson, as of and for the year ended December 31, 2019, and the related notes to the financial statements.

The Governmental Accounting Standards Board (GASB) provides for certain required supplementary information (RSI) to accompany the entity's basic financial statements. The following RSI will be subjected to certain limited procedures, but will not be audited.

1. Management's discussion and analysis.
2. Budgetary comparison schedules.
3. GASB-required supplementary pension and OPEB information.

We will also evaluate and report on the presentation of the following supplementary information other than RSI accompanying the financial statements in relation to the financial statements as a whole:

1. Combining and individual nonmajor fund statements and schedules.
2. Component unit financial statements

The following information other than RSI accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements and our auditors' report will not provide an opinion or any assurance on that information:

1. Introductory section
2. Statistical section

#### **Nonaudit services**

We will also provide the following nonaudit services:

- Preparation of adjusting journal entries, as needed.

#### **Audit objectives**

The objective of our audit is the expression of opinions about whether your basic financial statements are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP). Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS) and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and will include tests of your accounting records and other procedures we consider necessary to enable us to express such opinions. We will apply certain limited procedures to the RSI in accordance with U.S. GAAS. However, we will not express an opinion or provide any assurance on the RSI because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. We will also perform procedures to enable us to express an opinion on whether the supplementary information (as identified above) other than RSI accompanying the financial statements is fairly stated, in all material respects, in relation to the financial statements as a whole.

We will issue a written report upon completion of our audit of your financial statements. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If circumstances occur related to the condition of your records, the availability of sufficient, appropriate audit evidence, or the existence of a significant risk of material misstatement of the financial statements caused by error, fraudulent financial reporting, or misappropriation of assets, which in our professional judgment prevent us from completing the audit or forming opinions on the financial statements, we retain the right to take any course of action permitted by professional standards, including declining to express opinions or issue a report, or withdrawing from the engagement.

We will also provide a report (which does not include an opinion) on internal control related to the financial statements and on compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements, as required by *Government Auditing Standards*. The report on internal control over financial reporting and on compliance and other matters will include a paragraph that states (1) that the purpose of the report is solely to describe the scope of our testing of internal control and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The paragraph will also state that the report is not suitable for any other purpose. If during our audit we become aware that the entity is subject to an audit requirement that is not encompassed in the terms of this engagement, we will communicate to management and those charged with governance that an audit

conducted in accordance with U.S. GAAS and the standards for financial audits contained in *Government Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

#### **Auditor responsibilities, procedures, and limitations**

We will conduct our audit in accordance with U.S. GAAS and the standards for financial audits contained in *Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements as a whole are free from material misstatement, whether due to fraud or error. An audit involves performing procedures to obtain sufficient appropriate audit evidence about the amounts and disclosures in the basic financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the basic financial statements.

There is an unavoidable risk, because of the inherent limitations of an audit, together with the inherent limitations of internal control, that some material misstatements may not be detected, even though the audit is properly planned and performed in accordance with U.S. GAAS and *Government Auditing Standards*. Because we will not perform a detailed examination of all transactions, material misstatements, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity, may not be detected. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management and those charged with governance of any material errors, fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management and those charged with governance of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the basic financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting fraud or errors that are material to the financial statements and to preventing and detecting misstatements resulting from noncompliance with provisions of laws, regulations, contracts, and grant agreements that have a material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*. An audit is not designed to provide assurance on internal control or to identify deficiencies, significant deficiencies, or material weaknesses in internal control. However, we will communicate to you in writing significant deficiencies or material weaknesses in internal control relevant to the audit of the basic financial statements that we identify during the audit that are required to be communicated under AICPA professional standards and *Government Auditing Standards*.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the entity's compliance with the provisions of laws, regulations, contracts, and grant agreements that have a material effect on the financial statements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

We will include in our report on internal control over financial reporting and compliance relevant information about any fraud; noncompliance with provisions of laws, regulations, contracts, or grant agreements; or abuse that may have occurred that are required to be communicated under *Government Auditing Standards*.

Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

### **Management responsibilities**

Our audit will be conducted on the basis that you (management and, when appropriate, those charged with governance) acknowledge and understand that you have certain responsibilities that are fundamental to the conduct of an audit.

You are responsible for the preparation and fair presentation of the financial statements and RSI in accordance with U.S. GAAP. Management's responsibilities include the selection and application of accounting principles; recording and reflecting all transactions in the financial statements; determining the reasonableness of significant accounting estimates included in the financial statements; adjusting the financial statements to correct material misstatements; and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design, implementation, and maintenance of effective internal control, including evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error. You are responsible for the design, implementation, and maintenance of internal controls to prevent and detect fraud; assessing the risk that the financial statements may be materially misstated as a result of fraud; and for informing us about all known or suspected fraud affecting the entity involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for implementing systems designed to achieve compliance with applicable laws and regulations and the provisions of contracts and grant agreements; identifying and ensuring that the entity complies with applicable laws, regulations, contracts, and grant agreements; and informing us of all instances of identified or suspected noncompliance whose effects on the financial statements should be considered. You are responsible for taking timely and appropriate steps to remedy any fraud; noncompliance with provisions of laws, regulations, contracts, or grant agreements; or abuse that we may report.

You are responsible for ensuring that management is reliable and for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, and other matters, and for the accuracy and completeness of that information, and for ensuring the information is reliable and properly reported; (2) additional information that we may request for the purpose of the audit; and (3) unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence. You agree to inform us of events occurring or facts discovered subsequent to the date of the financial statements that may affect the financial statements.

Management is responsible for the preparation of the supplementary information in accordance with U.S. GAAP. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon or make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon. You agree to provide us written representations related to the presentation of the supplementary information.

Management is responsible for providing us with a written confirmation concerning representations made by you and your staff to us in connection with the audit and the presentation of the basic financial statements and RSI. During our engagement, we will request information and explanations from you regarding, among other matters, the entity's activities, internal control, future plans, specific transactions, and accounting systems and procedures. The procedures we will perform during our engagement and the conclusions we reach as a basis for our report will be heavily influenced by the representations that we receive in the representation letter and otherwise from you. Accordingly, inaccurate, incomplete, or false representations could cause us to expend unnecessary effort or could cause a material fraud or error to go undetected by our procedures. In view of the foregoing, you agree that we shall not be responsible for any misstatements in the entity's financial statements that we may fail to detect as a result of misrepresentations made to us by you.

Management is responsible for authorizing the predecessor auditor to allow us to review the predecessor auditor's workpapers and to respond fully to our inquiries, thereby providing us with information to assist us in planning and performing the engagement. You will be responsible for any fees billed by the predecessor auditor related to our review of their workpapers and our inquiries.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the "Audit objectives" section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or other engagements or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions for the report, and for the timing and format for providing that information.

#### **Responsibilities and limitations related to nonaudit services**

For all nonaudit services we may provide to you, management agrees to assume all management responsibilities; oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience to understand and oversee the services; evaluate the

adequacy and results of the services; and accept responsibility for the results of the services. Management is also responsible for ensuring that your data and records are complete and that you have received sufficient information to oversee the services.

The responsibilities and limitations related to the nonaudit services performed as part of this engagement are as follows:

- We will propose adjusting journal entries as needed. You will be required to review and approve those entries and to understand the nature of the changes and their impact on the financial statements.

These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*.

#### **Use of financial statements**

The financial statements and our report thereon are for management's use. If you intend to reproduce and publish the financial statements and our report thereon, they must be reproduced in their entirety. Inclusion of the audited financial statements in a document, such as an annual report or an offering document, should be done only with our prior approval of the document. You are responsible to provide us the opportunity to review such documents before issuance.

If the parties (i.e., you and CLA) agree that CLA will not be involved with your official statements related to municipal securities filings or other offering documents, we will require that any official statements or other offering documents issued by you with which we are not involved clearly indicate that CLA is not involved with the contents of such documents. Such disclosure should read as follows:

CliftonLarsonAllen LLP, our independent auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. CliftonLarsonAllen LLP also has not performed any procedures relating to this offering document.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website or submitted on a regulator website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in those sites or to consider the consistency of other information in the electronic site with the original document.

We may issue preliminary draft financial statements to you for your review. Any preliminary draft financial statements should not be relied on or distributed.

#### **Engagement administration and other matters**

We understand that your employees will prepare all confirmations, account analyses, and audit schedules we request and will locate any documents or invoices selected by us for testing. A list of information we expect to need for our audit and the dates required will be provided in a separate communication.

We will provide copies of our reports to the entity; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

We are available to perform additional procedures with regard to fraud detection and prevention, at your request, as a separate engagement, subject to completion of our normal engagement acceptance procedures. The terms and fees of such an engagement would be documented in a separate engagement letter.

The audit documentation for this engagement is the sole and exclusive property of CLA and constitutes confidential and proprietary information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the Missouri State Auditors office, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of CLA personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of seven years after the report release date. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

Except as permitted by the "Consent" section of this agreement, CLA will not disclose any confidential, proprietary, or privileged information of the entity to any persons without the authorization of entity management or unless required by law. This confidentiality provision does not prohibit us from disclosing your information to one or more of our affiliated companies in order to provide services that you have requested from us or from any such affiliated company. Any such affiliated company shall be subject to the same restrictions on the use and disclosure of your information as apply to us.

Professional standards require us to be independent with respect to you in the performance of these services. Any discussion that you have with our personnel regarding potential employment with you could impair our independence with respect to this engagement. Therefore, we request that you inform us prior to any such discussions so that we can implement appropriate safeguards to maintain our independence and objectivity. Further, any employment offers to any staff members working on this engagement without our prior knowledge may require substantial additional procedures to ensure our independence. You will be responsible for any additional costs incurred to perform these procedures.

Our relationship with you is limited to that described in this letter. As such, you understand and agree that we are acting solely as independent accountants. We are not acting in any way as a fiduciary or assuming any fiduciary responsibilities for you. We are not responsible for the preparation of any report to any governmental agency, or any other form, return, or report or for providing advice or any other service not specifically recited in this letter.

Our engagement and responsibility end on delivery of our signed report. Any additional services that might be requested will be a separate, new engagement. The terms and conditions of that new engagement will be governed by a new, specific engagement letter for that service.

*Government Auditing Standards* require that we make our most recent external peer review report publicly available. The report is posted on our website at [www.CLAconnect.com/Aboutus/](http://www.CLAconnect.com/Aboutus/).

### **Jurisdiction**

This agreement and engagement letter and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

### **Time limitation**

The nature of our services makes it difficult, with the passage of time, to gather and present evidence that fully and fairly establishes the facts underlying any Dispute that may arise between the parties. The parties agree that, notwithstanding any statute or law of limitations that might otherwise apply to a Dispute, including one arising out of this agreement or the services performed under this agreement, for breach of contract or fiduciary duty, tort, fraud, misrepresentation or any other cause of action or remedy, any action or legal proceeding by you against us must be commenced within twenty-four (24) months ("Limitation Period") after the date when we deliver our final audit report under this agreement to you, regardless of whether we do other services for you relating to the audit report, or you shall be forever barred from commencing a lawsuit or obtaining any legal or equitable relief or recovery.

The Limitation Period applies and begins to run even if you have not suffered any damage or loss, or have not become aware of the existence or possible existence of a Dispute.

### **Fees**

We estimate that our professional fees will not exceed \$62,000. This is inclusive of expenses (including internal and administrative charges) plus a technology and client support fee of five percent (5%) of all professional fees billed. This estimate is based on anticipated cooperation from your personnel and their assistance with preparing confirmations and requested schedules. If the requested items are not available on the dates required or are not accurate, the fees and expenses will likely be higher. If unexpected circumstances require significant additional time, we will advise you before undertaking work that would require a substantial increase in the fee and expense estimate. Our invoices, including applicable state and local taxes, will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 30 days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed even if we have not issued our reports. You will be obligated to compensate us for all time expended and related fees and to reimburse us for all out-of-pocket expenditures through the date of termination.

### ***Unanticipated services***

We do not anticipate encountering the need to perform additional services beyond those described in this letter. Below are listings of services considered to be outside the scope of our engagement. If any such service needs to be completed before the audit can proceed in an efficient manner, we will determine whether we can

provide the service and maintain our independence. If appropriate, we will notify you and provide a fair and reasonable price for providing the service. We will bill you for the service at periodic dates after the additional service has been performed.

#### **Bookkeeping services**

Bookkeeping services are not audit services. Bookkeeping services include the following activities:

- Preparation of a trial balance
- Account reconciliations
- Bank statement reconciliations
- Capital asset accounting (e.g., calculating depreciation, identify capital assets for additions and deletions)
- Calculating accruals
- Analyzing transactions for proper recording
- Converting cash basis accounting records to accrual basis
- Preparation of financial statements and the related notes to the financial statements
- Processing immaterial adjustments through the financial statements
- Adjusting the financial statements for new activities and new disclosures

#### **Additional work resulting from unanticipated changes in your organization or accounting records**

If your organization undergoes significant changes in key personnel, accounting systems, and/or internal control, we are required to update our audit documentation and audit plan. The following are examples of situations that will require additional audit work:

- Revising documentation of your internal control for changes resulting from your implementation of new information systems
- Deterioration in the quality of the entity's accounting records during the current-year engagement in comparison to the prior-year engagement
- Significant new accounting issues
- Significant changes in your volume of business
- New or unusual transactions

- Changes in audit scope or requirements resulting from changes in your activities
- Erroneous or incomplete accounting records
- Evidence of material weaknesses or significant deficiencies in internal control
- Implementation or adoption of new or existing accounting, reporting, regulatory, or tax requirements
- New financial statement disclosures

**Changes in engagement timing and assistance by your personnel**

The fee estimate is based on anticipated cooperation from your personnel and their assistance with timely preparation of confirmations and requested schedules. If the requested items are not available on the dates required or are not accurate, we will advise management. Additional time and costs may be necessary because of such unanticipated delays. Examples of situations that may cause our estimated fee to increase include:

- Significant delays in responding to our requests for information such as reconciling variances or providing requested supporting documentation (e.g., invoices, contracts, and other documents)
- Rescheduling our fieldwork
- Schedule disruption caused by litigation, financial challenges (going concern), loan covenants (waivers), etc.
- Identifying a significant number of proposed audit adjustments
- Schedules prepared by your personnel that do not reconcile to the general ledger
- Numerous revisions to information and schedules provided by your personnel
- Restating financial statements for accounting errors in the prior year
- Lack of availability of entity personnel during audit fieldwork

***Changes in accounting and audit standards***

Standard setters and regulators continue to evaluate and modify standards. Such changes may result in new or revised financial reporting and disclosure requirements or expand the nature, timing, and scope of the activities we are required to perform. To the extent that the amount of time required to provide the services described in the letter increases due to such changes, our fee may need to be adjusted. We will discuss such circumstances with you prior to performing the additional work.

***Other fees***

You also agree to compensate us for any time and expenses, including time and expenses of legal counsel, we may incur in responding to discovery requests or participating as a witness or otherwise in any legal, regulatory, or other proceedings that we are asked to respond to on your behalf.

***Finance charges and collection expenses***

You agree that if any statement is not paid within 30 days from its billing date, the unpaid balance shall accrue interest at the monthly rate of one and one-quarter percent (1.25%), which is an annual percentage rate of 15%. In the event that any collection action is required to collect unpaid balances due us, reasonable attorney fees and expenses shall be recoverable.

**Consent**

***Consent to use financial information***

Annually, we assemble a variety of benchmarking analyses using client data obtained through our audit and other engagements. Some of this benchmarking information is published and released publicly. However, the information that we obtain is confidential, as required by the AICPA Code of Professional Conduct. Your acceptance of this engagement letter will serve as your consent to use of City of Branson's information in these cost comparison, performance indicator, and/or benchmarking reports.

***Subcontractors***

CLA may, at times, use subcontractors to perform services under this agreement, and they may have access to your information and records. Any such subcontractors will be subject to the same restrictions on the use of such information and records as apply to CLA under this agreement.

***Predecessor auditor communications***

You agree to provide us permission to communicate with the predecessor auditor and to authorize the predecessor auditor to respond fully to our inquiries regarding any matters that will assist us in finalizing our engagement acceptance. You further acknowledge that our final acceptance of the engagement is subject to the completion of those inquiries and evaluation of the responses.

**Agreement**

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. This letter constitutes the entire agreement regarding these services and supersedes all prior agreements (whether oral or written), understandings, negotiations, and discussions between you and CLA. If you have any questions, please let us know. Please sign, date, and return the copy of this letter to us to indicate your acknowledgment and understanding of, and agreement with, the arrangements for our audit of your financial statements including the terms of our engagement and the parties' respective responsibilities.

Sincerely,

**CliftonLarsonAllen LLP**



Harold S. Ray, CPA  
Signing Director  
913-232-4335  
Harold.Ray@CLAconnect.com

Enclosure

**Response:**

This letter correctly sets forth the understanding of City of Branson.

Authorized signature: \_\_\_\_\_

Title: Mayor      Date: \_\_\_\_\_

Authorized signature: \_\_\_\_\_

Title: City Clerk      Date: \_\_\_\_\_

Authorized signature: Clerk #51831 1/6/20

Title: City Attorney Date: \_\_\_\_\_