NOTICE OF MEETING

BOARD OF ALDERMEN

Regular Meeting – Tuesday, February 25, 2020 – 6:00 p.m.
Council Chambers – Branson City Hall – 110 W. Maddux

AGENDA

MEETING CALLED TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

- **Jamie Rouch**

ROLL CALL

AWARDS/RECOGNITIONS:

- **Employee of the Month:**
  a) **Rick Bright of the Police Department to be presented by Alderman Brian Clonts.**

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) **February 11, 2020 Regular Meeting**

2) Acknowledge Receipt of Minutes:
a) **Human Resources Committee meeting of January 15, 2020**

3) Final Reading of Bill No. 5781 approving the Annexation of the property located at 150 Gunner Hill Lane.

4) Final Reading of Bill No. 5782 approving the Annexation of the property located at 3855 Fall Creek Road.

5) Final Reading of Bill No. 5783 approving an Agreement with Missouri American Water Company for Water Termination Services and authorizing the Mayor to execute the contract.

6) Final Reading of Bill No. 5784 approving an Agreement with Missouri American Water Company for the purchase of Water Usage Data and authorizing the Mayor to execute the contract.

7) **Final Reading of Bill No. 5785 accepting the proposal of MTS Contracting Inc. for sandblasting and painting of the Branson Lakeside RV Park shower house and restroom for the City of Branson and authorizing the Mayor to execute the contract.**

8) **Final Reading of Bill No. 5786 amending the adopted 2020 Budget for the City of Branson, to adjust monies for the General Fund.**

9) **Final Reading of Bill No. 5787 approving the Facility Use Agreement with Ballparks of America, LLC and authorizing the Mayor to execute the contract.**

REGULAR AGENDA:

10) **A Resolution approving the Annual Operating & Capital Budgets of the Branson Convention Center from January 1, 2020 to December 31, 2020. (Postponed during the February 11, 2020 meeting)**

11) **Final 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. (Postponed during the February 11, 2020 meeting)**

12) **Final 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. (Postponed during the February 11, 2020 meeting)**

13) **A Resolution approving a Special Event Permit Application for the 2020 Lights of Joy Christmas Drive-Thru.**

14) **First Reading of Bill No. 5788 amending Chapters 1, 18 and 58 of the Branson Municipal Code pertaining to the Realignment of Code Enforcement within the City and Dangerous Buildings.**

15) **First Reading of Bill No. 5789 amending the adopted 2019 Budget for the City of Branson, to adjust monies for Various Funds.**

16) **First Reading of Bill No. 5790 amending the adopted 2019 Budget for the City of Branson, to adjust monies for the Mandatory Redemption and Waterfall in the Debt Service Funds.**

17) **First Reading of Bill No. 5791 approving payment of Incentive Fees to SMG, Branson Convention Center's Management, in accordance with their contract for FY2018.**

18) **First Reading of Bill No. 5792 approving an amendment to the contract with Architect Design Group pertaining to Professional Consulting Services for a New Fire Station and Police Headquarters and authorizing the Mayor to execute the contract.**

REPORTS

ADJOURN

STAFF REPORT

ITEM/SUBJECT: **RECOGNIZING RICK BRIGHT OF THE POLICE DEPARTMENT AS THE SPECIAL COMMENDATION EMPLOYEE OF THE MONTH FOR FEBRUARY, 2020.**

INITIATED BY: **EMPLOYEE OF THE MONTH COMMITTEE**

DATE: **FEBRUARY 25, 2020**

EXECUTIVE SUMMARY:

PRESENTATION BY ALDERMAN:

It is my privilege to present the City of Branson's "Special Commendation" Employee of the Month award for February 2020 to Police Officer Rick Bright.

This award is to recognize those employees who have gone above and beyond in life-saving and dangerous situations.

This past summer, Officer Bright was dispatched to a medical emergency. When he got there, he discovered someone who was not breathing. Officer Bright immediately began CPR and continued until he was relieved by Taney County Ambulance personnel. Because of his quick reaction and calm determination, the person began breathing again and was able to be transported to the hospital.

Officer Bright's actions positively impacted that family, our community, and the City of Branson as he upheld the Police Department's mission of enhancing the community through a commitment to excellence, compassion and impartiality in all actions.

On behalf of the Mayor, Board of Aldermen, City Administrator and City staff, it is my honor to present this plaque naming Rick Bright as the February 2020 "Special Commendation" Employee of the Month.

Congratulations and keep up the good work!

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

____ Recommended
____ Not Recommended
_X_ Neutral/None

COMMUNITY PLAN 2030: Good Governance (PBB)

ATTACHED EXHIBITS:

DRAFT

MINUTES

THE REGULAR MEETING OF THE
BOARD OF ALDERMEN
CITY OF BRANSON, MISSOURI
February 11, 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 February 11, 2020, at 6:00 p.m. Mayor Akers called the meeting to order with the "Pledge of Allegiance" and Charlie Huston gave the invocation.

ROLL CALL

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

AWARDS / RECOGNITIONS

Employee of the Month

Alderman Skains presented Andrew Zubrod of the Information Technology Department as the February Employee of the Month in recognition for displaying City of Branson Values.

Proclamation

Mayor Akers recognized February 10, 2020 through February 16, 2020 as Ronald McDonald House Week in Branson, Missouri.

Special Recognition

Mayor Akers recognized Joyce Davis for 60 years of service with the Branson Café.

Mayor Akers read a statement regarding speaker decorum and stated in order to give everyone a chance to speak tonight I would like to ask that if you're speaking on an item, that you keep your comments succinct, to the topic and as short as possible. You're allowed to only speak once on an item and please do not repeat what has already been said by another speaker. Once public discussion has ended on an item and the Board starts their discussion, no additional comments will be taken from the audience. Please remember to speak into the mic and state your name and address for the record. However, if an Alderman wishes to bring someone back up, the chair allows for that to happen and if you have a clarification on an item or something you'd like to ask one of the speakers, the Aldermen have that. We just ask you please respect the five minute timeline.

PUBLIC COMMENT

Gary Groman, 350 S. Wildwood Drive, Branson, Missouri, mentioned speaking two meetings ago about two issues; the Mayor's failure to follow City ordinance and years of its application during the public comments part of the meeting, and what he considers the impropriety of the City Attorney making out-of-state inquiries about him after he spoke at a previous meeting. He will not repeat his comments relative to

his belief that the Mayor's approach to public comments is illogical and contrary to the way it's been done for decades and is in complete violation to section 2-70(c) of the Branson Municipal Code. He referenced the introduction the Mayor read a moment ago regarding public comments and the statement about how once public discussion ends on an item, the Board starts its discussion. He pointed out each person speaking during public comments usually discusses a different item, so based on the Mayor's own words it appears subsection 2-70(c) aside, that Board discussion starts after each item. Yet when an Alderman tries to do so, the Mayor says they have to wait until all of the speakers have spoken and call them up one by one. Mr. Groman stated, it seems like he can't even follow his own instructions, but has to modify them for his own purposes as he goes along. He asked what new order the Mayor is bringing to the meetings that previous Mayors in subsection 2-70(c) didn't and what caused him to make this change. He inquired if there was a problem needing solved, or if it's just a chance to show everybody who the boss is. He realizes these are rhetorical questions because he can't ask questions, and he feels the Board knows how it should be and is letting the Mayor get away with it. He added, but what would one expect from a group of leaders who did nothing when the City Attorney, with what he assumes was with the blessing of Senior City Staff, using City resources, made inquiries as to his professional status with the Illinois Bar Association through another attorney in Illinois. Mr. Groman reported City Attorney Chris Lebeck then sent an email about the results to the Board and Senior Staff. He recalled asking for what legitimate purpose was such action taken and if the Board was concerned about the message and perception such actions send out. He explained when he requested information on the situation, he received a copy of the email which was just a blank space with all the information redacted, including his name. He recalled asking at that meeting what message this action sends out to residents and businesses regarding interacting with City Government. He asked if this is a precedence the Board wants to let stand without any action. He commented it's easy to say it is only Gary Groman who cares. He said he actually doesn't even care himself, but now understands why people have expressed hesitation about speaking out about City actions for fear of what the City will do.

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 laws pertaining to our City 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 in all meetings of the Board. 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 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 for these meetings that any abstention by any member of the Board during this meeting can 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. Alderman Castillon requested Item Numbers 4 and 6 be removed from the Consent Agenda and placed as the first and second items on the Regular Agenda. Mayor Akers asked City Clerk Lisa Westfall to read the items on the Consent Agenda as amended. City Clerk Lisa Westfall read the following Consent Agenda items by title.

Approval of Board of Aldermen Minutes:

a) January 28, 2020 Regular Meeting

Acknowledge Receipt of Minutes:

a) Budget and Finance Committee meeting of December 6, 2019

BILL NO. 5776
Ord. No. 2020-0025 **Amending the adopted 2020 Budget for the City of Branson, to adjust monies for the General Fund.**

Final Reading of Bill No. 5776, an ordinance amending the adopted 2020 Budget for the City of Branson, to adjust monies for the General Fund was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Castillon. Nays: none. Absent: Milton. Motion carried. Ordinance No. 2020-0025 was duly enacted.

BILL NO. 5779
Ord. No. 2020-0027 **Approving the contract with Don Brown Chevrolet pertaining to purchase of a 2020 Chevy Tahoe PPV for the Police Departments K9 Unit.**

Final Reading of Bill No. 5779, 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 was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Castillon. Nays: none. Absent: Milton. Motion carried. Ordinance No. 2020-0027 was duly enacted.

Mayor Akers opened the floor for a motion to approve all items on the Consent Agenda as amended. Alderman Clonts moved to approve all items on the Consent Agenda, seconded by Alderman McConnell. Voting aye: McConnell, Clonts, Simmons, Skains and Castillon. Nays: none. Absent: Milton. Motion carried.

REGULAR AGENDA

BILL NO. 5778
POSTPONED **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.**

Final Reading of Bill No. 5778, an ordinance 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 was read by title by City Clerk Lisa Westfall. Mayor Akers asked for a motion approving Bill No. 5778. Alderman Clonts 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. Alderman Clonts moved to postpone Bill No. 5778 to the February 25, 2020 Board of Aldermen meeting, 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. No discussion. Voting aye: Clonts, Simmons and Skains. Nays: McConnell and Castillon. Absent: Milton. Motion carried.

BILL NO. 5780
POSTPONED **Approving the contract with Clifton Larson Allen LLP pertaining to auditing services.**

Final Reading of Bill No. 5780, an ordinance approving the contract with Clifton Larson Allen LLP pertaining to auditing services and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a Staff Report was provided by Assistant City Administrator John Manning and Finance Director Jamie Rouch. Mayor Akers asked for a motion approving Bill No. 5780. Alderman Clonts 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. Alderman Skains moved to postpone Bill No. 5780 to the February 25, 2020 Board of Aldermen meeting, seconded by Alderman Simmons. 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: Clonts, Simmons and Skains. Nays: McConnell and Castillon. Absent: Milton. Motion carried.

Report by Jonas Arjes about the Taney County Partnership 2019 Year-End Review.

A Report on the Taney County Partnership 2019 Year-End Review was provided by Jonas Arjes. 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.

Report by Marc Mulherin about the Branson Convention Center 2019 Year-End Review.

A Report about the Branson Convention Center 2019 Year-End Review was presented by Brian Johnson, SMG's Director of Finance of the Branson Convention Center. 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.

RESOLUTION POSTPONED **Resolution approving the Annual Operating & Capital Budgets of the Branson Convention Center from January 1, 2020 to December 31, 2020.**

A Resolution approving the Annual Operating & Capital Budgets of the Branson Convention Center from January 1, 2020 to December 31, 2020, was read by title by City Clerk Lisa Westfall and a staff report was provided by Finance Director Jamie Rouch and Brian Johnson, Director of Finance for the Branson Convention Center. Alderman McConnell moved to postpone the resolution to the February 25, 2020 Board of Aldermen meeting, seconded by Alderman Castillon. 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 Castillon. Nays: none. Absent: Milton. Motion carried.

BILL NO. 5781 **Approving the Annexation of the property located at 150 Gunner Hill Lane, Branson, Missouri.**

Public Hearing and First Reading of Bill No. 5781, an ordinance approving the annexation of the property located at 150 Gunner Hill Lane, Branson, Missouri, was read by title by City Clerk Lisa Westfall. Mayor Akers opened the public hearing and a staff report was presented by Planning and Development Director Joel Hornickel. Mayor Akers asked for anyone in the audience wishing to speak in favor of or opposing this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Mayor Akers closed the public hearing. Mayor Akers asked for a motion approving Bill No. 5781. Alderman Skains so moved, seconded by Alderman McConnell. 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 and Skains. Nays: None. Absent: Milton. Motion carried. Alderman Castillon did not vote.

BILL NO. 5782 **Approving the Annexation of the property located at 3855 Fall Creek Road, Branson, Missouri.**

Public Hearing and First Reading of Bill No. 5782, an ordinance approving the annexation of the property located at 3855 Fall Creek Road, Branson, Missouri, was read by title by City Clerk Lisa Westfall. Mayor Akers opened the public hearing and a staff report was presented by Planning and Development Director Joel Hornickel. Mayor Akers asked for anyone in the audience wishing to speak in favor of or opposing this matter.

Cherry Webster, 118 Country Bluff Drive, Branson, Missouri, explained she lives in the second house on the right in the Country Bluff Estates subdivision and her property and the one adjoining it, which is an empty lot her mother owns, butts up against this parcel. She mentioned being involved in a lot of discussions back in August with Alderman Clonts, Mayor Akers, Alderman McConnell and Mr. Ruda and she feels it's still not a great location for government subsidized low income housing. She feels people can call it affordable housing and be politically correct, but her subdivision is also affordable as 100 families can afford to live there. She added, there are other locations that are much more logical, but it looks like this is going to proceed and she asked if it would be possible for Mr. Ruda to have a few proffer or development agreements that might make the two neighborhoods fit more easily together. She commented great fences make great neighbors and she feels it would be really nice if the 30 foot buffer was dense like tall thorny hawthorn trees, followed by medium size thorny barberry shrubs. She asked if it's possible to leave some of the mature trees on the parcel. She reported they're currently being torn down which is kind of ghastly looking and she hopes it's just going to be the four acres for the townhouse side. Ms. Webster asked if it's possible to leave the more mature trees back into the single family development area. Her subdivision has covenants which is one of the main reasons she bought her house 10 years ago and one covenant is that residents have to keep boats, trailers and RV vehicles in garages with the doors closed. She reported there are enough problems with the people who live in the subdivision that the subdivision's Board and President of the association frequently try to communicate with homeowners about keeping their vehicles inside their garages. She added, there are at least 12 neighbors who still think their garage is a closet and she doesn't understand why some people park their vehicles in their driveway and use their garage as a closet. Ms. Webster mentioned people park their business vehicles on the street and enclosed landscape trailers, making it hard for emergency vehicles to come in and is unsightly. She understands the City has ordinances to help keep a community looking attractive, but thinks it needs more than just the City ordinances. She stated they do not want the neighborhood next door to look like Bird Road or Spring Creek Road; it needs to be attractive. She recalled Mr. Ruda had said he builds a nice product and while he might be able to build a nice looking product, it's who is going to live there. She mentioned living in a government subsidized low income housing development in her early twenties and her and her husband happened to be the number two family that moved in there. They watched the rest of the neighborhood fill in and fortunately were able to leave two years later. She expressed concerns about the product that's going to be built and the people who are going to live there because low income housing does not usually generate the most responsible people. Ms. Webster recalled when she lived in subsidized housing, kids would hang around the dumpster at 9:00 p.m. or 10:00 p.m. on school nights with nothing to do. She explained when kids are hanging around with nothing to do, they get into trouble and she believes there's a need for covenants to make it look nice and some very strong barriers to keep neighbors in their own subdivision. She commented kids like to roam, they want to go hiking and seeing what is over on the other side.

Rick Key, 170 Country Bluff Drive, Branson, Missouri, commented his concern is as the property goes down Lake Taneycomo direction, the land narrows. He mentioned hearing all kinds of different things such as it's going to be affordable housing, partially affordable housing and all along Lake Taneycomo it will be nightly rental condos. In the case of it being nightly rental condos going down Fall Creek, he explained there's not much room between the bluff and Fall Creek at the lower end. He inquired if a condo, parking lot and road were put up, how close it would be to the homes in his subdivision. He mentioned offering to buy the corner and was told early on it was totally out of the question. He expressed his concerns that if it's affordable housing or nightly rentals that his subdivision would have consideration since the development would be close to the narrow part near their backyards. He added, we don't want to be right

there and explained it's on a hill too. Mr. Key commented he owns nightly rentals and doesn't have anything against them, but his nightly rentals are in a nightly rental complex with no homes around it. He feels it will be bad for everyone who lives on the far corner, because there's not much room down there and he requested the Board relay to Dan Ruda the subdivision's desire for consideration. He commented, it's a really nice neighborhood which is why he bought there and they would like to keep it that way. He clarified he's not saying nightly rentals are bad as he knows Mr. Ruda puts in top quality stuff which he's seen on some of the original properties down Fall Creek. He knows it is going to be nice if he does nightly rentals, but he'd like consideration for the people who live near the lower end of the property.

Jeff Seifried, 4100 Gretna Road, Branson, Missouri, speaking on behalf of the Branson/Lakes Area Chamber of Commerce and CVB, mentioned writing a letter of support to the State for this particular project. He explained Branson is way behind the eight ball when it comes to providing better quality housing for its residents and citizens. In light of shutting down unsafe places around the community and having availability of quality places to live, he feels this is a first step in the right direction. He feels this is a quality developer who cares about the community, has invested millions of dollars all over the City and will once again make a difference for the citizens of Branson. He explained if there are other projects they can help support at a State level with this developer or others, they would be happy to do, but they'd like to get moving on this project as soon as possible.

Charles Geer, 141 Country Bluff Drive, Branson, Missouri, shared his concerns about the flood water that runs through his property. He explained lot 35 is included in the drawing, but it is separate from Mr. Ruda's property and he doesn't see where it's designated as a separate lot. He added, it's right across the street from where he lives and all the flood water comes right down through Mr. Ruda's property and through the additional lot that's not his property, but is in the county. He explained the water will be coming down through his property, through another county lot and then into Country Bluff Estates and he wants to know what's going to be done with that flood water. He commented, that's his big concern because he's getting muddy water there now with the tree removal that's being done on that lot. He reiterated, the flood water needs to be addressed as to what's going on with that to keep everyone safe in Country Bluff Estates.

Mayor Akers asked for comments from the Board. Discussion. Mayor Akers closed the public hearing. Mayor Akers asked for a motion approving Bill No. 5782. 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 and Castillon. Nays: none. Absent: Milton. Motion carried.

BILL NO. 5783

Approving an agreement with Missouri American Water Company for Water Termination Services.

First Reading of Bill No. 5783, an ordinance approving an agreement with Missouri American Water Company for Water Termination 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 Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5783. Alderman Simmons 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. No discussion. Voting aye: McConnell, Clonts, Simmons, Skains and Castillon. Nays: none. Absent: Milton. Motion carried.

BILL NO. 5784

Approving an agreement with Missouri American Water Company for the purchase of Water Usage Data.

First Reading of Bill No. 5784, an ordinance approving an agreement with Missouri American Water Company for the purchase of Water Usage Data 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. 5784. 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 and Castillon. Nays: none. Absent: Milton. Motion carried.

BILL NO. 5785

Accepting the proposal of MTS Contracting Inc. for sandblasting and painting of the Branson Lakeside RV Park shower house and restroom for the City of Branson.

First Reading of Bill No. 5785, an ordinance accepting the proposal of MTS Contracting Inc. for sandblasting and painting of the Branson Lakeside RV Park shower house and restroom for the City of Branson and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Parks and Recreation Director Cindy Shook. Mayor Akers asked for a motion approving Bill No. 5785. Alderman Castillon so moved, seconded by Alderman McConnell. 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 Castillon. Nays: none. Absent: Milton. Motion carried.

BILL NO. 5786

Amending the adopted 2020 Budget for the City of Branson, to adjust monies for the General Fund.

First Reading of Bill No. 5786, an ordinance amending the adopted 2020 Budget for the City of Branson, to adjust monies for the General 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. 5786. Alderman Simmons 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 and Castillon. Nays: none. Absent: Milton. Motion carried.

BILL NO. 5787

Approving the Facility Use Agreement with Ballparks of America, LLC.

First Reading of Bill No. 5787, an ordinance approving the Facility Use Agreement with Ballparks of America, LLC and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by City Attorney Chris Lebeck and Paul Satterwhite of Ballparks of America, LLC. Mayor Akers asked for a motion approving Bill No. 5787. Alderman Castillon so moved, seconded by Alderman McConnell. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter.

Michael Solonik, Hamilton, New Jersey, introduced himself as the Cal Ripken World Series Director with Babe Ruth League, Inc. He commented it's been a few months' process trying to figure out who their new partners would be and since Mr. Satterwhite and his team have stepped up, he's gotten to know them. Mr. Solonik explained his company is also on a time crunch as it has 10 international countries coming in which have to figure out their travel arrangements. He mentioned his company has about 3,000 hotel room nights and 10 U.S. teams already qualified, but are just waiting to book travel. He commented as far as the facility use with the community, the Babe Ruth League orchestrated the donation of a video board to the complex with the previous owners. He explained the spirit of that was they wanted to be good community supporters and be a part of groups that need to do something there; whether with movie nights, concerts or things like that. After speaking with Mr. Satterwhite, he believes he shares that same vision and with regards to the time crunch, he'd like to show support for his request.

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

DISBURSEMENTS

Mayor Akers stated the next item is the review of disbursements [(November 22, 2019 through January 16, 2020) See Master File for copies of disbursements] Mayor Akers asked if there were any questions regarding the disbursements. Discussion. Mayor Akers asked for a motion to acknowledge the receipt of disbursements from November 22, 2019, through January 16, 2020. Alderman Skains so moved, seconded by Alderman Simmons. Mayor Akers asked for any comments. No discussion. Voting aye: McConnell, Clonts, Simmons, Skains and Castillon. Nays: none. Absent: Milton. Motion carried.

MAYOR/ALDERMEN/ADMINISTRATOR'S REPORTS

Alderman Skains thanked Jeff Seifried and everyone from the CVB involved with the Black Tie Gala which he felt it was first class. He mentioned seeing a lot of tears from people who were justly presented awards and recognized. Alderman Skains felt it was wonderful and he thanked all the sponsors as he greatly appreciates what they did.

Alderman Castillon agreed with Alderman Skains' comments and feels the CVB did a great job on the Black Tie Gala. He congratulated Alderman McConnell on his wedding and mentioned he will find out next Friday when he's having surgery and he will be out of operation up to 8 weeks.

City Administrator Stan Dobbins commended the Parks and Recreation Department for the work they've done on the Awberry Restroom. He explained they completely re-did the plumbing under the building and reported it's working far better and will reduce the costs of repair issues due to clogging. He added, they saved the City a considerable amount of money by doing it in-house; it was hard work in lousy weather and he can't thank them enough for what they did.

Mayor Akers said there has been some confusion over defining conflict of interest and he asked City Administrator Stan Dobbins to put together information for clarification and discussion. He announced the year-end figures will be coming in soon and he's anxious to see how the City ended up. Mayor Akers explained he'll have a state of the City report as soon as those figures are finalized and mentioned he'll miss next week's Study Session.

ADJOURN

Mayor Akers asked for a motion to adjourn. Alderman Castillon moved to adjourn, seconded by Alderman Skains. Voting aye: McConnell, Clonts, Simmons, Skains and Castillon. Nays: none. Absent: Milton. Motion carried. Meeting adjourned at 8:20 p.m.

_____
E. Edd Akers
Mayor

_____
Lisa Westfall
City Clerk

M I N U T E S

HUMAN RESOURCES COMMITTEE
CITY OF BRANSON, MISSOURI
January 15, 2020

1) **Call to Order**
The Human Resources Committee met in the Fishbowl of City Hall, Wednesday, January 15, 2020. 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, and Alderman Rick Castillon. There is a quorum.

Also present: Assistant City Administrator John Manning, Human Resources Director Jan Fischer, Kimberly Cooper, Bob Smither, Kelly Farner, Gina Stech, Chena Simmons, Melody Pettit, Chad Forster, Tim Connell, Ted Martin, Jamie Rouch and Traci Henderson.

Conference call: Nathan Covey and Anita Ford.

3) **Acknowledgement of November 27, 2019 Minutes.**
Motion to approve: City Administrator Stan Dobbins; Second: Alderman Rick Castillon; Vote: 4 yes, 0 no.

4) **Discussion of New Hires/Promotions/Reclassifications.**
Discussion led by Human Resources Director Jan Fischer.

5) **Update on Factors for Performance Appraisals for City Employees.**
Discussion introduced by Jan Fischer.

Factors employees are evaluated on have been decreased to a more manageable and more appropriate number and Engagement/Attitude has been implemented as an additional factor in evaluating employees.

6) **Discussion of Cyber Liability and Cyber Risk Mitigation.**
Discussion introduced by Bob Smither; led by Chad Forster, Nathan Covey, Tim Connell and Anita Ford. Discussion among committee members regarding the balance of insurance and infrastructure for cyber liability and cyber risk mitigation.

Recommendation to move forward with increase to $10M coverage for cyber security: City Administrator Stan Dobbins; Second: Alderman Rick Castillon; Vote 4 yes, 0 no.

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

Safety update given by Bob Smither.

8) **Human Resources Director's Report.**
Update given by Jan Fischer. Only employees who changed insurance plans at open enrollment will receive new insurance cards. A new committee member search to replace community member Joshua Allen has been implemented. The Board approved Human Resources Manual Articles 6, 7, 8, 13 regarding substance abuse and equal employment. The committee was informed that Sergeant testing for the Police Department will begin soon.

M I N U T E S

HUMAN RESOURCES COMMITTEE
CITY OF BRANSON, MISSOURI
January 15, 2020

9) Adjourn.
Motion to adjourn: Alderman Rick Castillon; Second: City Administrator Stan Dobbins; Vote: 4 yes, 0 no.
Time Adjourned: 11:00 a.m.

BILL NO. 5781

STAFF REPORT

ITEM/SUBJECT: **READING OF A BILL APPROVING THE ANNEXATION OF THE PROPERTY LOCATED AT 150 GUNNER HILL LANE, BRANSON, MISSOURI.**

INITIATED BY: **PLANNING & DEVELOPMENT DEPARTMENT**

FIRST READING: **FEBRUARY 11, 2020** **FINAL READING:** **FEBRUARY 25, 2020**

EXECUTIVE SUMMARY:

- A petition for annexation from Mark Ruda on behalf of Table Rock at Branson, Inc. for this property was formally presented to the Board of Aldermen on January 28, 2020.
- This is the Public Hearing concerning this request in addition to its first reading. The date set for this hearing is in accordance with the RSMo requirement of no less than 14 days and not more than 60 days after the petition was received by the Board of Aldermen.
- The approximately 16.5 acre property is currently vacant, but is proposed to be developed similar to the adjacent development, the Lodges at Chateau Cove, with nightly rental vacation homes. It is located on the west side of Missouri State Highway 265 at the intersection of Gunner Hill Lane.
- Staff has reviewed the file and determined the property is contiguous with existing city limits. Staff has also determined there will be minimal impact created from the annexation of this property.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

_X_ **Recommended**
____ **Not Recommended**
____ **Neutral/None**

COMMUNITY PLAN 2030: LU-2: Annexation.

ATTACHED EXHIBITS:

1) Petition for Annexation
2) Vicinity Map
3) Departmental Comments

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 16th 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]

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

ACKNOWLEDGMENT OF PROPERTY OWNER

STATE OF MISSOURI)
) SS.
COUNTY OF TANEY)

On this 16th 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.

Karen E. Vejraska
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

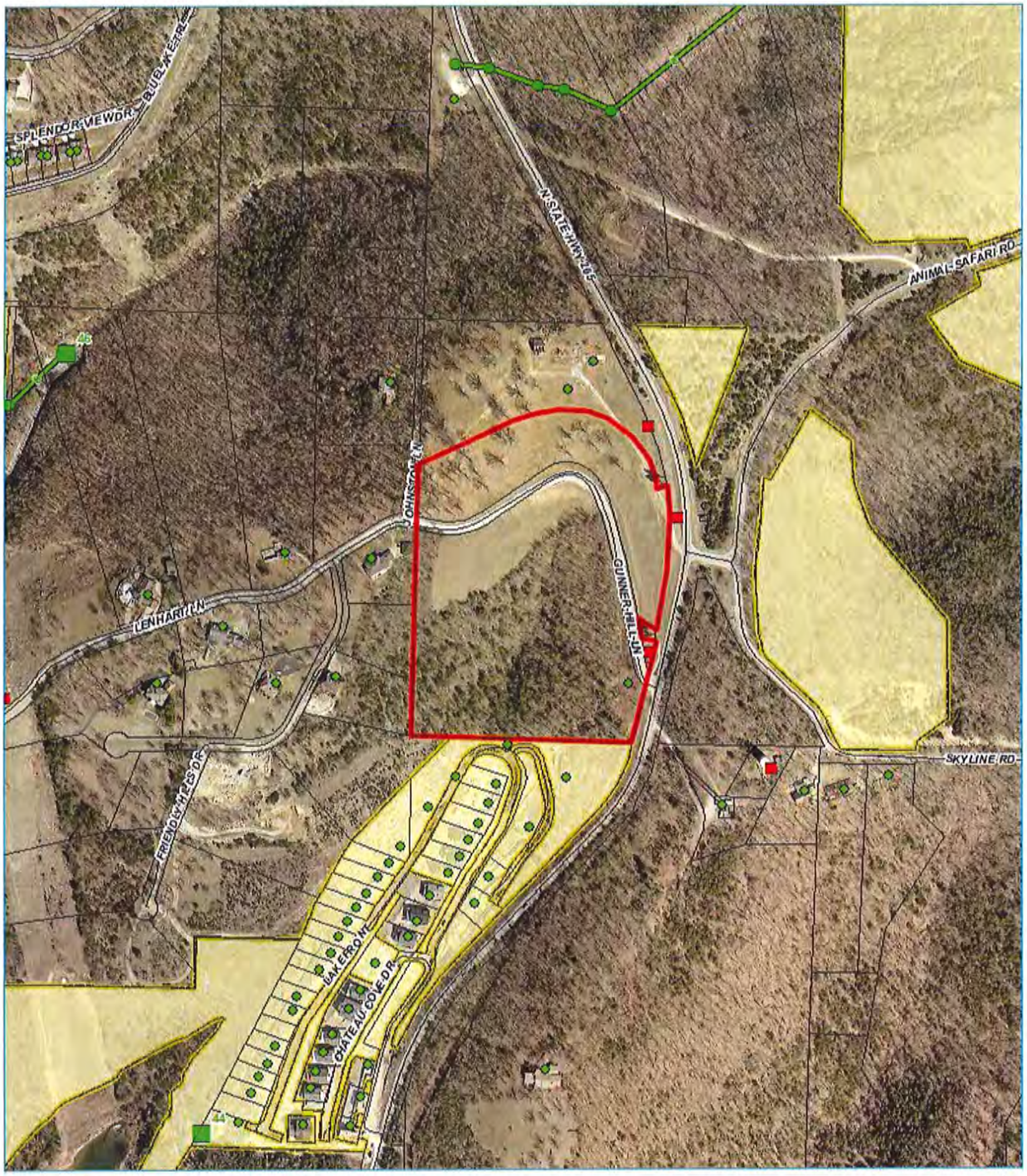
EXHIBIT 'A'

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 177.61FEET (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.

2) VICINITY MAP



N

City of Branson
Planning & Development
January 16, 2020

150 Gunner Hill Ln

Fire Department					
Located in Planned Growth Area		**Serviced Impact**		**Budget Impact**	
Yes	X	**None**	____	**None**	____
No	____	**Minimal**	X	**Minimal**	X
		Significant	____	**Significant**	____
Comments: The proposed property will be 3 miles from the proposed station 4 and 3 miles from existing station 3. Meeting the fire hydrant spacing and flow requirements (1,500 gpm) is critical for the property.					
Name: Randy Fogle				**Date: 1/27/2020**	

Police Department					
Located in Planned Growth Area		**Serviced Impact**		**Budget Impact**	
Yes	____	**None**	____	**None**	____
No	____	**Minimal**	____	**Minimal**	____
		Significant	____	**Significant**	____
Comments: No comments provided.					
Name:				**Date:**	

Engineering/Public Works Department					
Located in Planned Growth Area		**Serviced Impact**		**Budget Impact**	
Yes	X	**None**	____	**None**	____
No	____	**Minimal**	X	**Minimal**	X
		Significant	____	**Significant**	____
Comments: After talking to Devon Huff, Taney County maintains Gunner Hill Ln. from Hwy 265 to the first street intersection. If the street is to be annexed into the city it will have to be brought up to City Standards. All Stormwater and detention shall be met.					
Name: Keith Francis				**Date: 1/24/2020**	

Planning and Development Department					
Located in Planned Growth Area		**Serviced Impact**		**Budget Impact**	
Yes	X	**None**	X	**None**	X
No	____	**Minimal**	____	**Minimal**	____
		Significant	____	**Significant**	____
Comments: The property is adjacent to City limits and therefore is eligible for annexation. The property is a continuation of a development that has recently annexed in within the last several months.					
Name: Perry Eckhardt				**Date: 1/28/2020**	

Utilities Department					
Located in Planned Growth Area		**Serviced Impact**		**Budget Impact**	
Yes	X	**None**	____	**None**	____
No	____	**Minimal**	X	**Minimal**	X
		Significant	____	**Significant**	____
Comments: Sewer is accessible from the property to the south and must be extended, at their own expense, to service the subject property including the portion north of Gunner Hill Ln. Also, at their own expense and as necessary, capacity upgrades to the existing receiving lift station. The public sewer infrastructure must be donated as capital by the property owner to the city. Public water is served through Missouri American.					
Name: Tara Norback				**Date: 1/28/2020**	

BILL NO. 5781 **ORDINANCE NO. _____**

AN ORDINANCE APPROVING THE ANNEXATION OF THE PROPERTY LOCATED AT 150 GUNNER HILL LANE, BRANSON, MISSOURI.

WHEREAS, on January 16, 2020, a verified petition signed by all the owners of the real estate hereinafter described requesting annexation of said territory into the City of Branson, Missouri, was filed with the City Clerk; and

WHEREAS, said real estate as hereinafter described is adjacent and contiguous to the present corporate limits of the City of Branson, Missouri; and,

WHEREAS, a public hearing concerning said matter was held at the City Hall in Branson, Missouri, at the hour of 6:00 pm on February 11, 2020; and,

WHEREAS, notice of said Public Hearing, was given by publication of notice thereof, on Saturday, January 22, 2020, in the Branson Tri-Lakes News, a weekly newspaper of general circulation in the County of Taney, State of Missouri; and

WHEREAS, at said Public Hearing, all interested persons, corporations or political subdivisions were afforded the opportunity to present evidence regarding the proposed annexation; and,

WHEREAS, no written objection to the proposed annexation was filed with the Board of Aldermen of the City of Branson, Missouri within fourteen days after the public hearing; and

WHEREAS, the Board of Aldermen of the City of Branson, Missouri does find and determine that said annexation is reasonable and necessary to the proper development of the city; and

WHEREAS, the City of Branson, Missouri is able to furnish normal municipal services to said area within a reasonable time after annexation; now

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

Section 1: Pursuant to the provision of Section 71.012 RSMo the following described real estate is hereby annexed into the City of Branson, Missouri, to wit:

See Exhibit 'A'

Section 2: The boundaries of the City of Branson, Missouri, hereby are altered so as to encompass the above described tract of land lying adjacent and contiguous to the present corporate limits.

Section 3: The City Clerk of the City of Branson hereby is ordered to cause three certified copies of this Ordinance to be filed with the Taney County Clerk.

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 _____ 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:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CLL #51831 2/4/20
Chris Lebeck #51831
City Attorney

EXHIBIT 'A'

150 Gunner Hill Lane

Parcel ID # 18-2.0-10-001-003-002.000

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 177.61FEET (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.

BILL NO. 5782

STAFF REPORT

ITEM/SUBJECT: **READING OF A BILL APPROVING THE ANNEXATION OF THE PROPERTY LOCATED AT 3855 FALL CREEK ROAD, BRANSON, MISSOURI.**

INITIATED BY: **PLANNING & DEVELOPMENT DEPARTMENT**

FIRST READING: **FEBRUARY 11, 2020** **FINAL READING:** **FEBRUARY 25, 2020**

EXECUTIVE SUMMARY:

- A petition for annexation from Dan Ruda on behalf of Fountains on Fall Creek, LLC for this property was formally presented to the Board of Aldermen on January 28, 2020.
- This is the Public Hearing concerning this request in addition to its first reading. The date set for this hearing is in accordance with the RSMo requirement of no less than 14 days and not more than 60 days after the petition was received by the Board of Aldermen.
- The approximately 55 acre property is currently vacant except for a small, single-family residence built in 1954 per Taney County records. It is proposed to be developed with a mix of housing types, including affordable housing which will utilize Missouri Housing Development Commission (MHDC) awarded funds. The property is located on the south side of Fall Creek Road and west of the Country Bluff Estates Subdivision.
- Staff has reviewed the file and determined the property is contiguous with existing city limits. Staff has also determined there will be minimal impact created from the annexation of this property.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

_X_ **Recommended**
____ **Not Recommended**
____ **Neutral/None**

COMMUNITY PLAN 2030: LU-2: Annexation.

ATTACHED EXHIBITS:

1) Petition for Annexation
2) Vicinity Map
3) Departmental Comments

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 16th 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.

Karen E. Vejraska
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

ACKNOWLEDGMENT OF PROPERTY OWNER

STATE OF Missouri)
) **SS.**
COUNTY OF Taney)

On this 16th 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

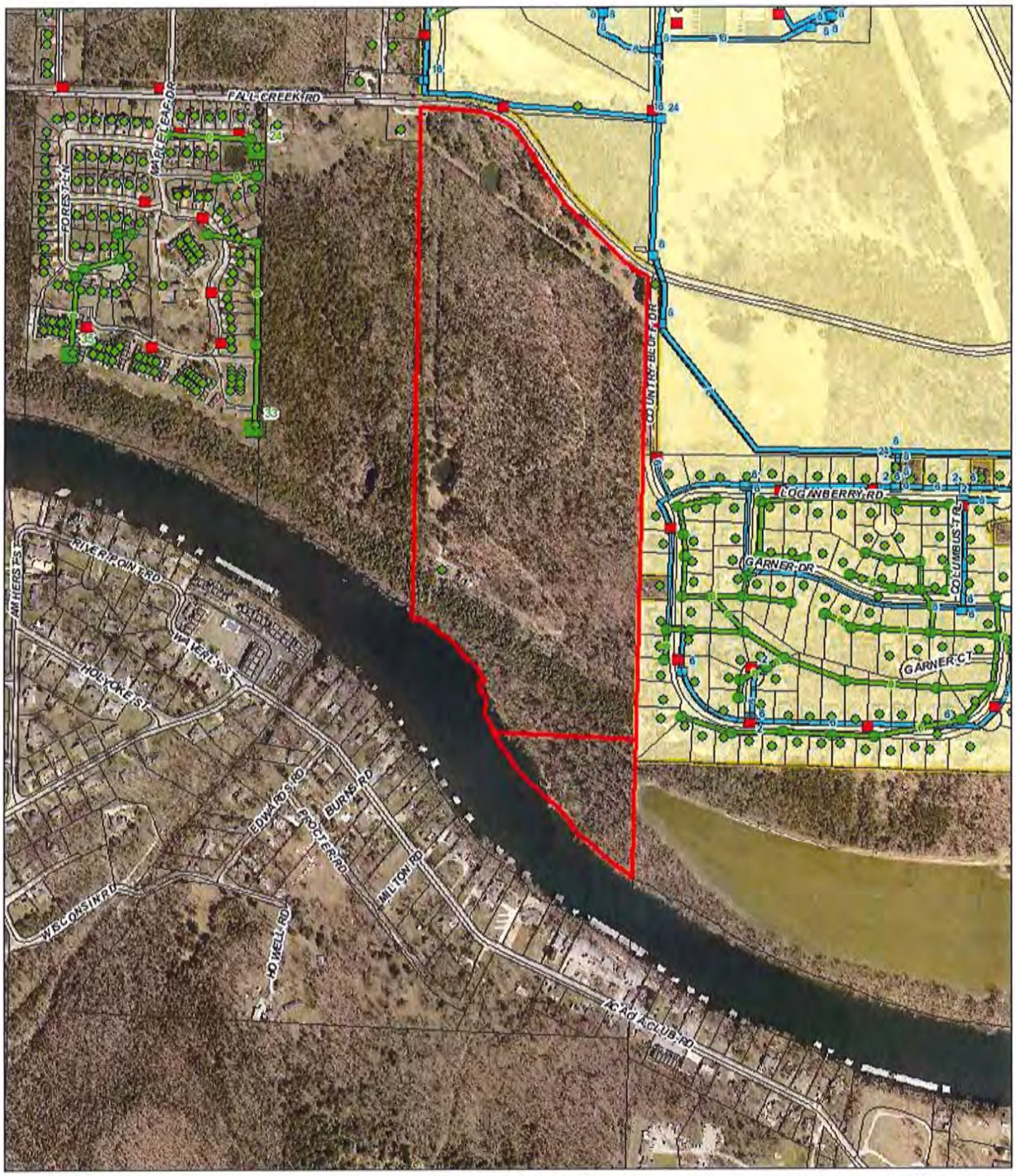
My Commission Expires:

April 8, 2023

[SEAL]

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

2) VICINITY MAP



N

City of Branson
Planning & Development
January 16, 2020

3855 Fall Creek Rd

Fire Department					
Located in Planned Growth Area		**Serviced Impact**		**Budget Impact**	
Yes	X	**None**	_____	**None**	_____
No	_____	**Minimal**	X	**Minimal**	X
		Significant	_____	**Significant**	_____
Comments: Meeting the fire hydrant spacing and flow requirements (1,500 gpm) is critical for this property.					
Name: Randy Fogle				**Date: 1/27/2020**	

Police Department					
Located in Planned Growth Area		**Serviced Impact**		**Budget Impact**	
Yes	_____	**None**	_____	**None**	_____
No	_____	**Minimal**	_____	**Minimal**	_____
		Significant	_____	**Significant**	_____
Comments: No comments provided.					
Name:				**Date:**	

Engineering/Public Works Department					
Located in Planned Growth Area		**Serviced Impact**		**Budget Impact**	
Yes	X	**None**	_____	**None**	_____
No	_____	**Minimal**	X	**Minimal**	X
		Significant	_____	**Significant**	_____
Comments: Fall Creek Road is maintained by Taney County. If the Fountains on Fall Creek construct private or public streets they shall be designed and constructed to current City standards. Development shall meet all stormwater drainage and detention requirements.					
Name: Keith Francis				**Date: 1/24/2020**	

Planning and Development Department					
Located in Planned Growth Area		**Serviced Impact**		**Budget Impact**	
Yes	X	**None**	X	**None**	X
No	_____	**Minimal**	_____	**Minimal**	_____
		Significant	_____	**Significant**	_____
Comments: The property is adjacent to City limits and therefore is eligible for annexation. The applicant has been awarded grants/credits to provide affordable housing, a housing need identified by the City.					
Name: Perry Eckhardt				**Date: 1/28/2020**	

Utilities Department					
Located in Planned Growth Area		**Serviced Impact**		**Budget Impact**	
Yes	X	**None**	_____	**None**	_____
No	_____	**Minimal**	X	**Minimal**	X
		Significant	_____	**Significant**	_____
Comments: Water and sewer are located to the east. The subject property shall extend the public water and sewer main, at their own expense, to property boundary and any interior boundaries to fully service the current and future parcels. Also, at their own expense and as necessary, capacity upgrades to the existing receiving lift station. Both public water and sewer infrastructure must be donated as capital by the property owner to the city.					
Name: Tara Norback				**Date: 1/28/2020**	

BILL NO. 5782 **ORDINANCE NO. _____**

AN ORDINANCE APPROVING THE ANNEXATION OF THE PROPERTY LOCATED AT 3855 FALL CREEK ROAD, BRANSON, MISSOURI.

WHEREAS, on January 16, 2020, a verified petition signed by all the owners of the real estate hereinafter described requesting annexation of said territory into the City of Branson, Missouri, was filed with the City Clerk; and

WHEREAS, said real estate as hereinafter described is adjacent and contiguous to the present corporate limits of the City of Branson, Missouri; and,

WHEREAS, a public hearing concerning said matter was held at the City Hall in Branson, Missouri, at the hour of 6:00 pm on February 11, 2020; and,

WHEREAS, notice of said Public Hearing, was given by publication of notice thereof, on Tuesday, January 18, 2020, in the Branson Tri-Lakes News, a weekly newspaper of general circulation in the County of Taney, State of Missouri; and

WHEREAS, at said Public Hearing, all interested persons, corporations or political subdivisions were afforded the opportunity to present evidence regarding the proposed annexation; and,

WHEREAS, no written objection to the proposed annexation was filed with the Board of Aldermen of the City of Branson, Missouri within fourteen days after the public hearing; and

WHEREAS, the Board of Aldermen of the City of Branson, Missouri does find and determine that said annexation is reasonable and necessary to the proper development of the city; and

WHEREAS, the City of Branson, Missouri is able to furnish normal municipal services to said area within a reasonable time after annexation; now

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

Section 1: Pursuant to the provision of Section 71.012 RSMo the following described real estate is hereby annexed into the City of Branson, Missouri, to wit:

See Exhibit 'A'

Section 2: The boundaries of the City of Branson, Missouri, hereby are altered so as to encompass the above described tract of land lying adjacent and contiguous to the present corporate limits.

Section 3: The City Clerk of the City of Branson hereby is ordered to cause three certified copies of this Ordinance to be filed with the Taney County Clerk.

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 _____ 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:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CQLL #51831 2/4/20
_____
Chris Lebeck #51831
City Attorney

EXHIBIT 'A'

3855 Fall Creek Road

Parcel ID # 18-1.0-12-004-001-002.000 and 18-6.0-13-001-001-001.000

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.

BILL NO. 5783

STAFF REPORT

ITEM/SUBJECT: **READING OF A BILL APPROVING AN AGREEMENT WITH MISSOURI AMERICAN WATER COMPANY FOR WATER TERMINATION SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

INITIATED BY: **UTILITIES DEPARTMENT**

FIRST READING: **FEBRUARY 11, 2020** **FINAL READING:** **FEBRUARY 25, 2020**

EXECUTIVE SUMMARY:

- Missouri American Water Company (MAWC) supplies public drinking water to residents and businesses in the southwestern section of Branson including areas such as Pointe Royale, Fall Creek Resort, Table Rock Acres, Table Rock Village, Chateau on the Lake, Majestic Point, Whisper Cove and other locations in that general area. The City of Branson provides sanitary sewer service in these same areas.
- The City has maintained an agreement with MAWC since 2013 for MAWC to provide water termination services to their water customers, when necessary, due to nonpayment of City sewer bills in accordance with guidelines established under RSMo Chapter 393.
- Under this agreement MAWC will, at the request of the city, provide water termination to their water customer if that customer is connected to the City of Branson sewer system and has failed to pay their City sewer bill, following all attempts by the City to collect the unpaid charges through the City's billing and delinquent notification process as outlined in Chapter 90 of the City's municipal code.
- MAWC will charge the City for their costs to perform the water termination service as allowed in State statute. Cost incurred by the City for each individual termination service will in turn be passed on to the customer responsible for nonpayment of their sewer bill.
- Water service will be restored to the customer by MAWC following the City's receipt of the required payment for sewer services and reimbursement to the City for the MAWC termination charges which are assessed and allowed by statute.
- If approved, the agreement for this service will be for the fiscal year 2020 period. Applicable fee amounts and stipulations and are indicated in the Agreement Fee Schedule.

FINANCIAL IMPACT:

___ **No impact/Not applicable**
_X_ **Budgeted in the 2020 budget**
___ **Other (see additional explanation)**

STAFF RECOMMENDATION:

_X_ **Recommended**
____ **Not Recommended**
____ **Neutral/None**

COMMUNITY PLAN 2030: EI 1.2.12

ATTACHED EXHIBITS:

BILL NO. 5783 **ORDINANCE NO. _____**

AN ORDINANCE APPROVING AN AGREEMENT WITH MISSOURI AMERICAN WATER COMPANY FOR WATER TERMINATION SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

WHEREAS, the City of Branson charges a monthly fee for sewer services to customers both inside and outside the City limits and the City desires for Missouri American Water Company to provide water termination for non-payment of sewer bills to City sewer customers connected to the Missouri American Water system; and

WHEREAS, Missouri American Water Company provides water services to residents which includes customers connected to the City of Branson sewer collection system and is authorized under State statute, at the request and direction of the City of Branson, to terminate water services at any premises, at which the sewer bill is unpaid; 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 an agreement with Missouri American Water Company for water termination services and authorizes the Mayor to execute the contract attached hereto as Exhibit "1".

Section 2: This ordinance shall be in full force and effect 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:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CL #51831 2/4/20
_____
Chris Lebeck #51831
City Attorney

TERMINATION OF WATER SERVICE AGREEMENT

Made as of the 23rd day of January, 2020 between the City of Branson, Missouri, ("City"), and MISSOURI-AMERICAN WATER COMPANY, a Missouri corporation, ("MAWC").

WHEREAS, the City is engaged in supplying sewer service to the citizens and residents of the City and the adjacent area; and

WHEREAS, the City charges a fee for such sewer services and bills such fee on a periodic basis to its citizens and residents so served; and

WHEREAS, the City is obligated to collect delinquent sewer bills from its citizens and residents so served; and

WHEREAS, MAWC is the owner and operator of a water distribution system serving customers of the City, subject to the laws of the State of Missouri and the Jurisdiction, Rules and Regulations of the Missouri Public Service Commission ("Commission"); and

WHEREAS, MAWC is authorized, at the request and direction of the City pursuant to the provision of Section 393.015 of the Revised Statutes of the State of Missouri, to terminate water service and discontinue the supply of water from its system to any premises, at which the sewer bills for sewer service supplied by the City are unpaid;

NOW THEREFORE, in consideration of the covenants hereinafter expressed, the parties hereto do mutually agree as follows:

1. When in the course of its business, the City determines, pursuant to state statute, that City sewer charges remain unpaid and are in arrears for more than thirty (30) days after rendition of a written notice of such charges to its sewer customer, the City shall submit a request, in a format specified by MAWC, TO MAWC to terminate water service to the City's sewer customer until such time as the sewer charges and all related costs are paid, and with such request, the City shall provide customer-identifying information as specified by MAWC. With such request, the City certifies:

    (A) that said sewer customer's sewer charges are in arrears for more than thirty (30) days after the City sends written notice;

    (B) that said sewer customer has been afforded written notice of: (1) the arrearage amount and, (2) the City's intent to terminate sewer services by means of a request to MAWC to discontinue said City sewer customer's water service;

    (C) that the City's sewer customer has been afforded a right to be heard on the correctness of the City's record of arrearage;

(D) that all Federal and State Constitutional as well as all Federal and State statutory pre-requisites applicable to the collection of debt have been properly satisfied by the City;

(E) that the City has complied with its own ordinance and procedures.

2. Upon receipt of the termination request as set out in Paragraph 1, the City and MAWC will arrive at a mutually agreeable date where an employee of MAWC, along with an authorized representative of the City, shall go to the premises identified by the City. After the representative of the City advises any responding person present at such premises that water service will be terminated at the request of the City due to non-payment of sewer bills, the employee of MAWC shall terminate the water service to such premises. Provided however, MAWC shall not be required to terminate such water service in the event its customer at the premises as identified by the City is a person or entity other than the City's sewer customer.

3. At the requested direction of the City, MAWC shall restore water service to the premises of the City's sewer customers whose water service has been terminated as herein provided. However, notwithstanding anything to the contrary herein stated or implied, MAWC may restore water service to any premises where the water service has been terminated as herein provided upon the bonafide application for water service by any person or entity other than the City's sewer customer whose water service was terminated at such premises.

   Water restoration shall be attempted but not guaranteed during normal working hours on Monday through Friday (hereinafter "Standard Restoration"). Unless otherwise specified by the City, restoration will be attempted but not guaranteed on the same day for instructions received from the City prior to 3:00 p.m. Monday through Friday, and on the next day for instructions received later in the day. Requests for restoration outside of normal working hours (or after 3:00 p.m. on Friday) may be accepted at the discretion of MAWC. If MAWC agrees to restore service outside of normal working hours, an extra charge shall apply (hereinafter "After Hours Restoration").

4. If new City sewer customers which are also MAWC customers do not pay the City a required sewer service deposit with 60 days of receiving sewer service, MAWC shall terminate water service to that premise following the same required notifications as that for non-payment of sewer service.

5. Inapplicable PSC Notice Requirements. All notice and complaint procedures specified in 4 CSR 240, and Chapter's 386 and 393 RSMo, which apply to customer rights to utility service from a regulated utility, SHALL NOT APPLY to termination instructions issued by the City pursuant to this Agreement. All notice, complaint procedures and

administrative consumer remedies, to the extent that they may exist or be alleged to exist, shall be the responsibility of the City.

6. The City and MAWC shall establish a mutually beneficial schedule and procedure pertaining to the filling and processing of the City's requests for termination of water service as herein provided so as to not unduly restrict, interfere with or impede MAWC from performing its duties and responsibilities in providing water service to its customers. Notwithstanding anything to the contrary herein stated, MAWC reserves the exclusive right at its sole discretion to process the City's requests for termination of water service on such schedules and at such times as are convenient to MAWC consistent with MAWC's normal business practice and procedure.

7. The City shall pay MAWC to cover MAWC's cost of terminating or restoring the water supply for each premises identified by the City and each visit to such premises. The termination fees, Standard Restoration fees and After Hours Restoration fees are set forth in the fee schedule, attached as Exhibit A. MAWC will bill the City periodically for these fees, and the City shall pay each such bill within thirty (30) days after the date of the bill. Such amount shall not be subject to refund for any reason. In the event that more than one hour is required for either the termination or restoration of water service to any such premises, the City shall pay the actual costs thereof to MAWC based on time, material, transportation and other fixed charges. Bills for actual costs are payable within (30) days after the date of the bill.

   If MAWC makes a reasonable attempt to terminate or restore water service and is unsuccessful because of address inadequacies, inoperable or damaged facilities, danger to any employee or any other reason beyond MAWC's reasonable control, the fees identified in Exhibit A will be charged for the attempt. Thereafter, the parties will attempt to determine an alternative course of action acceptable to both parties, which shall be reduced to a written instruction from the City to MAWC and, until that time, MAWC shall be absolved from its time requirements for action.

8. In addition to the fees set out in Paragraph 7, at the option of MAWC, MAWC can require the City to pay for the estimated loss of water revenues resulting from each such termination made hereunder. Such estimated loss of water revenues shall be based upon the actual period of time during which the supply of water is discontinued in each instance and the average water revenue received by MAWC for a like period of time during the year prior to such termination from the class of customer involved in each instance, as determined from the books and records of MAWC. The estimated loss of revenue shall be billed by MAWC to the City periodically at the same times as MAWC would have billed the customer if the water service had not been terminated, and the City shall pay each such bill within thirty (30) days of receipt thereof. Notwithstanding anything to the contrary herein stated, the City's obligation to pay to MAWC the estimated loss of water revenues resulting from each termination made hereunder, shall

not exceed the average water revenue received by MAWC during one billing period for each such termination.

9. MAWC shall not be liable for any loss, damage or other claim asserted by the City's sewer customers, the owner and/or tenant of the premises, the water customer, the City or any other person, corporation, or entity based upon or arising from the termination of water service at the request of the City. Moreover, the City will be responsible for any damages to MAWC's property arising from the parties' actions fulfilling their obligations under this Agreement. To the extent permitted by law, the City agrees to indemnify, defend and hold MAWC harmless from and against any and all claims, complaints or causes of action arising out of actions taken by MAWC, other than those resulting from MAWC's negligence, pursuant to any of the City's "Instruction to Terminate Service." Because MAWC is providing a service to the City at cost and has no incentive whatsoever to take the risk of claims, complaints or causes of action arising out of actions taken pursuant to this Agreement, if the City at any time asserts that it is not permitted by law to indemnify MAWC under the provisions of this Paragraph, or is limited in the extent of its indemnification, or for any other reasons takes the position that MAWC must defend itself or be responsible for some or all costs arising from such claims, all MAWC obligations under this Agreement shall terminate as of that date.

10. The City shall handle all customer communications regarding service terminations implemented pursuant to this Agreement, including any face-to-face communications at the premises at the time MAWC is terminating or restoring water service. Communications from customers to MAWC shall be referred and directed to the City.

11. MAWC's actions required under this Agreement shall be excused if due to matters beyond its control, including but not limited to: employee work stoppages, strikes, inclement weather, emergencies, or where MAWC's utilization of manpower or resources are required elsewhere. Termination will not be completed if a local board of health, municipality, fire district, court of competent jurisdiction or other governmental entity having jurisdiction issues an instruction to MAWC so stating. At such time, MAWC will relay such conflicting instructions to the City, and MAWC will not knowingly take further actions toward termination until City notifies MAWC in writing that it has resolved the conflicting instructions. Thereafter, the City shall indemnify, defend and hold MAWC harmless, to the extent permitted by law, for actions taken by MAWC based on the City's notification.

    In no event shall MAWC be required to disconnect a fire line service without authorization from the governmental City responsible for fire protection to the affected property, even in cases of combined fire and domestic service lines.

12. To the extent that this Agreement becomes the subject of any regulatory proceeding before the Commission and the Commission produces a determination that alters the terms or fees set forth in this Agreement, either party may terminate the Agreement with

notice to the other party, or the parties may agree to amend the Agreement consistent with any Commission directive or order.

13. The initial term of this Agreement shall be until December 31, 2020. Thereafter, it will continue on a calendar year basis, from year to year, dependent upon budget appropriations and with approval from the Board of Aldermen, unless terminated by either of the parties giving thirty (30) days written notice to the other party at its principal place of business.

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

CITY OF BRANSON, MISSOURI

_____

E. Edd Akers, Mayor

ATTEST:

_____

Lisa K Westfall, City Clerk

APPROVED AS TO FORM:

CL #51831 12/20/15

Chris Lebeck #51831, City Attorney

MISSOURI-AMERICAN WATER COMPANY

ATTEST:

Mary Beth Hercules
Assistant Secretary

By: Grant A. Evitts

~~Greg Weeks~~ – Vice President of Operations
Grant Evitts

EXHIBIT A

FEE SCHEDULE*

Standard Termination or Restoration per metered connection, including unsuccessful attempts	$28.50
After Hours Restoration per metered connection, including unsuccessful attempts	$131.00

**Any terminations or restorations requiring more than one hour for the services will be billed actual costs per the Agreement.

BILL NO. 5784

STAFF REPORT

ITEM/SUBJECT: **READING OF A BILL APPROVING AN AGREEMENT WITH MISSOURI AMERICAN WATER COMPANY FOR THE PURCHASE OF WATER USAGE DATA AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

INITIATED BY: **UTILITIES DEPARTMENT**

FIRST READING: **FEBRUARY 11, 2020** **FINAL READING:** **FEBRUARY 25, 2020**

EXECUTIVE SUMMARY:

- Missouri American Water Company (MAWC) supplies public drinking water to residents and businesses in the southwestern section of Branson including areas such as Pointe Royale, Fall Creek Resort, Table Rock Acres, Table Rock Village, Chateau on the Lake, Majestic Point, Whisper Cove and other locations in that general area. The City of Branson provides sanitary sewer service in these same areas.

- Under this agreement MAWC will furnish their monthly water usage data to the City of Branson from each MAWC customer that is connected to the City's sewer system. The City's Finance Department will use the individual customer's water usage to calculate and charge for City sewer service based on the volume of water used.

- MAWC agrees to provide this data on a monthly basis during the fiscal year 2020. MAWC also agrees to hold the annual one-time fee at $3000 to assemble and provide this information for this period.

FINANCIAL IMPACT:

___ **No impact/Not applicable**
_X_ **Budgeted in the 2020 budget**
___ **Other (see additional explanation)**

STAFF RECOMMENDATION:

_X_ **Recommended**
____ **Not Recommended**
____ **Neutral/None**

COMMUNITY PLAN 2030: EI 1.2.12

ATTACHED EXHIBITS:

BILL NO. 5784 **ORDINANCE NO. _____**

AN ORDINANCE APPROVING AN AGREEMENT WITH MISSOURI AMERICAN WATER COMPANY FOR THE PURCHASE OF WATER USAGE DATA AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

WHEREAS, the City of Branson charges a monthly fee for sewer services to customers both inside and outside the City limits and the City desires for Missouri American Water Company to provide water usage data to the City for its sewer billing purposes; and

WHEREAS, Missouri American Water Company provides water services to residents which includes customers connected to the City of Branson sewer collection system and will provide water usage data to be utilized by the City to process monthly sewer bills; 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 an agreement with the Missouri American Water Company for purchase of Water Usage Data in the not to exceed amount of $3,000.00 and authorizes the Mayor to execute the contract attached hereto as Exhibit "1".

Section 2: This ordinance shall be in full force and effect 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:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CQLL #51831 2/4/20
Chris Lebeck #51831
City Attorney

MISSOURI-AMERICAN WATER COMPANY-CITY OF BRANSON WATER USAGE DATA AGREEMENT

This WATER USAGE DATA AGREEMENT (the "Agreement") is made and entered into as of the 23rd day of January, 2020 by and between Missouri-American Water Company, a Missouri corporation (hereinafter "MAWC" or the "Company"), and the City of Branson, a political subdivision established under the Constitution of the State of Missouri (hereinafter "City").

WHEREAS, MAWC provides water service to customers in Branson, Missouri, and through meter readings and estimates collects certain water usage and customer identification information for its billing purposes; and

WHEREAS, City provides sanitary sewer service to customers in Branson, Missouri, and has established charges for such service based upon customer water usage; and

WHEREAS, City has requested that MAWC provide certain water usage and customer identification information that City requires to compute and collect its sewer charges; and

WHEREAS, MAWC is willing to provide usage information in exchange for payment by the City; and

WHEREAS, MAWC is a public utility regulated by the Missouri Public Service Commission (hereinafter "Commission"); and

WHEREAS, MAWC and City desire to enter into an agreement containing specific terms and conditions of providing the water usage and customer identification data.

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MAWC and City agree as follows:

1. DATA TO BE PROVIDED MAWC agrees to make available to City water usage data relative to each of MAWC's customers in Branson, which is collected quarterly or monthly in MAWC's ordinary course of business through meter readings or lawful estimates. Each customer's water usage will be ascertained from readings obtained by some combination of either actual meter readings, postcard readings mailed in from customers, telephone readings called in by customers, or estimated readings by MAWC personnel when the foregoing are unavailable. The water usage data will cover a period of approximately 90 days for quarterly billed customers and a period of approximately 30 days for monthly-billed customers.

The water usage and customer identification data (hereinafter referred to as the "Data") shall be made available to City by MAWC on a monthly basis, and shall include the following Data:

A. Transaction information, including reading, usage and adjustment information for each customer account, as follows:

(i) Whether the reading is an actual reading or an estimate (estimates shall include office estimates performed by MAWC and reads provided by the customer):
(ii) Usage adjustment(s) with appropriate code(s) (if applicable);
(iii) Cancel read (if applicable):
(iv) Closing bill (if applicable);
(v) The reading, which shall contain at a minimum:
   a. The reading date;
   b. Days of duration;
   c. Usage amount;
   d. Reading frequency (bi-monthly, quarterly, monthly);
   e. Unit of measure (gallons, hundred gallons, hundred cubic feet, thousand gallons);
   f. Negative and positive indicator on usage; and
   g. Transaction number for each record.

B. Account and premise change information, including customer, service address and status information, as follows:
(i) Account name and mailing address (including address, city, state and zip code);
(ii) Premise address (i.e. the service address);
(iii) Status of account;
(iv) Status of premise; and
(v) Account/premise change date (if applicable).

C. Opening and closing service records, including information concerning the status of the service at the premise address, as follows:
(i) New premise;
(ii) Inactivated premise; and/or
(iii) Killed premise.

Because a City customer and a MAWC customer at a specific address may be different individuals or entities, it will be City's responsibility to discern from the Data the appropriate customer identification information for City's purposes. MAWC will not be responsible for determining which of its customers are also the City's customers. In addition, MAWC does not make any representations or warranties to City as to the accuracy, completeness or fitness for a particular purpose of the Data.

As of the date the City makes its first annual payment, City may retrieve the above Data via a secure website maintained by MAWC and all customer records made available to City are referenced by MAWC account number and premise number. To the extent MAWC intends to change the manner by which the Data will be made available to City or to change the manner in which MAWC references customer records, it shall provide City with no less than ninety (90) days' notice, per the notice provision set forth in paragraph 14 below.

2. CONFIDENTIALITY City agrees that the Data it obtains shall be used only for the purpose of computing and collecting its sewer charges, and that it shall limit the disclosure of the Data to only those officers, employees, and agents who need the Data for such purpose. City agrees to keep the Data confidential and shall not disclose, provide or sell the Data to any third party,

firm, corporation or entity, except as required by law or as otherwise provided herein. Both parties acknowledge the City's responsibility as a public body to comply with Chapter 610 of the Revised Missouri Statutes, "Governmental Bodies and Records," and that the decision to turn any records over via a public record request in compliance with that act is the City decision and the City decision alone.

3. INAPPLICABLE PSC NOTICE REQUIREMENTS All notice and complaint procedures specified in 4 CSR 240, and Chapters 386 and 393 RSMo that apply to customer rights to utility service from a regulated utility, shall not apply to action or inaction by MAWC pursuant to the Agreement or MAWC's election to enter into this Agreement. All notice, complaint procedures and administrative consumer remedies, to the extent that they may exist or be alleged to exist, shall be the responsibility of City.

4. FEES The City will pay an annual fee for MAWC to provide Data under this Agreement as set forth in the fee schedule on Exhibit A. The first annual payment will be due 30 days after the Effective Date and, thereafter, the City will be billed annually. From time to time, MAWC may bill the City for additional costs incurred to satisfy additional data requests by the City beyond the scope of data provided and covered in this Agreement. The City will pay MAWC within 30 days from receipt of any such billings. Should the City fail to pay any amounts due under the terms of this Agreement, MAWC's obligations to deliver the Data under this Agreement shall cease until such amounts are paid in full.

5. COMMISSION REVIEW To the extent that this Agreement becomes the subject of any regulatory proceeding before the Commission and the Commission produces a determination that alters the terms or fees set forth in this Agreement, impacts the Company's authorized revenues (i.e. imputes revenues to the Company), or is otherwise inconsistent with the Company's expected rate-making treatment, either party may terminate the Agreement with notice to the other party, or the parties may agree to amend the Agreement consistent with any Commission directive or order.

6. CUSTOMER COMMUNICATIONS City shall handle all customer communications regarding the implementation of this Agreement or any actions that are taken pursuant to this Agreement. Communications from customers to MAWC regarding City billings will be referred and directed to City, but MAWC will respond to reasonable requests for information from City to assist City in the handling of specific customer issues from time to time.

7. FORCE MAJEURE AND CONFLICTING REQUIREMENTS MAWC's actions required under this Agreement shall be excused due to matters beyond its control, including but not limited to employee work stoppages, strikes, inclement weather, or emergencies requiring utilization of manpower of resources elsewhere. In addition, the aforementioned information will cease to be provided if a court of competent jurisdiction or other governmental entity having jurisdiction issues an order to MAWC so requiring.

8. EXPIRATION OR TERMINATION The initial term of this Agreement shall be until December 31, 2020. Thereafter, it will continue, on a calendar year basis from year to year, dependent upon budget appropriations and with approval from the Board of Aldermen, unless terminated by either of the parties giving thirty (30) days' written notice to the other party as set forth in Paragraph 13 below.

9. SUCCESSORS AND ASSIGNS MAWC and City agree that this Agreement shall be binding upon and inure to benefit of their respective successors and assigns.

10. ENTIRE AGREEMENT This Agreement sets forth the entire understanding between the parties and fully supersedes any prior agreements or understanding between the parties relating to the subject matter set forth herein.

11. AMENDMENT Neither this Agreement, nor any term hereof may be amended, changed, modified, altered or waived except in writing executed by both City and MAWC or by an order or directive of the Commission as set forth in Paragraph 5 above.

12. AUTHORITY OF PARTIES Each party and signatory hereto has the authority to enter into this Agreement and at all times has full authority to perform this Agreement. No further approval or consent by any other person or authority is required. Upon execution of the Agreement, the City shall designate a representative to whom all inquiries from MAWC should be directed and decisions of that individual shall be final and binding on City.

13. NOTICES All notices and other communications between MAWC and City concerning this Agreement (collectively, "Notices") shall be given in writing to the addresses set forth below:

MAWC:

Missouri-American Water Company
727 Craig Road
St. Louis, MO 63141

Attn: Vice-President of Operations

With Copy to:

Missouri-American Water Company
727 Craig Road
St. Louis, MO 63141

Attn: Legal Department

City:

City of Branson

Utilities
616 W. Pacific St.
Branson, MO 65616
Attn: Utilities Director

14. CONSTRUCTION The headings or captions in this Agreement are solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

15. GOVERNING LAW To the extent a dispute arises between MAWC and City involving enforcement of this Agreement, such dispute shall be governed by the laws of the State of Missouri applicable to contracts made and performed entirely in Missouri, without regard to any principles of conflicts of law.

16. INCORPORATION OF RECITALS The Recitals are hereby incorporated into this Agreement.

17. COUNTERPARTS This Agreement may be executed in counterparts, including facsimile or photocopy counterparts, each of which shall be deemed an original, but all of which taken together shall constitute a single document.

18. EFFECTIVE DATE This Agreement shall be effective upon the date this Agreement is signed by both parties ("Effective Date").

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as the day and year first above written.

MISSOURI-AMERICAN WATER COMPANY

By Grant A. Evitts

ATTEST:

Mary Beth Hercules
Assistant Secretary

CITY OF BRANSON, MISSOURI

E. Edd Akers, Mayor

ATTEST:

Lisa K Westfall, City Clerk

APPROVED AS TO FORM:

#51831 12/20/15

Chris Lebeck, #51831 City Attorney

EXHIBIT A

FEE SCHEDULE

Annual Data Usage Rate	$3,000

BILL NO. 5785

STAFF REPORT

ITEM/SUBJECT: **READING OF A BILL ACCEPTING THE PROPOSAL OF MTS CONTRACTING INC. FOR SANDBLASTING AND PAINTING OF THE BRANSON LAKESIDE RV PARK SHOWER HOUSE AND RESTROOM FOR THE CITY OF BRANSON AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

INITIATED BY: **PARKS AND RECREATION DEPARTMENT**

FIRST READING: **FEBRUARY 11, 2020** **FINAL READING:** **FEBRUARY 25, 2020**

EXECUTIVE SUMMARY:

- Three qualified bids were received on January 15, 2020 for sandblasting and painting of the Branson Lakeside RV Park shower house and restroom. Bid results are as follows:

BIDDER	AMOUNT
Bussey's Painting Inc.	$33,969.00
CCIMW, LLC	$29.800.00
MTS Contracting Inc.	$27,640.00

- Sandblasting and painting is needed to maintain the quality of the facility and is a best practice. Sandblasting of the campground shower house is necessary to remove numerous layers of paint built up over the years. By sandblasting, new paint will better adhere and any cracks or peeling that may have developed will be repaired.

- Upkeep and maintenance of the campground shower house is important as it contributes to the satisfaction of our RV guests. Condition and cleanliness of the shower house is a major factor in our Good Sam's rating, which provides a yearly rating that many RV guests use to determine the parks they will choose to stay in.

- The campground represents the largest revenue opportunity for the Parks Department and maintaining it at a high level is a top priority.

- Staff recommends a contract be awarded to low bidder MTS Contracting Inc. for a total not to exceed $27,640.00.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

_X__ 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:

BILL NO. 5785 **ORDINANCE NO. _____**

AN ORDINANCE ACCEPTING THE PROPOSAL OF MTS CONTRACTING INC. FOR SANDBLASTING AND PAINTING OF THE BRANSON LAKESIDE RV PARK SHOWER HOUSE AND RESTROOM FOR THE CITY OF BRANSON AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

WHEREAS, the City of Branson advertised for proposals for sandblasting and painting services for the City of Branson; and

WHEREAS, of the proposals which were received, MTS Contracting Inc. has been recommended for approval by staff; and

WHEREAS, the Board of Aldermen desires to award 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 accepts the proposal of MTS Contracting Inc. for sandblasting and painting of the Branson Lakeside RV Park shower house and restroom for the City of Branson for an amount not to exceed $27,640.00.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, on this _____ day of _____, 2020.

_____
E. Edd Akers
Mayor

ATTEST:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CLL #51831 2/4/20
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 **MTS Contracting Inc.** ("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, but in any event, all of the work required hereunder shall be completed by **October 1, 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 B**, 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 **Twenty Seven Thousand Six Hundred Forty Dollars ($27,640.00), all of which is dependent upon budget approprations.**

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. **Bonds and Insurance**. The Service Provider must have and maintain, at the Service Provider'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 Service Provider'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 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.

B. 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.

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 Service Provider will require all Sub-Service Providers to provide and maintain like insurance as set forth above unless the Service Provider'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. Service Provider understands and agrees that the insurance required under the terms of the contract in no way precludes the Service Provider from carrying such other insurance as may be deemed necessary by the Service Provider for the operation of the Service Providers business or for the benefit of the Service Provider's employees.

G. Notwithstanding any other provision of the contract to the contrary, no insurance procured by the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 or mailed to the address provided.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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: _____ 1-27-20
(Signature) Date

Name: THOMAS J BURCIK
(Printed Name)

Title: VP

Company Name: MTS CONTRACTING, INC

Address: 2110 E ROCKHURST
SPRINGFIELD MO 65802

Phone: 417-865-9991

E-Mail: tombcMtscontracting.com

Tax ID: 431745990

CITY OF BRANSON, MISSOURI

_____ _____
E. Edd Akers Date
Mayor

ATTEST:

_____ _____
Lisa K Westfall Date
City Clerk

APPROVED AS TO FORM:

_____ #51831 _____ 1/22/20
Chris Lebeck #51831 Date
City Attorney

Exhibit A

MTS Contracting, Inc.
2110 E. Rockhurst St.
Springfield, MO 65802

SCOPE OF WORK

1. Purpose: MTS Contracting, Inc. agrees to provide the materials and labor to sandblast and paint Branson Lakeside RV Park shower house and restroom, located at 300 S. Boxcar Willie Dr. Branson, MO. Materials and duties are shown in the following general requirements.

2. General Requirements:

2.1 REFERENCES

A. ASTM D 16 - Terminology Relating to Paint, Varnish, Lacquer, and Related Products.

B. ASTM D 4263 - Indicating Moisture in Concrete by the Plastic Sheet Method.

C. ASTM F 1869 - Measuring Moisture Vapor Emission Rate of Concrete Subfloor Using Anhydrous Calcium Chloride.

D. International Concrete Repair Institute (ICRI) Guideline No. 03732 - Selecting and Specifying Concrete Surface Preparation for Sealers, Coatings, and Polymer Overlays.

E. SSPC-SP 1 - Solvent Cleaning.

F. SSPC-SP 6/NACE 3 - Commercial Blast Cleaning.

G. SSPC-SP 13/NACE 6 - Surface Preparation of Concrete.

2.2 DEFINITIONS

A. Definitions of Painting Terms: ASTM D 16, unless otherwise specified.

B. Dry Film Thickness (DFT): Thickness of a coat of paint in fully cured state measured in mils (1/1000 inch).

2.3 ENVIRONMENTAL REQUIREMENTS

A. Weather:
   1. Air and Surface Temperatures: Prepare surfaces and apply and cure coatings within air and surface temperature range in accordance with manufacturer's instructions.

   2. Surface Temperature: Minimum of 5 degrees F (3 degrees C) above dew point.

   3. Relative Humidity: Prepare surfaces and apply and cure coatings within relative humidity range in accordance with manufacturer's instructions.

   4. Precipitation: Do not prepare surfaces or apply coatings in rain, snow, fog, or mist.

B. Dust and Contaminants:
   1. Schedule coating work to avoid excessive dust and airborne contaminants.

   2. Protect work areas from excessive dust and airborne contaminants during coating application and curing.

2.4 MANUFACTURER

A. Tnemec Company Incorporated, 6800 Corporate Drive, Kansas City, Missouri 64120-1372. Toll Free (800) 863-6321. Phone (816) 483-3400. Fax (816) 483-3969. Web Site www.tnemec.com.

2.5 COATING SYSTEM FOR SHOWERHOUSE
A. Showerhouse and Restroom Coating
   1. System Type: Epoxy.
   2. Surface Preparation: SSPC-SP13 in accordance with a minimum of CSP-3 Filler and Surfacer: Series 215 Surfacing Epoxy as required.
   3. Primer: Tnemec Series 1254 Epoxoblock WB at 75-100 sq. ft. per gallon
   4. Intermediate: Tnemec Series 280 Tneme-Glaze at 4.0-8.0 mils dft
   5. Finish: Tnemec Series 280 Tneme-Glaze at 4.0-8.0 mils dft

2.6 ACCESSORIES

A. Coating Application Accessories:
   1. Accessories required for application of specified coatings in accordance with manufacturer's instructions, including thinners.
   2. Products of coating manufacturer.

2.7 EXAMINATION

A. Examine areas and conditions under which coating systems are to be applied. Notify Owner of areas or conditions not acceptable. Do not begin surface preparation or application until unacceptable areas or conditions have been corrected.

2.8 PROTECTION OF SURFACES NOT SCHEDULED TO BE COATED

A. Protect surrounding areas and surfaces not scheduled to be coated from damage during surface preparation and application of coatings.
B. Immediately remove coatings that fall on surrounding areas and surfaces not scheduled to be coated.
C. Adequately cover all floor drains during surface preparation to prevent build up in sewer lines.

2.9 SURFACE PREPARATION

A. Abrasive Blast and feather all edges to a smooth transition.

B. SSPC-SP13 in accordance with a minimum of CSP-3.

Dry abrasive blasting or wet abrasive blasting shall be used to remove existing coating and contaminants to expose subsurface voids and produce a sound concrete surface with adequate profile and surface porosity.
C. All surfaces must be clean, dry and free from contaminants.

2.10 APPLICATION

A. Apply coatings in accordance with manufacturer's instructions.

B. Mix and thin coatings, including multi-component materials, in accordance with manufacturer's instructions.

C. Keep containers closed when not in use to avoid contamination.

D. Do not use mixed coatings beyond pot life limits.

E. Use application equipment, tools, pressure settings, and techniques in accordance with manufacturer's instructions.

F. Uniformly apply coatings at spreading rate required to achieve specified DFT.

G. Apply coatings to be free of film characteristics or defects that would adversely affect performance or appearance of coating systems.

H. Stripe paint with brush critical locations on steel such as welds, corners, and edges using specified primer.

2.11 REPAIR

A. Materials and Surfaces Not Scheduled to Be Coated: Repair or replace damaged materials and surfaces not scheduled to be coated.

B. Damaged Coatings: Touch-up or repair damaged coatings. Touch-up of minor damage shall be acceptable where result is not visibly different from adjacent surfaces. Recoat entire surface where touch-up result is visibly different, either in sheen, texture, or color.

C. Coating Defects: Repair in accordance with manufacturer's instructions coatings that exhibit film characteristics or defects that would adversely affect performance or appearance of coating systems.

2.12 CLEANING

A. Remove temporary coverings and protection of surrounding areas and surfaces.

2.13 SCHEDULE

A. Work with Parks and Recreation for on site preparation prior to scheduled events.

3. Invoicing: The City agrees to pay the MTS Contracting, Inc. in accordance with the rates set forth on the pricing page. Payments will be paid by the City based upon an itemized statement of services furnished by MTS Contracting, Inc. and subject to approval by the requesting department that MTS Contracting, Inc. fully performed the work satisfactorily. Invoices must be submitted within 30 days of completion of work performed.

4. Subcontracting: MTS Contracting, Inc. must function as the single point of responsibility for the City, regardless of any subcontractor arrangements for all services provided. MTS Contracting, Inc. must submit a list of subcontractors to the Purchasing Department for approval within thirty (30) days from the beginning of this contract. This shall include

assuming responsibilities and liabilities for all material, and services provided. None of the work or services covered by the contract shall be subcontracted without the prior approval of the City.

5. Investigation of Conditions: MTS Contracting, Inc. should carefully examine the site of the work, and fully inform themselves to the conditions of the equipment and limitations. MTS Contracting, Inc. must use such methods and means to carry out his work so as to cause minimal interruption or interference with City business. To schedule a time, contact Assistant Parks Director at 417-335-2368 to make arrangements.

Exhibit B

PRICING PAGE

MTS Contracting, Inc. provided pricing information as specified below to provide materials and labor to sandblast and paint shower house and restroom in accordance with the terms and conditions of this contract.

001. Brush blast finishable surface down to sound surface, clean and dry before coating. Repair all cracks in finishable surface. Remove all caulking and replace with new caulking in finishable surface. Three (3) coats of Tnemec Paint or approved equal

$ 27,640.00

BILL NO. 5786

City of Branson MISSOURI

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/LEGAL DEPARTMENT**

FIRST READING: **FEBRUARY 11, 2020** **FINAL READING:** **FEBRUARY 25, 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.
- This amendment is for a total of $240.000. The City will pay $240,000 for the facilities use agreement for Ballparks of America, per the terms of the contract.
- Future year payments will be subject to annual appropriation and included in budget projections.
- If the Board of Aldermen elect to appropriate these funds, the unreserved fund balance in the General Fund will be lowered to cover the amount.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

___ Recommended
____ Not Recommended
__X__ Neutral/None

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. 5786 **ORDINANCE NO. _____**

AN ORDINANCE AMENDING THE ADOPTED 2020 BUDGET FOR THE CITY OF BRANSON, TO ADJUST MONIES FOR THE GENERAL FUND.

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

	Increase
101-1095-510-2099 (General Fund-Contractual Other)	$240,000
Unreserved Fund Balance (General Fund)	($240,000)

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:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CLW #51831 2/6/20

Chris Lebeck #51831
City Attorney

BILL NO. 5787

City of Branson MISSOURI

STAFF REPORT

ITEM/SUBJECT: **READING OF A BILL APPROVING THE FACILITY USE AGREEMENT WITH BALLPARKS OF AMERICA, LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

INITIATED BY: **LEGAL DEPARTMENT**

FIRST READING: **FEBRUARY 11, 2020** **FINAL READING:** **FEBRUARY 25, 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.
- The City of Branson entered into a new ground lease agreement with Ballparks of America, LLC who assumed the lease interest of Ballparks of Branson, LLC.
- This agreement before the Board is a Facility Use Agreement where the City of Branson will have access to the unused portions of the Ballparks of America LLC complex for local programming and community access as determined by the Parks and Recreation Department.

FINANCIAL IMPACT:

___ No impact/Not applicable

___ Budgeted in the current year's budget

_X__ Other (see additional explanation)

STAFF RECOMMENDATION:

____ Recommended

____ Not Recommended

_X__ Neutral/None

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 FACILITY USE AGREEMENT WITH BALLPARKS OF AMERICA, LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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 of Ground Lease by Tenant with a new group Ballparks of America, LLC.

In late 2019, the City of Branson entered into negotiations with Ballparks of America, LLC to negotiate a new ground lease and facility use agreement for the City of Branson. On January 28, 2020 the Ground Lease was approved by the City of Branson. From those negotiations the attached Facility Use Agreement is also presented to the Board.

The Facility Use Agreement provides access to the facility for the City of Branson when tournament program is not in session. The agreement also requires Ballparks of America, LLC to contract with a national operator for the park and calls for accountability as to the marketing of the facility. Annual cost to the City is $240,000 a year. Estimated economic impact of the operations is dependent on the number of teams that use the facility but for reference in 2018 Ballparks of Branson, LLC brought in an estimated 578 teams (8,670 participants) to the complex in the current condition it sits for an estimated economic impact $13,779,269.11.

BILL NO. 5787 **ORDINANCE NO. _____**

AN ORDINANCE APPROVING THE FACILITY USE AGREEMENT WITH BALLPARKS OF AMERICA, LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

WHEREAS, the City of Branson approved a long-term lease with Ballparks of America, LLC on January 28, 2020 when they assumed the interest of Ballparks of Branson LLC from Cedar Rapids Bank and Trust; and

WHEREAS, Ballparks of America will continue operate a sports recreational facility on the property; and

WHEREAS, the City of Branson desires to increase the inventory of sports recreational facilities available to the citizens and sports teams within City of Branson.

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 Facility Use 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:

CL #51831 2/6/20

_____
Chris Lebeck #51831
City Attorney

FACILITY USE AGREEMENT

This Facility Use Agreement (this "Agreement") is made and entered into this _____ day of February, 2020 (the "Effective Date"), by and between Branson, Missouri, a Missouri Municipal Corporation ("City") and Ballparks of America, LLC, a Missouri limited liability company ("BOA").

WITNESSETH:

THAT, WHEREAS, the City desires to engage BOA to provide local use access to the athletic fields and related amenities (i.e., restrooms, common areas, and parking lots) (collectively, the "Fields") on the property described on Exhibit "A" attached hereto ("Property"); and

WHEREAS, on January 30, 2020 the City entered into a thirty-five (35) year Ground Lease Agreement with BOA for the Property.

WHEREAS, BOA is currently in negotiations with national sports facilities operators for the exclusive management and operation of the Fields. For purposes of this Agreement, the sports facilities operator ultimately selected by BOA, in its sole discretion, pursuant to a contract with BOA will be deemed the "Operator."

WHEREAS, BOA has made certain representations and statements to the City with respect to the provision of local use access to the Fields for use by the City, which are more fully set forth herein, and the City has accepted said proposal;

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

1. **Scope of Work.**
   A. **Local Use.** BOA agrees to provide the City local use access to the Fields (subject to availability), during normal operating hours and when staffing is traditionally available for the Fields, and excluding state and federal holidays unless otherwise agreed to by BOA at the request of City, on dates where the Fields are available and are not being used for previously scheduled programing (scheduled by BOA or its Operator) or held for anticipated programming, BOA shall take all reasonable steps to ensure that staff are at the Fields on site to oversee all hours when the Ballparks are open for local use. BOA or its Operator will work with the City to provide a calendar of events or other information indicating availability of the Fields for local use. The City shall submit requests for local use of the Fields (or any portion thereof) to BOA or its Operator in writing at least fourteen (14) days in advance of the City's proposed use. All such requests shall be subject to the approval of BOA or its Operator in its sole discretion. For time slots where there is short-term availability of the Fields for local use (less than fourteen days before the availability), BOA or its Operator will work with the City to maximize the use of the

Fields. Assuming all other provisions of this Agreement are met, local access use of the Fields will begin on or about April 1, 2020.

B. **National Operator**. BOA shall, within sixty (60) days of the Effective Date of this Agreement, enter into an agreement with an Operator for the operation, facilities management, and national marketing of the Fields on behalf of BOA.

C. **Marketing of Ballparks.** A complete marketing plan for Ballparks of America shall be developed by BOA or their Operator annually in collaboration with the Branson Conventions and Visitors Bureau (CVB). A copy of the marketing plan shall be delivered to the City annually, provided, however, that BOA or its Operator shall be permitted to redact any confidential or trade secret information contained in such marketing plan. BOA shall require their Operator to implement the marketing plan, which shall include physical marketing of the Fields, digital marketing of the Fields on Operator websites, and social media and email marketing campaigns, as more fully set forth in the marketing plan.

2. **Addition to Work**. The City and BOA may amend the scope of work, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 7 of this Agreement. Any amendments to this Agreement shall be entered into in accordance with Paragraph 20 of this Agreement.

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**. BOA agrees and binds itself to secure and pay for all personnel, labor, materials and supplies required to perform the scope of work set forth in Paragraph 1 hereof. Such personnel shall not be employees of or have any contractual relationship with the City. All of the work required hereunder will be performed by BOA (or its Operator) or under the direct supervision of BOA and all personnel engaged in the work shall be qualified to perform such work and shall be authorized under any applicable state and local law to perform such work. The City acknowledges that the work or services covered by this Agreement may be subcontracted or otherwise delegated to the Operator engaged by BOA. Otherwise, the work or services covered by this Agreement shall not be contracted without the written approval of the City, which approval shall not be unreasonably withheld.

5. **Term**. BOA or its Operator shall provide access to the Fields and perform the work described in Paragraph 1 hereof as soon as practicable after the execution of this Agreement, unless otherwise agreed by the parties. **The term of the Agreement will be effective as of the Effective Date and shall remain in effect for an initial period of five (5) years (the "Initial Term") unless earlier terminated in accordance with Paragraph 8 hereof. Upon expiration of the Initial Term, this Agreement will automatically renew for successive one-year terms unless either party provides notice of nonrenewal at least sixty (60) days**

prior to the end of the then-current contract term. This Agreement shall not bind, nor purport to bind, the City for any contract term beyond the Initial Term of the Agreement.

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 Agreement which cannot be exceeded unless this Agreement is amended.

7. **Payment**. Subject to performed by BOA of its obligations under this Agreement, the City agrees to pay BOA a sum of $20,000.00/month ($240,000 per year) in semi-annual installments. The payments made pursuant to this paragraph shall constitute complete compensation for all work and access provided under this Agreement (the "Fees"). The first payment of the Fees in the amount of $120,000.00 shall occur within fifteen (15) days of the date that BOA provides City with written notice that BOA has entered into a contract with an Operator, as set out in Paragraph 1.B above. All payments under this Agreement by the City are subject to annual appropriation by the City.

8. **Termination of Agreement.**

   A. Termination for breach. Failure of BOA to fulfill BOA's material obligations under this contract in accordance with the schedule and description of work set forth in Paragraph 1 above shall constitute a breach of this Agreement. If BOA fails to cure said breach within thirty (30) days after written notice from the City to BOA setting forth the basis for the breach, the City shall have the right to immediately terminate the Agreement upon written notice to BOA. Failure of the City to fulfill its payment obligations under this Agreement shall constitute a breach of the Agreement, and, without limiting any other rights or remedies available to BOA, BOA shall thereupon have the right to immediately terminate the Agreement upon written notice to the City. In the event of the termination of this Agreement due to a breach by a party which is not cured under any applicable cure period, the non-breaching party may pursue any available remedies under Missouri law against the breaching party.

   B. Right to terminate in the absence of breach. Either party may terminate this Agreement for any reason, by serving notice of intent to terminate in writing upon the other party by the means specified in paragraph 17 of this section. Such notice shall specify the date of termination, but in no event shall either party terminate the Agreement under this provision upon less than sixty (60) days' advance notice to the other party; provided, that the parties may mutually agree to waive the sixty (60) 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 Agreement.

9. **Conflicts**. Any bidder or signee of this Agreement shall disclose any financial relationship (direct or indirect) to a salaried officer or employee of the City or member of the City Board of Aldermen in writing at the time of the execution of this Agreement. A violation of this provision renders the

Agreement void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. BOA covenants that it presently has no financial relationship (direct or indirect) to a salaried officer or employee of the City or member of the City Board of Aldermen, and shall not acquire any interest, direct or indirect, which would conflict in such manner that would prevent the performance of BOA's work under this Agreement. BOA further covenants that in the performance of this Agreement, no person having such interest shall be employed by BOA.

10. **Assignment**. BOA shall not assign any interest in this Agreement, 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 BOA from the City under this Agreement 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 without City approval is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the Agreement 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. Notwithstanding the foregoing, the parties agree that BOA shall have the right, without the approval of the City, to assign its rights and obligations under this Agreement to any (a) affiliate or (b) successor-in-interest as a result of a merger or consolidation or in connection with the sale or transfer of all or substantially all of its business or assets to which this Agreement relates, provided such assignee has experience in successfully operating sports complexes substantially similar to Ballparks of America.

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

12. **Discrimination.** BOA agrees in the performance of this Agreement 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 BOA or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

13. **General Independent Service Provider Clause**. This Agreement does not create an employee/employer relationship between the parties. It is the parties' intention that BOA 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. BOA will retain sole and absolute discretion in the judgment of the manner and means of carrying out BOA's activities and responsibilities hereunder. BOA 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 BOA and the City, and the City will not be liable for any obligation incurred by BOA.

14. City Benefits. BOA 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 BOA 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 Agreement. The maximum liability of either party shall be limited to the amount of money to be paid by the City under this Agreement. All of the provisions in this agreement are subject to the terms of the Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.

B. BOA 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 BOA or their Operator.

C. BOA shall indemnify and hold the city harmless from all wages or overtime compensation due BOA's employees and from any and all claims by BOA's 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. Bonds and Insurance. BOA agrees to have and maintain, at BOA'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 BOA's performance under this contract. The insurance coverage shall include, but need not be limited to, the following coverages 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 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.

B. 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.

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 BOA and Sub-Service Provider(s).

D. BOA will require all subcontractors to provide and maintain like insurance as set forth above unless BOA's policies extend to claims made against or growing out of operations of the subcontractor.

E. Written evidence of the required insurance coverage must be submitted before or upon award of the Agreement. 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 Agreement.

F. BOA understands and agrees that the insurance required under the terms of the Agreement in no way precludes BOA from carrying such other insurance as may be deemed necessary by BOA for the operation of BOA's business or for the benefit of the BOA's employees.

G. Notwithstanding any other provision of the contract to the contrary, no insurance procured by BOA 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.

H. If this is a multi-year contract, then BOA 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 BOA 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 or mailed to the address provided.

17. 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 BOA at the addresses provided 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.

If to City:
City of Branson
Attn: Contract Management
110 W Maddux St., Ste. 205
Branson, MO 65616
417-337-8522

If to BOA:
1911 S. National Ave., Suite 101
Springfield, MO 65804
Attn: Greg Snider, Manager

18. **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.

19. **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, BOA (or its Operator, if all employees are employed by the Operator) will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Agreement. BOA, or its Operator, will provide 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.

20. **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.

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

22. **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.

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

BALLPARKS OF AMERICA LLC

By:_____ _____
(Signature) Date

Name:_____
(Printed Name)

Title:_____

Company Name:_____

Address:_____

_____

Phone:_____

E-Mail:_____

Tax ID:_____

CITY OF BRANSON, MISSOURI

_____ _____
E. Edd Akers Date
Mayor

ATTEST:

_____ _____
Lisa K Westfall Date
City Clerk

APPROVED AS TO FORM:

CL #51831 2/6/20
Chris Lebeck #51831 Date
City Attorney

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 ¼ of the Southwest ¼ 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: **RESOLUTION APPROVING THE ANNUAL OPERATING & CAPITAL BUDGETS OF THE BRANSON CONVENTION CENTER FROM JANUARY 1, 2020 TO DECEMBER 31, 2020.**

INITIATED BY: **FINANCE DEPARTMENT/CONVENTION CENTER**

FIRST READING: **FEBRUARY 25, 2020**

EXECUTIVE SUMMARY:

- The 2020 Convention Center's Operating & Capital budgets are being presented to the Board of Aldermen after being reviewed by staff and the Budget & Finance committee.
- Attached to this resolution are the summary pages for the budget to be considered by the Board of Alderman for approval.
- Staff will continue to report, on a regular basis, to the Board of Aldermen and the Budget & Finance Committee on the financial condition of the 2020 budget.

UPDATE:

- This item was postponed during the February 11, 2020 Regular Board of Aldermen meeting. It is in need of a motion, second and a vote.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

__x_ Recommended
____ Not Recommended
____ Neutral/None

COMMUNITY PLAN 2030: Supports the Convention Center and other meeting facilities that serve as an economic driver adding to the economic health of the City.

ATTACHED EXHIBITS: Exhibit "1" – 2020 Budget Powerpoint

Exhibit "2" – 2020 Capital Budget

BRANSON CONVENTION CENTER
Managed by SMG

Branson Convention Center 2020 Follow up Budget Presentation

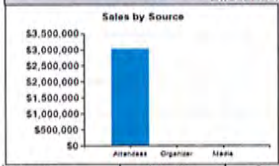
SAVOR...Branson
at Branson Convention Center

Event Impact Summary – MO NASP 2019

Event Impact Summary
Destination: Branson Lakes Area Convention & Visitors Bureau

Event Parameters		Key Results	
Event Name:	MONASP State Championship - 2019	Total participant spending:	$3,041,043
Organization:	MCHF and MDC	Visitors:	$3,041,043
Event Type:	Youth Amateur	Locals:	$0
Start Date:	3/22/2019	Direct Visitor Impacts	
End Date:	3/24/2019	Local Taxes:	$203,916
Overnight Attendees:	8329	Jobs Supported	1,971
Day Attendees:	3919	Room Demand:	9,427

Direct Business Sales



Industry	Attendees	Organizer	Media/Sponsors	Total
Lodging	$601,332	$0	$0	$601,332
Transportation	$140,535	$4,213	$465	$145,213
Food & Beverage	$1,177,007	$0	$0	$1,177,007
Retail	$591,675	$0	$0	$591,675
Recreation	$323,983	$0	$0	$323,983
Space Rental	$0	$0	$0	$0
Business Services	$0	$1,570	$262	$1,833
TOTAL	$3,034,532	$5,783	$728	$3,041,043

Destinations International Event Impact Calculator 5/29/2019 12:59:33 PM

****A 2011 study found the center's annual economic impact was roughly $16 million.
****Currently CVB working on conducting a 2019 Economic Impact Study for all events held at BCC.

Questions from First Budget Meeting

Why were expenses up for 2020, while revenues are budgeted to decrease?

- Direct expenses vary with revenues. These are comprised of food costs and direct labor. We budgeted 28.3% costs for 2020, whereas 2019 was 26.2%. This accounts for about $66k. Below is a list of direct expense cost % for the last four years and budget 2020:
  - 2020 28.3%
  - 2019 26.2%
  - 2018 26.5%
  - 2017 26.6%
  - 2016 28.2%

Questions from First Budget Meeting

Indirect expenses do not vary with changes in revenues. These would increase with inflation despite less revenues in 2020. The % increase from 2019 to 2020 budget is 1.4%. Below is a list of indirect costs totals:

- 2020 $3,754,000
- 2019 $3,702,000
- 2018 $3,618,000
- 2017 $3,510,000
- 2016 $3,629,000
- 4 year avg. $3,615,000

Additional Financial Information

Annual financial losses since SMG Management now ASM Global transitioned on April 1, 2014

- 2019 $(31,170)
- 2018 $(283,857)
- 2017 $(444,997)
- 2016 $(398,783)
- 2015 $(110,196)
- 2014 $(732,849)

Questions from First Budget Meeting

Given current information, is the budget still appropriate?

- Last meeting we discussed the addition of some new clients that we had booked since the budget was finalized in September.
- We have signed about $350k in additional client revenue since the budget was created.
- However, we also included an estimate for additional unknown revenue when we compiled the budget.
- The estimate should turn out to be fairly accurate for the year. Upon further review, we believe we will be close to the original budget presented, maybe slightly better.

2020 Capital Budget

Priority		
1	Reader Boards outside meeting rooms	$52,000
1	Replace/upgrade landscape features	$10,000
1	Replace roof walk pads	$8,000
1	Replace insulation on chillers and piping	$10,000
1	Replace one set of rusting stairs	$15,000
1	Purchase Floor Machine for E-Hall	$15,000
1	4 banquet hot boxes, rolling	$19,600
1	Floor fryer	$20,100
1	1 range with 6 burners	$5,000
		$154,700

Highest Priorty Based on:

End of Manufacturing Life
Industry Standards
Corporate Direction
SMG Knowledge of Building Operations

Notes:

A	Current Capital Fund Amount at 1/1/20:	**$416,000**
B	Determined Capital Fund Yearly Minimal Reserve Amount:	**$200,000**
C	SMG Capital Fund Commitment:	**$100,000**
D	2020 Capital Fund Payments amount/year end	**$141,000**
E	Estimated balance in capital reserve account at year-end 2020	**$502,300**

RESOLUTION NO. _____

A RESOLUTION APPROVING THE ANNUAL OPERATING & CAPITAL BUDGETS OF THE BRANSON CONVENTION CENTER FROM JANUARY 1, 2020 TO DECEMBER 31, 2020.

WHEREAS, the contract with the Branson Convention Center requires the City of Branson to review and approve their Operating & Capital Budgets; and

WHEREAS, the 2020 Budgets were submitted and reviewed by the Finance Committee; and

WHEREAS, the Board of Alderman desire to approve the annual Operating & Capital Budgets of the Branson Convention Center from January 1, 2020 to December 31, 2020.

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 annual Operating & Capital Budgets of the Branson Convention Center from January 1, 2020 to December 31, 2020 attached hereto as Exhibit "1".

ADOPTED by the Board of Aldermen of the City of Branson, Missouri, on this ____ day of _____, 2020.

_____
E. Edd Akers
Mayor

ATTEST:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

#51831 2/4/20

_____
Chris Lebeck #51831
City Attorney

Exhibit "1"

The Branson Convention Center
Year: 2020 Scenario: Budget
2020 EBITDA Budget Summary

	January Budget	February Budget	March Budget	April Budget	May Budget	June Budget	July Budget	August Budget	September Budget	October Budget	November Budget	December Budget	2020 Budget
Revenues:													
Concessions Revenue	13,000.00	20,683.00	23,000.00	15,000.00	7,200.00	20,000.00	20,000.00	0.00	0.00	23,500.00	10,692.00	10,000.00	163,075.00
Banquet/AV Revenue	126,891.73	179,923.62	435,174.00	423,854.98	290,572.36	625,559.88	335,533.67	377,331.00	359,451.00	472,428.65	248,215.93	238,915.80	4,113,852.62
Total Food and Beverage	**139,891.73**	**200,606.62**	**458,174.00**	**438,854.98**	**297,772.36**	**645,559.88**	**355,533.67**	**377,331.00**	**359,451.00**	**495,928.65**	**258,907.93**	**248,915.80**	**4,276,927.62**
Parking Revenue	12,900.00	18,700.00	27,300.00	20,300.00	15,300.00	31,000.00	26,100.00	18,000.00	19,000.00	25,000.00	15,000.00	10,000.00	238,600.00
Other Operating Revenue	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	837.00	10,000.00
Total Revenue	**153,624.73**	**220,139.62**	**486,307.00**	**459,987.98**	**313,905.36**	**677,392.88**	**382,466.67**	**396,164.00**	**379,284.00**	**521,761.65**	**274,740.93**	**259,752.80**	**4,525,527.62**
Department Expenses													
Concessions Expense	4,550.00	7,239.05	8,050.00	5,250.00	2,520.00	7,000.00	7,000.00	0.00	0.00	8,225.00	3,742.20	3,500.00	57,076.25
Banquet/AV Expense	83,666.82	89,535.40	152,601.50	148,086.14	127,865.64	221,859.15	136,863.04	149,976.50	156,504.00	173,884.29	131,045.70	109,787.50	1,681,675.68
Total Food and Beverage	**88,216.82**	**96,774.45**	**160,651.50**	**153,336.14**	**130,385.64**	**228,859.15**	**143,863.04**	**149,976.50**	**156,504.00**	**182,109.29**	**134,787.90**	**113,287.50**	**1,738,751.93**
Total Departmental Expenses	**88,216.82**	**96,774.45**	**160,651.50**	**153,336.14**	**130,385.64**	**228,859.15**	**143,863.04**	**149,976.50**	**156,504.00**	**182,109.29**	**134,787.90**	**113,287.50**	**1,738,751.93**
Department Profits:													
Concessions Profit	8,450.00	13,443.95	14,950.00	9,750.00	4,680.00	13,000.00	13,000.00	0.00	0.00	15,275.00	6,949.80	6,500.00	105,998.75
Banquet/AV Profit	43,224.91	90,388.22	282,572.50	275,768.84	162,706.72	403,700.73	198,670.63	227,354.50	202,947.00	298,544.37	117,170.23	129,128.30	2,432,176.94
Total Food and Beverage Profit	**51,674.91**	**103,832.17**	**297,522.50**	**285,518.84**	**167,386.72**	**416,700.73**	**211,670.63**	**227,354.50**	**202,947.00**	**313,819.37**	**124,120.03**	**135,628.30**	**2,538,175.69**
Parking Profit	12,900.00	18,700.00	27,300.00	20,300.00	15,300.00	31,000.00	26,100.00	18,000.00	19,000.00	25,000.00	15,000.00	10,000.00	238,600.00
Other Operating Departments Profit	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	837.00	10,000.00
Total Department Profit	**65,407.91**	**123,365.17**	**325,655.50**	**306,651.84**	**183,519.72**	**448,533.73**	**238,603.63**	**246,187.50**	**222,780.00**	**339,652.37**	**139,953.03**	**146,465.30**	**2,786,775.69**
General & Administrative	76,915.32	76,915.32	76,915.32	76,915.32	76,915.32	76,915.32	76,915.32	76,915.32	76,915.32	76,915.32	76,915.32	76,904.32	922,972.80
Marketing	27,435.00	27,435.00	27,435.00	27,435.00	27,435.00	27,435.00	27,435.00	27,435.00	27,435.00	27,435.00	27,435.00	27,444.00	329,229.00
Property Operations	100,692.00	99,866.00	98,595.00	100,999.00	102,671.00	98,675.00	98,722.00	99,058.00	100,512.00	100,999.00	102,128.00	99,233.00	1,202,150.00
Energy	55,121.00	51,840.00	52,934.00	41,997.00	43,091.00	59,495.00	56,214.00	54,027.00	48,559.00	44,185.00	47,465.00	51,841.00	606,769.00
Total Deductions	**260,163.32**	**256,056.32**	**255,879.32**	**247,346.32**	**250,112.32**	**262,520.32**	**259,286.32**	**257,435.32**	**253,421.32**	**249,534.32**	**253,943.32**	**255,422.32**	**3,061,120.80**
Income Before Fixed Charges	**(194,755.40)**	**(132,691.14)**	**69,776.18**	**59,305.52**	**(66,592.60)**	**186,013.41**	**(20,682.69)**	**(11,247.82)**	**(30,641.32)**	**90,118.05**	**(113,990.28)**	**(108,957.02)**	**(274,345.11)**
Fixed Costs:													
Property Taxes & Insurance	11,192.00	11,192.00	11,192.00	11,192.00	11,192.00	11,192.00	11,192.00	11,192.00	11,192.00	11,192.00	11,192.00	11,188.00	134,300.00
Total Fixed Costs	**11,192.00**	**11,192.00**	**11,192.00**	**11,192.00**	**11,192.00**	**11,192.00**	**11,192.00**	**11,192.00**	**11,192.00**	**11,192.00**	**11,192.00**	**11,188.00**	**134,300.00**
EBITDA	**(205,947.40)**	**(143,883.14)**	**58,584.18**	**48,113.52**	**(77,784.60)**	**174,821.41**	**(31,874.69)**	**(22,439.82)**	**(41,833.32)**	**78,926.05**	**(125,182.28)**	**(120,145.02)**	**(408,645.11)**
EBIT	**(205,947.40)**	**(143,883.14)**	**58,584.18**	**48,113.52**	**(77,784.60)**	**174,821.41**	**(31,874.69)**	**(22,439.82)**	**(41,833.32)**	**78,926.05**	**(125,182.28)**	**(120,145.02)**	**(408,645.11)**
Management Fees:													
Base Management Fees	12,000.00	12,000.00	12,000.00	12,000.00	12,000.00	12,000.00	12,000.00	12,000.00	12,000.00	12,000.00	12,000.00	12,000.00	144,000.00
Total Management Fees	**12,000.00**	**12,000.00**	**12,000.00**	**12,000.00**	**12,000.00**	**12,000.00**	**12,000.00**	**12,000.00**	**12,000.00**	**12,000.00**	**12,000.00**	**12,000.00**	**144,000.00**
Profit (Loss) Before Taxes	**(217,947.40)**	**(155,883.14)**	**46,584.18**	**36,113.52**	**(89,784.60)**	**162,821.41**	**(43,874.69)**	**(34,439.82)**	**(53,833.32)**	**66,926.05**	**(137,182.28)**	**(132,145.02)**	**(552,645.11)**

Branson Convention Center
Budget in F/S Format
Year ending December 31, 2020

	January	February	March	April	May	June	July	August	September	October	November	December	2020 Budgeted Year-End Total
EVENT INCOME													
Direct Event Income													
Rental Income	15,100	57,666	70,160	75,000	8,200	53,550	53,250	18,000	9,500	82,250	10,000	14,330	467,006
Service Revenue	6,460	28,681	26,309	32,419	13,722	33,357	21,062	26,666	26,381	57,802	43,457	19,241	335,557
Service Expenses	(9,036)	(21,320)	(16,019)	(16,173)	(8,176)	(27,363)	(18,739)	(14,000)	(23,103)	(40,000)	(34,914)	(12,000)	(240,843)
Total Direct Event Income	12,524	65,027	80,450	91,246	13,746	59,544	55,573	30,666	12,778	100,052	18,543	21,571	561,720
Ancillary Income													
F & B Concessions	8,450	13,444	14,950	9,750	4,680	13,000	13,000	0	0	15,275	6,950	6,500	105,999
F & B Catering	74,429	58,189	231,251	215,001	188,489	376,585	184,526	229,717	223,197	224,420	128,855	133,075	2,267,732
Parking	12,900	18,700	27,300	20,300	15,300	31,000	26,100	18,000	19,000	25,000	15,000	10,000	238,600
Audio Visual	0	11,000	6,000	6,200	1,000	3,800	400	6,500	4,500	8,500	5,000	6,200	59,100
Internet Services	900	900	7,700	6,100	2,000	4,100	1,300	700	3,700	6,800	4,000	700	38,900
Equipment Rental	600	500	2,400	4,200	2,700	5,400	2,100	5,000	4,000	4,000	6,000	4,000	40,900
Total Ancillary Income	97,279	102,733	289,601	261,551	214,169	433,885	227,426	259,917	254,397	283,995	165,805	160,475	2,751,231
Total Event Income	109,803	167,760	370,051	352,797	227,915	493,429	282,999	290,583	267,175	384,047	184,348	182,046	3,312,951
Total Other Operating Income	833	833	833	833	833	833	833	833	833	833	833	837	10,000
Adjusted Gross Income	110,636	168,593	370,884	353,630	228,748	494,262	283,832	291,416	268,008	384,880	185,181	182,883	3,322,951
INDIRECT EXPENSES													
Salaries & Wages	141,677	141,677	141,677	141,677	141,677	141,677	141,677	141,677	141,677	141,677	141,677	141,679	1,700,126
Payroll Taxes & Benefits	48,579	48,579	48,579	48,579	48,579	48,579	48,579	48,579	48,579	48,579	48,579	48,604	582,973
Net Salaries and Benefits	190,256	190,256	190,256	190,256	190,256	190,256	190,256	190,256	190,256	190,256	190,256	190,283	2,283,099
Contracted Services	8,325	9,325	7,925	7,925	7,925	8,125	7,925	8,425	7,925	7,925	7,925	8,325	98,000
General and Administrative	15,173	15,173	15,173	16,923	15,173	15,673	15,173	15,173	15,173	15,173	15,173	15,158	184,312
Operations	12,194	10,204	10,341	10,287	14,400	10,204	10,370	10,287	10,341	10,287	13,857	10,257	133,029
Repairs & Maintenance	7,129	7,293	7,285	9,489	7,048	7,048	7,129	7,048	8,948	9,489	7,048	6,558	91,512
Operational Supplies	4,479	4,479	4,479	4,733	4,733	4,733	4,733	4,733	4,733	4,733	4,733	5,499	56,800
Insurance	12,492	12,492	12,492	12,492	12,492	12,492	12,492	12,492	12,492	12,492	12,492	12,488	149,900
Utilities	55,699	52,418	53,512	42,575	43,669	60,073	56,792	54,605	49,137	44,763	48,043	52,409	613,694
SMG Management Fees	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	144,000
Total Indirect Expenses	317,747	313,640	313,463	306,680	307,696	320,604	316,870	315,019	311,005	307,118	311,527	312,977	3,754,346
Net Income (Loss) from Operations	(207,111)	(145,047)	57,421	46,950	(78,948)	173,658	(33,038)	(23,604)	(42,997)	77,762	(126,346)	(130,095)	**(431,395)**
Marketing Fund Expenditures	10,103	10,103	10,103	10,103	10,103	10,103	10,103	10,103	10,103	10,103	10,103	10,117	121,250
Net Income (Loss) after Marketing Expenditures	**(217,214)**	**(155,150)**	**47,318**	**36,847**	**(89,051)**	**163,555**	**(43,141)**	**(33,707)**	**(53,100)**	**67,659**	**(136,449)**	**(140,212)**	**(552,645.11)**

BILL NO. 5778

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 25, 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.

UPDATE:

- This item was postponed during its Final Reading at the February 11, 2020 Regular Board of Aldermen meeting. It has had a motion and second for approval and is in need of a vote.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

_X_ Recommended
____ Not Recommended
____ Neutral/None

COMMUNITY PLAN 2030: C-1: Public Safety

ATTACHED EXHIBITS:

BILL NO. 5778 **ORDINANCE NO. _____**

AN ORDINANCE 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.

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 Article VIII – *Other Nuisances*; Division 2 – *Smoke-Free*; Section 58-331 – *Definitions*; Section 58-342 – *Minors Prohibited from Purchase or Possession of Tobacco Products, Alternative Nicotine Products or Vapor Products - Penalties*; Section 58-343 – *Distribution or Sale of Tobacco Products, Alternative Nicotine Products or Vapor Products to Minors Prohibited* of the Branson Municipal Code is hereby amended to read as follows:

ARTICLE VIII. - OTHER NUISANCES
DIVISION 2. - SMOKE-FREE

Sec. 58-342. - [~~Minors~~] **Persons Under 21 Years of Age** Prohibited from Purchase or Possession of Tobacco Products, Alternative Nicotine Products or Vapor Products - Penalties.

(a) No person less than [~~18~~] **21** years of age shall purchase, attempt to purchase or possess tobacco products, alternative nicotine products or vapor products unless such person is an employee of a seller of cigarettes, tobacco products, alternative nicotine products or vapor products and is in such possession to effect a sale in the course of employment or an employee of the Division of Alcohol and Tobacco Control for enforcement purposes pursuant to subsection (5) of RSMo 407.934.

(b) Any person less than [~~18~~] **21** years of age shall not misrepresent his age to purchase cigarettes, tobacco products, and alternative nicotine products or vapor products.

(c) Any person who violates the provisions of this section shall be penalized as follows:

(1) For the first violation, in addition to the penalties set forth Section 1-13, the person shall have any cigarettes, tobacco products, alternative nicotine products or vapor products confiscated.

(2) For a second violation and any subsequent violations, in addition to the penalties set forth in Section 1-13, the person shall have any cigarettes, tobacco products, alternative nicotine products or vapor products confiscated and shall complete a tobacco education or smoking cessation program, if available.

Sec. 58-343. - Distribution or Sale of Tobacco Products, Alternative Nicotine Products or Vapor Products to [~~Minors~~] **Persons under 21 Years of Age** Prohibited.

It shall be unlawful for any person to sell, provide or distribute by any means tobacco products, alternative nicotine products or vapor products to persons under [~~18~~] **21** years of age.

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 by the Mayor.

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:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CL #51831 1/23/20

_____
Chris Lebeck #51831
City Attorney

BILL NO. 5780

City of Branson 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 25, 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.

UPDATE:

- This item was postponed during its Final Reading at the February 11, 2020 Regular Board of Aldermen meeting. It has had a motion and second for approval and is in need of a vote.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

_X_ **Recommended**
____ **Not Recommended**
____ **Neutral/None**

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:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CQL #51831 1/23/24

Chris Lebeck #51831
City Attorney

Exhibit "1"

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/.

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: _____ #51851 1/6/20

Title: City Attorney Date: _____

STAFF REPORT

ITEM/SUBJECT: **RESOLUTION APPROVING A SPECIAL EVENT PERMIT APPLICATION FOR THE 2020 LIGHTS OF JOY CHRISTMAS DRIVE-THRU.**

INITIATED BY: **PLANNING & DEVELOPMENT DEPARTMENT**

DATE: **FEBRUARY 25, 2020**

EXECUTIVE SUMMARY:

- Request made by Attractions Management Group, LLC for their first year operating the Lights of Joy Christmas drive-thru display, which had been known as Branson's Gift of Lights for the previous five years.

- Proposed to be held from Sunday, November 1, 2020, through Saturday, January 2, 2021 between 5:00 pm and 11:00 pm. Event setup is proposed to begin on Monday, October 5, 2020, and breakdown is expected to be completed no later than Monday, January 4, 2021.

- Request includes the temporary closure of a 1.2 mile portion of Expressway Lane between Shepherd of the Hills Expressway and Roark Valley Road. The ticket booth is proposed to be located near the intersection of Expressway Lane and Shepherd of the Hills Expressway. Taney County has given previous permission to allow Expressway Lane to be one way traffic for the event during the proposed dates and times.

- Proposed event is expected to attract more than 25,000 persons in approximately 15,000 cars, motor coaches, church buses and limos.

- Five temporary banners and ten temporary yard signs have been proposed as part of the proposed event. Additionally, the applicant will be required to notify all those businesses and members of the public that may be affected by their event.

- Staff has reviewed the request and no costs are anticipated to assist with the proposed event.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

X Recommended
____ Not Recommended
____ Neutral/None

COMMUNITY PLAN 2030: C Strategy 6.3 Community Events.

ATTACHED EXHIBITS: 1) Special Events Review Letter

City of Branson MISSOURI

BransonMo.gov

SPECIAL EVENTS REVIEW

DATE: January 28, 2020

TO: Planning & Development, Public Works, Fire, Police, Finance, Health, Parks and Recreation, and Risk Management

FROM: Perry Eckhardt

SUBJECT: Special Events Permit Application-Street Closure

Please review the attached Special Event Permit Application No. **20-23.01** for the 2020 Lights of Joy sponsored by Attractions Management Group, LLC. The event is proposed to be held November 1, 2020 thru January 2, 2021.

It is up to each department to handle their own requirements directly with the applicant. If you have any questions or concerns about the request, please contact the applicant before approving. Any changes made due to discussion with the applicant must be indicated in the comments section on this form.

Please make comments below or attach a separate sheet as necessary. If an additional permit is required from your department for this event, please also note below.

Please sign this sheet and return to the Planning and Development Department no later than **Tuesday, February 18, 2020.** Thank you.

COMMENTS:

Building Department:
No comments.
Name: Roy Swarms Date: 1/31/2020

Finance Department:
No comments provided.
Name: Date:

Fire Department:

No comments.

Name: Randy Fogle Date: 1/31/2020

Health Department:

Not applicable. If the organizer decides to sell or give food away, they will need to contact the Taney County Health Department.

Name: Laura John Date: 2/3/2020

Parks Department:

No effect on department.

Name: Cindy Shook Date: 1/31/2020

Police Department:

No comments provided.

Name: Date:

Public Works Department:

Applicant shall provide the Engineering Department with a traffic control plan and it must be approved prior to the start date on permit. Applicant shall provide all traffic control for the duration of this event. No lights, cables or rope will be allowed to be strung between the signage along the bridge on the north end of Expressway Lane. No wires or other items shall be laid across the roadway obstructing snow plow operations.

Name: Ben Stabo Date: 2/6/2020

Risk Management:

The insurance coverages on the Certificate of Insurance are sufficient to cover this activity. However, the organizer will need to supply an updated certificate when available as the current one expires in May 2020.

Name: Bob Smither Date: 1/31/2020

Utilities Department:

No issue with proposed event.

Name: Tara Norback Date: 1/31/2020

RESOLUTION NO. _____

A RESOLUTION APPROVING A SPECIAL EVENT PERMIT APPLICATION FOR THE 2020 LIGHTS OF JOY CHRISTMAS DRIVE-THRU.

WHEREAS, Attractions Management Groups, LLC has submitted a Special Event Permit Application to the City of Branson for approval of 2020 Lights of Joy Christmas Drive-Thru, formerly known as Branson's Gift of Lights; and

WHEREAS, The Board of Aldermen wish to approve the application.

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 Special Event Permit Application attached as Exhibit 'A', and therefore grants an exception to its duration per Branson Municipal Code Section 94-65(i)(2).

Section 2: This resolution shall be in full force and effect after its passage by the Board of Aldermen and approval by the Mayor.

ADOPTED by the Board of Aldermen of the City of Branson, Missouri, on this ____ day of _____, 2020.

_____
E. Edd Akers
Mayor

ATTEST:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CKL #51831 2/20/20

_____
Chris Lebeck #51831
City Attorney

EXHIBIT 'A'

Branson MISSOURI
Planning & Development

SPECIAL EVENT PERMIT APPLICATION

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

Office Use Only
Permit Number
SEPA (SESC) 20.23.01
Date Applied
1/28/2020

Contact Information

Sponsor Name: Attractions Management Group, LLC

Contact Name: Steve Hager Email: steve@bransonlights.com

Mailing Address: 269 MO Hwy 248 Branson, MO 65616 Phone: (417) 233--1769

Event Information (Fee $116)

Event Name: Lights of Joy Expected number in attendance: 25000

Location: 700 Expressway Lane Branson, MO 65616

Will the event require a street(s) closure? No Yes: attach **Certificate of Liability Insurance**

➢ If NO, attach a letter of permission from the **property owner(s).**

Event website: lightsofjoydrivethru.com

Provide a general description and primary purpose of the event:
Lights of Joy Christmas drive-thru (formerly Branson's Gift of Lights - name change only, same owners) is one of the largest seasonal event in the city of Branson. We will attract around 15,000 cars, motor coaches, church buses and limos this season. This purpose of this for-profit event is to exemplify Branson's family values and magnify the true meaning of Christmas.

Duration

Period of operation will be permitted for a maximum of five (5) days within a consecutive 14-day period.

Event Setup: October 5, 2020 (Date) 8:00 (Time) ✔ AM PM

	Date	Start Time		End Time	
Day 1	November 1, 2020	5:00	AM ✔ PM	11:00	AM ✔ PM
Day 2	Every night	5:00	AM ✔ PM	11:00	AM ✔ PM
Day 3	through the	5:00	AM ✔ PM	11:00	AM ✔ PM
Day 4	2nd of Jan,	5:00	AM ✔ PM	11:00	AM ✔ PM
Day 5	2021	5:00	AM ✔ PM	11:00	AM ✔ PM

Breakdown: Jan 4 (Date) 8:00 (Time) ✔ AM PM

Site Plan

Attach a site plan that includes all applicable details listed below:

- Area of the entire event, including names of any streets
- Include the direction of travel if it is a moving event
- Location of any fencing, barriers, and/or barricades, and any removable fencing for emergency access
- Exit location for outdoor events that are fenced or within tent or tent structures
- Location of any 18-foot fire lanes and water supply for fire control
- Location of any food booths and cooking areas
- Location of any stages, platforms, scaffolding, bleachers, grandstands, canopies, tents, portable toilets, vendor booths, beer gardens, trash containers, dumpsters, and other temporary structures
- Locations of any speakers and lighting equipment
- Generator locations and/or source of electricity
- Location of event parking

Security Plan

Describe your security plan including crowd control, internal security, private security, and/or the assistance of the **City of Branson Police Department:**

Traffic will be controlled with a series of barricades and a traffic director. Traffic will flow one way from north to south on Expressway Lane, beginning at Shepherd of the Hills Expressway and ending at Roark Valley Road. A security/maintenance person patrols the length of the drive repeatedly.

If using a private security company, please provide the following information:

Name of Company Branson Security & Fire Email jeff.seay@wsfp.us

Contact Name Jeff Seay Phone (417) 338-8482

Emergency Medical Service Plan

Describe your emergency medical service plan including communications and type of resources that will be at your event and the manner in which they will be managed and deployed:

Every person there will have a cell phone. A maintenance/security person patrols the event repeatedly. That person and the ticket booth manager has been trained in hand-only cpr and basic first aid.

➢ Show location of medical services on site plan.

➢ Contact **Taney County Ambulance District** (TCAD) for information on assistance.

Sanitation Plan

Describe your plan for cleanup and removal of waste materials, including during and after your event. Include the number of containers and dumpsters you expect to provide:

We use WCA Waste, and put a dumpster on site from October 1st through the first week of January. We walk through the entire lenght of the display on a regular basis to collect trash.

If using a private waste management company, please provide the following information:

Name of Company WCA Waste Email

Contact Name Jake Black Phone (417) 851-1900

➢ Show location(s) on site plan.

➢ For information on obtaining recycling containers, contact the **City of Branson Recycling Center.**

Sanitation Plan (continued)

Describe your plan to provide restroom facilities at your event; including the number of portable toilets and/or description of on-site restrooms available. Include in your plan how the disposal of sanitary waste and sewage will be managed for the event:

We will provide a clean and sanitized portable outhouse near the parking lot. It will be serviced every week.

If using a private sanitation company, please provide the following information:

Name of Company BWI Sanitation Email office@bwisanitation.com

Contact Name Cynthia Phone (417) 869-6666

- Show location of all restrooms on site plan.

Food and Beverage Plan

FOOD AND BEVERAGE

Yes ✔ No Will the event include food concessions and/or preparation areas? If yes, describe the methods of preparation, cooking, and serving of food:

Address where fats, oils and grease will be disposed: _____

ALCOHOL

Yes ✔ No Will the event involve the consumption of alcoholic beverages on-site? If yes, please describe sale/distribution method and the required security measures:

- Show location(s) of food and beverage vendor(s) on site plan.
- Show location of alcohol consumption area(s) and fencing on site plan.
- A **Liquor License/Caterer's Liquor License** may be required at your event. Contact the **City of Branson Finance Department** for information.
- A **Temporary Business License** may be required. Contact the **City of Branson Finance Department** for information.
- **Additional permits** may be required. Contact the **Taney County Health Department** for information.

Certificate of Insurance

✔ Yes No Will the location of the event be on public property? If yes, liability insurance will be required and the City of Branson named as additional insured on the policy.

- Attach **Certificate of Liability Insurance**

Public Notification Plan

Indicate the method(s) used to notify the public who might be affected by the event.

✔ Postcard Email Published Notification ✔ Signage

Tent(s) and Fire Protection Plan

Yes ✔ No Will tents be used at the event? If yes, a **Special Permit** must be obtained a minimum of ten (10) days prior to the event from the **City of Branson Fire Department.**

Yes ✔ No Does the event include the use of fireworks, rockets, lasers, or other pyrotechnics? If yes, a **Special Permit** must be obtained from the **City of Branson Fire Department.** Describe and provide contact information:

Company Name _____ Email _____

Contact Name _____ Phone _____

- Show tent(s) and fireworks location(s) on site plan.
- Obtain **Special Permit** at the **City of Branson Fire Department**

Entertainment and Related Activities Plan

✔ Yes No Will there be music or live entertainment at the event?

Yes ✔ No Will stages, bandstands, or platforms be used for the event?

✔ Yes No Will sound amplification be used? If yes, please provide: Start time: 5:00 PM End time: 11:00 PM

✔ Yes No Will sound/light equipment be used for the event? If yes, provide a description for the use of sound/light equipment:

Pre-recorded Christmas carols by the choir of the 1st Nazarene Church and SIX on three PA speakers near the Santa booth and ticket booth.

Yes ✔ No Will the event have any live animals and/or horse-drawn carriage(s)? If yes, describe:

- Show location of all stages, bandstands, or platforms on site plan.
- Show location of all sound/light equipment on site plan.
- Show animal location(s) and route for horse-drawn carriage(s) on site plan.
- A **Construction Permit** may be required for stages, bandstands, or platforms. Contact the **City of Branson Planning and Development Department** for information.
- Additional permits may be required. Contact the **City of Branson's Animal Control** for information.

Temporary Sign Plan

✔ Yes No Will the event include the use of any temporary signs? If yes, identify sign types below.

Yard (max. 10)						
Qty. 10	Sign width 24"	x height 32"	= 5	sq. ft.		
Banner (max. 5)						
Qty. 5	Sign width 4	x height 8	= 32	sq. ft.	Mounting location: ✔ Freestanding	Wall

Provide a description of the location of each sign, (example: NE corner of Broadway and Main Street):

Banner 1: CVS Pharmacy on Hwy 76, Downtown

Banner 2: Koi Gardens on Hwy 76 & Michel Ln

Banner 3: Enterprise Car Rental on Hwy 76

Banner 4: Walgreens on Hwy 76 & Hwy 165

Banner 5: White Oak Service Station on Hwy 76 & 365

Yard 1: Holiday Inn Express on Green Mountain

Yard 2: Comfort Inn Thousand Hills on Green Mountain

Yard 3: Best Western on Hwy 76

Yard 4: Quality Inn on Shepherd of the Hills & Hwy 76

Yard 5: Best Western on Shepherd of the Hills

Yard 6: Thousand Hills on Hwy 76 & Wildwood

Yard 7: Comfort Inn & Suites on Gretna

Yard 8: TBD

Yard 9: TBD

Yard 10: TBD

Applicant Acknowledgement

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

Applicant Signature _____ Print Name _____ Date _____

OFFICE USE ONLY

✓	Description	Comments		✓	Description	Comments		
	Duration	# OCR	Cumm. Days		Vendors	Temp Bus Lic	Liquor Lic	Cater Lic
	Sign type	Qty.	Qty.		Sanitation Plan	Waste	Restrooms	
		Y:	B:					
	Site Plan			✓	Depts. Notified		✓ Depts. Notified	
	Public Notification				Building		Parks	
	Security Plan				Finance		Police	
	Emergency/Medical Plan				Fire		PW	
	Certificate of Insurance				Health		Utilities	

☐ Approved ☐ Denied

Approved by _____ Date _____ Reviewer time _____

05/2017

LIGHTS
OF
JOY
Christmas Drive-Thru
Exit
Entrance
Ticket Booth
Santa booth / possible retail
One way traffic flow from 5-11 PM
Lights of Joy Christmas Drive-thru
700 Expressway Lane
Enter: Across from Sight and Sound Theatre
Exit: On Roark Valley Road

BILL NO. 5788

STAFF REPORT

ITEM/SUBJECT: **READING OF A BILL AMENDING CHAPTERS 1, 18 AND 58 OF THE BRANSON MUNICIPAL CODE PERTAINING TO THE REALIGNMENT OF CODE ENFORCEMENT WITHIN THE CITY AND DANGEROUS BUILDINGS.**

INITIATED BY: **PLANNING AND DEVELOPMENT DEPARTMENT**

FIRST READING: **FEBRUARY 25, 2020** **FINAL READING:** **MARCH 10, 2020**

EXECUTIVE SUMMARY:

- Prior to September 1, 2019, code enforcement activities fell under the responsibility of the Planning & Development Director. Since, these activities have been realigned under the Police Chief. As a result, staff is proposing to amend Branson Municipal Code Chapter 58 to replace "planning and development director" with "police chief" to reinforce this recent alignment change within the City.

- In addition to the changes described above, staff is proposing minor amendments to Branson Municipal Code Chapter 18 to address necessary changes in the dangerous building process which were not fully addressed within Ordinance No. 2017-0095 when procedures for an Administrative Hearing Officer were established.

- During this effort, staff also identified misplaced code pertaining to the board of appeals along with four terms in the dangerous building code which no longer needed to be defined since they no longer had any connection with the dangerous building process.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

_X_ Recommended
____ Not Recommended
____ Neutral/None

COMMUNITY PLAN 2030: LU-5: Development Codes & Regulations.

ATTACHED EXHIBITS:

BILL NO. 5788 **ORDINANCE NO. _____**

AN ORDINANCE AMENDING CHAPTERS 1, 18 AND 58 OF THE BRANSON MUNICIPAL CODE PERTAINING TO THE REALIGNMENT OF CODE ENFORCEMENT WITHIN THE CITY AND DANGEROUS BUILDINGS.

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 of Aldermen, 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 Branson Municipal Code Chapter 1 - *General Provisions*, Chapter 18 - *Buildings and Building Regulations*, Article X. - *Dangerous Buildings* and Chapter 58 - *Offenses and Nuisances*, Article VIII. - *Other Nuisances*, are hereby amended to read as follows:

CHAPTER 1 - GENERAL PROVISIONS

Sec. 1-2. - Definitions and rules of construction.

Board of appeals. **The term "board of appeals" means the building code board of appeals of the city consisting of five members appointed by the board who are residents in the city and who hear and rule on appeals concerning interpretation or administration of building regulations of the city.**

CHAPTER 18 - BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. - IN GENERAL

Sec. 18-7. - Board of appeals.

The board of appeals was created pursuant to the authority of certain International Code Council codes, as adopted by this chapter. Such board of appeals has the authority to hear and decide appeals, as described in this chapter, as well as the authority described anywhere else in this Code.

Secs. 18-[~~7~~]**8**—18-26. - Reserved.

ARTICLE X. - DANGEROUS BUILDINGS

DIVISION 1. - GENERALLY

Sec. 18-218. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. For general definitions and rules of construction applicable throughout this Code, see section 1-2.

[~~*Board of appeals* means the board appointed by the city's board of aldermen to hear and rule on appeals from the decision of the planning and development director pursuant to this article.~~]

Inspector means a person appointed by the planning and development director **or the police chief** to perform inspections of buildings and structures in the enforcement of this article.

[~~*Notice and order* means the notice and order required by section 18-223.~~]

[~~*Order of abatement* means the order required by section 18-226.~~]

[~~*Planning and development director* means the person appointed by the city as the planning and development director. The planning and development director may select and appoint qualified persons as a designee.~~]

Sec. 18-226. - Failure to comply with notice and order.

(a) Upon receipt of a report from the inspector indicating failure by the owner or any interested party to commence work as required by the notice and order within the time specified by this article or upon failure to proceed continuously with work without unnecessary delay, the planning and development director shall [~~hold~~] **request** a hearing giving the owner and interested parties full and adequate hearing on the matter. Such hearing shall be recorded in accordance with RSMo 536.130, and shall be considered a contested case for purposes of judicial review.

(b) Written notice of such hearing shall be given at least ten days in advance of such hearing (in accordance with section 18-223(c)) directing the owner and interested parties to appear before the [~~planning and development director~~] **administrative hearing officer** on the date specified in the notice to show cause why the building or structure reported to be a dangerous building should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the notice and order.

(c) Any party may be represented by counsel and all parties shall have an opportunity to be heard.

(d) The [~~planning and development director~~] **administrative hearing officer** shall make written findings of fact from the evidence offered at said hearing as to whether or not the building or structure in question is a dangerous building as defined in this article.

(e) If the evidence supports a finding based upon competent and substantial evidence that the building or structure is a dangerous building, the [~~planning and development director~~] **administrative hearing officer** shall issue a written order of abatement based on such findings of fact, commanding the owner or other responsible party to repair, vacate, board, or demolish any building or structure found to be a dangerous building and to clean the property; provided that any person so notified shall have the privilege of either vacating and repairing said building or structure (if such repair will comply with the ordinances of the city) or may vacate and demolish said dangerous building at his own risk to prevent the city from acquiring a lien against the land where the dangerous building stands. If the evidence does not support a finding that a building or structure is a dangerous building, no order shall be issued.

(f) The written order of abatement from the [~~planning and development director~~] **administrative hearing officer** shall be delivered, by person or mail, to each party of the hearing, or their attorney of record. In addition, copies of the order shall be posted in a conspicuous place in the office of the planning and development director for a period of 30 days from the date of

issuance. The order shall state a reasonable time, to be no less than 30 days from the date of issuance, within which to comply with the order, and shall further provide that if the work is not substantially completed within 30 days of the issuance of the order, the city may, by its own employees or by contractor, perform the work necessary to bring the building into compliance with the [~~planning and development director's~~] **administrative hearing officer's** order with costs levied to the property owner, or by a lien placed upon the property.

[~~Sec. 18-227. - Appeals from the decision of the planning and development director.~~

~~(a) Any owner or interested party aggrieved by an order of abatement may appeal such order to the administrative hearing officer as provided by the code. To be effective, such appeal shall conform with the requirements of this section and shall be filed with the city clerk no later than 30 days after the written order of abatement has been issued. For purposes of an appeal of an order of abatement, such appeal shall be considered a rehearing.~~

~~(b) An appeal filed pursuant to this section shall include the following information:~~

~~(1) The name and mailing address of the person requesting the appeal (referred to in this section as the "appellant");~~

~~(2) A description of the order the appellant is appealing (including a copy of such order);~~

~~(3) A description of the appellant's interest in the property (e.g., ownership, lessee, mortgagee, etc.), and a description of how the order may affect such interest;~~

~~(4) A detailed description of the factual and legal grounds for the appellant's appeal;~~

~~(5) The common street address or legal description of the affected property.~~

~~(c) Upon request of the appellant, the administrative hearing officer may stay enforcement of any order of abatement, pending the review of the appeal and final action related thereto.~~

~~(d) Upon submission of a timely appeal that conforms with the requirements in subsection (b) of this section, the hearing of such appeal shall be scheduled to take place before the administrative hearing officer within 30 days of the filing of such appeal, and notice of such fact shall be provided to the appellant at the mailing address that he provided. Such notice shall also be sent to other interested parties, as defined by this article. The administrative hearing officer shall be provided with copies of any and all notices, orders, briefs, and documents provided by appellant.~~

~~(e) Unless waived by the appellant, either via formal waiver or failure to timely object, the hearing before the administrative hearing officer shall be recorded, via a method capable of transcription, and include:~~

~~(1) A brief submitted by the planning and development director, outlining the basis for the order of abatement;~~

~~(2) Any and all evidence that either the city or the appellant wishes to submit, which the administrative hearing officer deems relevant to the question of the validity of the planning and development director's order of abatement;~~

~~(3) Any and all testimony, given under oath, that either the city or the appellant wishes to submit, which the administrative hearing officer deems relevant to the question of the validity of the planning and development director's order of abatement. Parties shall have the right to cross examine any witness providing testimony;~~

~~(4) Any party may request additional procedures not specifically outlined herein and the administrative hearing officer shall consider and timely rule on such requests. Any and all exhibits presented at such hearing shall be made available to adverse parties prior to the hearing.~~

~~(f) The administrative hearing officer shall make a ruling, based upon competent and substantial evidence, either affirming or reversing, in part or in whole, the planning and development director's order of abatement, in accordance with this chapter. The administrative hearing~~

~~officer shall provide the appellant a copy of a finding of fact and conclusions of law for decision within 15 days of the conclusion of the hearing.~~

~~(g) The administrative hearing officer may establish additional procedures to fulfill the purpose of this section.~~]

Sec. 18-22[~~8~~]**7**. - Appeals from the administrative hearing officer.

Any person with standing aggrieved with the decision of the administrative hearing officer may appeal such decision **to the circuit court as established in Sections 536.100 to 536.140 RSMo, if a proper record as defined in Section 536.130 RSMo, is maintained of the hearing; otherwise, the appeal shall be made under the procedures provided by Section 536.150 RSMo** [~~as provided by RSMo ch. 536~~].

Sec. 18-22[~~9~~]**8**. - Enforcement of order of abatement; compliance.

(a) *Generally.*

(b) *Compliance with posted notices.*

(c) *Repair by city.* The planning and development director may, in addition to any other remedy herein provided or otherwise allowed by law, cause the building or structure to be **secured and** repaired to the extent necessary to correct the conditions that render the building or structure dangerous as set forth in the order of abatement; or, if the order of abatement required demolition, to cause the building to be **secured and** demolished and the materials, rubble, and debris therefrom removed and the parcel cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner provided in this article and as otherwise allowed by law.

Sec. 18-2[~~30~~]**29**. - Enforcement of order; extension of time to perform work.

Sec. 18-23[~~1~~]**0**. - Enforcement of order; interference with repair or demolition work prohibited.

Sec. 18-23[~~2~~]**1**. - Performance of work of **securing and** repair**,** or **securing and** demolition by city; general provisions.

When any work of **securing and** repair**,** or **securing and** demolition is to be done pursuant to this article by the city, the planning and development director shall, through the city administrator, issue an order and the work shall be accomplished by personnel of the city or by private contract under the direction of the planning and development director. The planning and development director may prepare plans and specifications, or may employ such architectural and engineering assistance on a contract basis as deemed reasonably necessary. If any part of the work is to be accomplished under private contract, standard contractual bid procedures shall be followed to minimize costs.

Sec. 18-23[~~3~~]**2**. - Issuance of tax bill for cost of work.

Sec. 18-23[4]**3**. - Insurance proceeds.

[~~Sec. 18-235. - Board of appeals.~~

~~The board of appeals was created pursuant to the authority of certain International Code Council codes, as adopted by this chapter. Such board of appeals has the authority to hear and decide appeals, as described in this article, as well as the authority described anywhere else in this Code. If the planning and development director or inspector is involved with issuance of an order of abatement that is subject to appeal, the planning and development director or inspector shall not serve on the board of appeals when such order is appealed.~~]

Secs. 18-23[~~6~~]**4**—18-263. - Reserved.

CHAPTER 58 - OFFENSES AND NUISANCES

ARTICLE VIII. - OTHER NUISANCES

DIVISION 1. - GENERALLY

Sec. 58-294. - Nuisances; general.

Sec. 58-295. - Enforcement and abatement.

(a) *Enforcement.* The [~~planning and development director~~] **police chief** shall be responsible for enforcement of this division.

(b) *Notice and order.* When a nuisance as described in this [~~article~~] **division** exists, the [~~planning and development director~~] **police chief** may declare a nuisance exists and give written notice to the owner, agent, tenant, occupant, or other person in control of the property, and order such nuisance be removed or abated. Such notice and order must be given to the property's owner.

(1) Any notice and order given pursuant to this section shall be given by one of the following means:

a. Personal service by leaving it at the addressee's usual place of abode with an occupant who is over the age of 15 years.

b. Mailing it via regular first class mail to the addressee. If the mailing is not returned, such notice shall be deemed effective.

c. When notice cannot be given by one of the means outlined above, then such notice shall be posted on or about the premises described in the notice.

d. There shall be a rebuttable presumption that any notice sent via regular mail pursuant to this section is received within two business days of its mailing. There shall also be a rebuttable presumption that any notice posted on the premises is received at the end of 24 hours after the posting thereof.

e. If none of those above-stated methods is successful, the [~~planning and development director~~] **police chief** may cause such notice and removal order to be published in the newspaper for two consecutive weeks.

(2) Such notice and removal order shall, at a minimum:

a. Declare that a nuisance exists;

b. Describe the condition that constitutes such nuisance;

c. Order the removal or abatement of such condition not less than [~~seven~~] **ten** days from the date of receipt of such notice;

d. Describe the location of the property where the nuisance exists, using the street address rather than a legal description when reasonably possible to do so;

e. State that if the owner or occupant fails to begin removing or abating the nuisance within the time allowed or pursue the removal or abatement of such nuisance without unnecessary delay, then the [~~planning and development director~~] **police chief** may cause the condition that constitutes the nuisance to be removed or abated and that the cost of such removal or abatement may be included in a special tax bill or added to the annual real estate tax bill for the property and collected in the same manner and procedure for collecting real estate taxes, and that such cost shall be a personal debt of the property owner;

f. State that if the owner or occupant of such property fails to begin removing or abating the nuisance within the time allowed, or upon failure to pursue the

removal of such nuisance without unnecessary delay, such owner or occupant may be cited for violating this article;

g. State that if the addressee wishes to contest the finding of a nuisance and removal order, he must file a written request for appeal with the [~~planning and development director~~] **police chief**, which must be received within seven days from the date the addressee received the notice and order.

(c) *Hearing.* Any owner, agent, tenant, occupant, or other person aggrieved by the [~~planning and development director's~~] **police chief's** notice and order may request in writing within five business days a public hearing as provided in chapter 30 of this Code for administrative hearings. That hearing date shall be set within 30 days of the request.

(d) *Abatement.* Follow**ing** the appeal process and the issuance of the [~~planning and development director's~~] **police chief's** final order of abatement.

(1) If the owner, agent, tenant, occupant, or other person in control of the property fails to begin removal or abatement of the nuisance in accordance with the notice and order of abatement within the time allowed, or upon failure to pursue the removal and abatement of such nuisance without unnecessary delay, the [~~planning and development director~~] **police chief** may cause the condition that constitutes the nuisance to be removed or abated. [~~The police department may be notified of such removal or abatement.~~]

(2) If the [~~planning and development director~~] **police chief** causes a nuisance to be removed or abated in accordance with this division and has sent notice and a removal order to the owner in accordance herewith, he shall certify the cost of such removal and abatement (which may include reasonable fees for the city's costs in administering this article) to the city clerk who shall cause the certified cost to be included in a special tax bill or added to the annual real estate tax bill for the property and the certified cost shall be collected by the official collecting taxes in the same manner and procedure for collecting real estate taxes. The tax bill from the date of its issuance shall be deemed a personal debt against the owner and shall also be a lien on the property until paid.

(3) The collection of the delinquent bill shall be governed by the laws governing delinquent and back taxes. The tax bill from the date of its issuance shall be deemed a personal debt against the owner and shall also be a lien on the property until paid. In the event a lawsuit is required to enforce the tax bill, the city may charge the property owner costs of collecting the tax bill including attorney's fees.

(e) *Warrant.* The [~~planning and development director~~] **police chief** may enter upon private property for inspection or for the purpose of inspecting or removing any nuisance in accordance with this article. If any person refuses to allow entry onto his private property, the [~~planning and development director~~] **police chief** may obtain an administrative search warrant in accordance with this Code and proceed in accordance therewith.

(f) *Emergency abatement.* When the [~~planning and development director~~] **police chief** determines that a nuisance is an imminent threat to the life, health, or safety of the public, he shall not be required to comply with the requirements of this section prior to abatement of such nuisance.

Sec. 58-296. - Strictest provisions to control in event of conflict.

Sec. 58-297. - False advertising.

(h) *Enforcement.* Enforcement of this section shall be the responsibility of the police department [~~or the code enforcement official~~].

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 by the Mayor.

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:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CGL #51831 2/20/20
_____
Chris Lebeck #51831
City Attorney

BILL NO. 5789

City of Branson MISSOURI

STAFF REPORT

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

INITIATED BY: **FINANCE DEPARTMENT**

FIRST READING: **FEBRUARY 25, 2020** **FINAL READING:** **MARCH 10, 2020**

EXECUTIVE SUMMARY:

- Per Branson Code (Sec. 2-418, Budget Modification), any increase in appropriation within a budgeted fund shall require the approval of the Board of Aldermen. The proposed changes to the 2019 Budget are indicated by the following budget amendment.

- Expenses for the Enterprise vehicle payments in 2019 were originally recorded in the General Fund non-departmental account, Public Safety, Transportation, Utilities, and Parks Funds until the Internal Service Funds (ISF) were established so the funds could be moved to the appropriate ISF accounts for tracking purposes.

- Expenses and Budget will now be moved from the various funds into the various Internal Service Funds to cover 2019 Enterprise expenses and future payments for the approved capital vehicles.

- Additionally, we expect the Parks Fund Balance to end higher than budgeted and recommend transferring an additional $100,000 to the Parks Internal Service Fund for future projected capital needs.

- The last transfer on the ordinance relates to the transfer of positions from the Planning Department to Police Department for Code Enforcement. This transfer amount covers the salary and benefits from September 1, 2019 to December 31, 2019. These salaries are budgeted as transfers from the General Fund to the Public Safety Fund beginning in FY2020.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

__X__ **Recommended**
____ **Not Recommended**
____ **Neutral/None**

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. 5789 **ORDINANCE NO. _____**

AN ORDINANCE AMENDING THE ADOPTED 2019 BUDGET FOR THE CITY OF BRANSON, TO ADJUST MONIES FOR VARIOUS 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 various funds 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 various fund.

Internal Service Funds

601-1095-510-7010 (Capital/Motor Vehicles-Utilities)	$56,812
602-2000-510-7010 (Capital/Motor Vehicles-Police)	$77,435
602-3000-510-7010 (Capital/Motor Vehicles-Fire)	$10,442
603-1095-510-7010 (Capital/Motor Vehicles-Parks)	$18,511
604-1095-510-7010 (Capital/Motor Vehicles-Public Works)	$37,778
605-1095-510-7010 (Capital/Motor Vehicles-General Fund)	$14,072
620-4500-570-9601 (Transfer out to W/S ISF)	$354,083
601-0000-499-4620 (Transfer in to W/S ISF)	$354,083
260-1095-520-9602 (Transfer out to Police ISF)	$172,908
602-0000-499-4260 (Transfer in to Police ISF)	$172,908
101-1095-510-9602 (Transfer out to Police ISF)	$83,190
602-0000-499-4260 (Transfer in to Police ISF)	$83,190
101-1095-510-9603 (Transfer out to Parks ISF)	$92,585
603-0000-499-4101 (Transfer in to Parks ISF)	$92,585
101-1095-510-9605 (Transfer out to GF ISF)	$81,091
605-0000-499-4101 (Transfer in to GF ISF)	$81,091
101-1095-510-9605 (Transfer out to GF ISF)	$43,134
605-0000-499-4101 (Transfer out to GF ISF)	$43,134
105-1095-510-9604 (Transfer out to Transp.ISF)	$133,067
604-0000-499-4105 (Transfer in to Transp. ISF)	$133,067

Internal Service Fund/Parks

230-1580-540-9603 (Transfer out to Parks ISF)	$100,000
603-0000-499-4230 (Transfer in to Parks ISF)	$100,000

Public Safety Fund/General Fund

101-1095-510-9260 (Transfer out to Public Safety)	$49,872
260-0000-499-9101 (Transfer in from GF)	$49,872

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:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

#51831 2/20/20
_____
Chris Lebeck #51831
City Attorney

BILL NO. 5790

City of Branson MISSOURI

STAFF REPORT

ITEM/SUBJECT: **READING OF A BILL AMENDING THE ADOPTED 2019 BUDGET FOR THE CITY OF BRANSON TO ADJUST MONIES FOR THE MANDATORY REDEMPTION AND WATERFALL IN THE DEBT SERVICE FUNDS.**

INITIATED BY: **FINANCE DEPARTMENT**

FIRST READING: **FEBRUARY 25, 2020** **FINAL READING:** **MARCH 10, 2020**

EXECUTIVE SUMMARY:

- Due to the Waterfall requirements on the Branson Hills and Branson Shoppes Bonds, they require excess tax receipts received in these funds to be used to pay additional principle and interest payments, this is referred to as the Mandatory Redemption.
- In 2019 additional payments for the Branson Hills and Branson Shoppes for interest and principle totaled $1,874,183.
- Due to the Waterfall requirements on the Branson Landing Bonds, an additional $864,043 in excess funds is being transferred to the 2011A bond and the 2005 IDA Branson Landing Bond. The overall effect on the budget for this transaction will increase expenditures in one fund while increasing the revenues in another fund.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

_X_ Recommended
____ Not Recommended
____ Neutral/None

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. 5790 **ORDINANCE NO. _____**

AN ORDINANCE AMENDING THE ADOPTED 2019 BUDGET FOR THE CITY OF BRANSON, TO ADJUST MONIES FOR THE MANDATORY REDEMPTION AND WATERFALL IN THE DEBT SERVICE 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 Debt Service Funds 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 Debt Service Funds.

Account Number	Increase Amount	Decrease Amount
Mandatory Redemption		
170-0710-510-8001 2005A Branson Hills	$445,000	
170-0710-510-8001 2007A Branson Hills	$110,000	
170-0710-510-8001 2017A Branson Shoppes	$500,000	
170-0710-510-8001 2017B Branson Shoppes	$410,000	
170-0710-510-8002 2017B Branson Shoppes	$409,183	
Fund Balance (170 Debt Service Fund)		$1,874,183
Waterfall		
160-0000-499-4165 Transfer from Other Fund	$646,302	
165-1095-510-9160 Transfer to Other Fund	$646,302	
165-1095-510-9171 Transfer to Other Fund	$217,742	
171-0000-499-4165 Transfer from Other Fund	$217,742	
Fund Balance (160 Debt Service Fund)	$646,301	
Fund Balance (165 Debt Service Fund)		$864,043
Fund Balance (171 Debt Service Fund)	$217,742	

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:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CL #51831 2/20/20
Chris Lebeck #51831
City Attorney

BILL NO. 5791

City of Branson MISSOURI

STAFF REPORT

ITEM/SUBJECT: **READING OF A BILL APPROVING PAYMENT OF INCENTIVE FEES TO SMG, BRANSON CONVENTION CENTER'S MANAGEMENT, IN ACCORDIANCE WITH THEIR CONTRACT FOR FY2018.**

INITIATED BY: **FINANCE/ADMINISTRATION**

FIRST READING: **FEBRUARY 25, 2020** **FINAL READING:** **MARCH 10, 2020**

EXECUTIVE SUMMARY:

- In March 2014, the City of Branson entered into a management services contract with SMG for the operation of the Branson Convention Center (BCC) and SMG has been operating the facility since April 1, 2014.
- The agreement between the parties stipulated a fixed management fee and provided for an additional annual incentive fee, which may be provided to SMG upon the attainment of certain performance criteria.
- The Budget and Finance Committee met in January 2020 to review materials and discuss the performance of SMG to recommend the incentive fee.
- In accordance with their current contract and the approved criteria, the Budget and Finance Committee approved an incentive fee of $126,684.

FINANCIAL IMPACT:

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

STAFF RECOMMENDATION:

____ **Recommended**
____ **Not Recommended**
_X_ **Neutral/None**

COMMUNITY PLAN 2030: Good Governance: Develops sustainable fiscal and operational policies and fosters trust and transparency by ensuring accountability, efficiency, integrity, innovation and responsiveness in all operations.

ATTACHED EXHIBITS:

ITEM/SUBJECT: **READING OF A BILL APPROVING PAYMENT OF INCENTIVE FEES TO SMG, BRANSON CONVENTION CENTER'S MANAGEMENT, IN ACCORDIANCE WITH THEIR CONTRACT FOR FY2018.**

DETAILED ANALYSIS:

In March 2014, the City entered into a Management Services Contract with SMG for the operation of the Branson Convention Center (BCC). SMG has been operating the facility since April 1, 2014. The agreement between the parties stipulated a fixed management fee ($135,000/yr.), and also provides for an additional annual incentive fee, which may be provided to SMG upon the attainment of certain performance criteria, up to the maximum of the fixed management fee. Each of the 5 criteria had a weighting, which would be used to determine the maximum fee per category.

1. Customer & Client Satisfaction (20%)
2. Completion of Goals & Objectives (20%)
3. Improved Operating Financial Condition (40%)
4. Responsiveness (10%)
5. Ingenuity & Creativity (10%)

The fixed management fee and maximum incentive fee is $ 137,700. The incentive fee committee's recommendation is broken out below and the total recommended fee will be $126,684:

CRITERIA	FEE	WT.	SCORE	AMT.
Customer & Client Satisfaction	$137,700 x	20% x	100% =	$27,540
Completion of Goals & Objectives	$137,700 x	20% x	75% =	$20,655
Improved Operating Financial Condition	$137,700 x	40% x	100% =	$55,080
Responsiveness	$137,700 x	10% x	70% =	$9,639
Ingenuity & Creativity	$137,700 x	10% x	100% =	$13,770
TOTAL INCENTIVE FEE AWARDED:			$ 126,684	

BILL NO. 5791 **ORDINANCE NO. _____**

AN ORDINANCE APPROVING PAYMENT OF INCENTIVE FEES TO SMG, BRANSON CONVENTION CENTER'S MANAGEMENT, IN ACCORDANCE WITH THEIR CONTRACT FOR FY2018.

WHEREAS, in March 2014, the City entered into a Management Services Contract with SMG for the operation of the Branson Convention Center (BCC) and SMG has been operating the facility since April 2, 2014; and

WHEREAS, the agreement between the parties stipulated a fixed management fee and provided for an additional annual incentive fee, which may be provided to SMG upon the attainment of certain performance criteria, up to the maximum of the fixed management fee; and

WHEREAS, in January 2020, the Budget and Finance Committee met to review materials and discuss the performance of SMG to recommend the incentive fee; and

WHEREAS, the Board of Aldermen desires to pay SMG incentive fees in accordance with the contract for FY2018.

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 payment of incentive fees in the amount of $126,684 to SMG, Branson Convention Center's Management in accordance with the contract for FY2018.

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:

CGL #51831 2/20/20
Chris Lebeck #51831
City Attorney

BILL NO. 5792

City of Branson MISSOURI

STAFF REPORT

ITEM/SUBJECT: **READING OF A BILL APPROVING AN AMENDMENT TO THE CONTRACT WITH ARCHITECT DESIGN GROUP PERTAINING TO PROFESSIONAL CONSULTING SERVICES FOR A NEW FIRE STATION AND POLICE HEADQUARTERS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

INITIATED BY: **PUBLIC WORKS/ENGINEERING**

FIRST READING: **FEBRUARY 25, 2020** **FINAL READING:** **MARCH 10, 2020**

EXECUTIVE SUMMARY:

- As part of our City's commitment to the citizens following their support of the new Public Safety Tax, work has been initiated by several staff members for the design and construction of a new Fire Station #4 and a new Police Headquarters.
- Proposals were received from twelve professional firms for the architectural and engineering design of these two new buildings.
- City Council approved a contract with Architect Design Group for Phase 1 of the contract for a detailed spatial needs assessment, site analysis and master planning, conceptual design, and site engineering in the not to exceed amount of $121,500.
- Phase 1 is now complete and has been reviewed by internal staff.
- Staff is now ready to move forward with Phase II services which is full architectural and engineering services for the complete design of both facilities and construction administration of the two facilities in the not to exceed amount of $1,255,932.00.
- Staff recommends approval of this bill.

FINANCIAL IMPACT:

___ **No impact/Not applicable**
___ **Budgeted in the current year's budget**
_X_ **Other (see additional explanation below)**

STAFF RECOMMENDATION:

_X_ **Recommended**
____ **Not Recommended**
____ **Neutral/None**

COMMUNITY PLAN 2030: C1.2.5

ATTACHED EXHIBITS:

SD

ITEM/SUBJECT: **READING OF A BILL APPROVING AN AMENDMENT TO THE CONTRACT WITH ARCHITECT DESIGN GROUP PERTAINING TO PROFESSIONAL CONSULTING SERVICES FOR A NEW FIRE STATION AND POLICE HEADQUARTERS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

FINANCIAL IMPACT:

Finance Director Jamie Rouch has secured funding for this project through an internal fund service supported by Public Safety Tax revenue.

BILL NO. 5792 **ORDINANCE NO. _____**

AN ORDINANCE APPROVING AN AMENDMENT TO THE CONTRACT WITH ARCHITECT DESIGN GROUP PERTAINING TO PROFESSIONAL CONSULTING SERVICES FOR A NEW FIRE STATION AND POLICE HEADQUARTERS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

WHEREAS, the City of Branson desires to improve public safety by constructing a Fire Station #4 and a new Police Headquarters; and

WHEREAS, an amended contract to perform professional design services with Architect Design Group has been recommended for approval by city staff; and

WHEREAS, the Board of Aldermen desires to approve the amended 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 an amendment to the contract with Architect Design Group for professional design services in the amount not to exceed $1,255,932 and authorizes the Mayor to execute the contract in the form attached as Exhibit "1".

Section 2: The Board of Aldermen hereby authorize the City Administrator to approve change orders as necessary, in accordance with the City's change order policy established in Resolution 2019-R002.

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 City of Branson, Missouri this _____day of _____, 2020.

_____
E. Edd Akers
Mayor

ATTEST:

_____
Lisa K Westfall
City Clerk

APPROVED AS TO FORM:

CLL #51831 2/20/20
Chris Lebeck #51831
City Attorney

AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Branson, Missouri
110 W. Maddux St.
Suite 205
Branson, MO 65616
Telephone Number: 417-337-8522

and the Architect:
(Name, legal status, address and other information)

Architects Design Group / ADG, Inc.
PO Box 1210
Winter Park, FL 32790
Telephone Number: 407.647.1706
Fax Number: 407.645.5525

for the following Project:
(Name, location and detailed description)

Branson Public Safety Facility and Fire Station with Fire Administration

This B101 - 2017 contract is an amendment to our original contract for pre-design services (B101-2017, dated May 6, 2019). This contract supersedes the original contract outlined above.

This project will include the construction of a new Police Department Headquarters building on City owned property located on Forsythe Street. The Police Headquarters will include administration, field operations, criminal investigations, and support services working space. These areas will also include two bay sally port, evidence and processing, community room, soft lobby, training rooms, and a community room emergency operations center. The estimated building size: 28,021 square feet.

This project will also include the construction of a new Fire Department Station #4 on City owned property located on Champagne Boulevard. The fire station will include three bays, living quarters, bunk room for 8 personnel, and a training / community room. The estimated building size: 10,924 square feet.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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User Notes:
(3B9ADAME)

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

This project will include the construction of a new Police Department Headquarters building on City owned property located on Forsythe Street. The Police Headquarters will include administration, field operations, criminal investigations, and support services working space. These areas will also include two bay sally port, evidence and processing, community room, soft lobby, training rooms, and a community room / emergency operations center. The estimated building size: 28,021 square feet.

This project will also include the construction of a new Fire Department Station #4 on City owned property located on Champagne Boulevard. The fire station will include three bays, living quarters, bunk room for 8 personnel, and a training / community room. The estimated building size: 10,924 square feet.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

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§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

TBD

§ 1.1.4 The Owner's anticipated design and construction milestone durations:

.1 Design phase milestone dates, if any:

Police Station:
- Programming: 2 months
- Schematic Design: 3 months
- Design Development: 3 months
- Construction Documents: 4 months

Fire Station:

- Programming: 2 months
- Schematic Design: 2.5 months
- Design Development: 2.5 months
- Construction Documents: 3 months

.2 Construction commencement date:

Police Station:

- Bidding: 2 months
- Construction Start: 2 weeks

Fire Station:
- Bidding: 2 months
- Construction Start: 2 weeks

.3 Substantial Completion date or dates:

- 16 months
- 12 months

(Paragraph Deleted)

4 Other milestone dates:

N/A

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

TBD

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

These projects will not be certified LEED projects, but will be designed to follow the principles of LEED design while respecting the construction budget.
(Paragraph Deleted)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate

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AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Keith Francis, Director of Public Works / Engineering
110 W. Maddux St.
Suite 310
Branson, MO 65616
Telephone Number: 417-337-8559

Email Address: kfrancis@bransonmo.gov

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

Chief Jeff Matthews
Branson Police Department
110 W. Maddux St. #100
Branson, MO 65616
Telephone Number: 417-334-3300

Chief Ted Martin
Branson Police Department
110 W. Maddux St. #100
Branson, MO 65616
Telephone Number: 417-243-2790

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

N/A

(Paragraph Deleted)

.3 Other, if any:
(List any other consultants and contractors retained by the Owner.)

N/A

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

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/
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User Notes:
(3B9ADA4E)

Ian A. Reeves, AIA
PO Box 1210
Winter Park, FL 32790
Telephone Number: 407.647.1706

Email Address: ianr@adgusa.org

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

J & M Engineering
Ben Jennings
3045 South Kansas Expressway
Springfield, MO 65807
Telephone Number: (417) 708-9315

.2 MEP / FP Engineer:

RTM Engineering Consultants
Cameron Collins
3333 East Battlefield Road, Suite 1000
Springfield, MO 65804
Telephone Number: (417) 881-0020

(Paragraph Deleted)

§ 1.1.11.2 Consultants retained under Supplemental Services: Geotechnical Engineering, Civil Engineer and Land Surveyor in addition to any other required special engineering consultants.

§ 1.1.12 Other Initial Information on which the Agreement is based:

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or

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User Notes: (3B9ADA4E)

relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars and Zero Cents ($ 1,000,000.00) for each occurrence and Two Million Dollars and Zero Cents ($ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars and Zero Cents ($ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents ($ 1,000,000.00) each accident, One Million Dollars and Zero Cents ($ 1,000,000.00) each employee, and One Million Dollars and Zero Cents ($ 1,000,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars and Zero Cents ($ 2,000,000.00) per claim and Two Million Dollars and Zero Cents ($ 2,000,000.00) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the

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requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants, if any. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants, if any. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings, floor plans with dimensions, and square footage and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital

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representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing, and colored photos of building systems and materials.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

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§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) evaluate any exceptions to bid documents, (5) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

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§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

The selected General Contractor will provide a detailed schedule outlining the specific tasks and durations of the construction of the two (2).

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to

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payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule, inclusive of a continuously updated log of all submittals (each with their own reference number), and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- **.1** conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- **.2** issue Certificates of Substantial Completion;
- **.3** forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,

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.4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility *(Architect, Owner, or not provided)*
§ 4.1.1.1 Programming	Architect
§ 4.1.1.2 Multiple preliminary designs	TBD
§ 4.1.1.3 Measured drawings	TBD
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	Architect
§4.1.1.7 Development of Building Information Models for post construction use	TBD
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	TBD
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Construction Manager
§ 4.1.1.13 On-site project representation	TBD
§ 4.1.1.14 Conformed documents for construction	Architect
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	TBD

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§ 4.1.1.17 Post-occupancy evaluation	TBD
§ 4.1.1.18 Facility support services	Owner
§ 4.1.1.19 Tenant-related services	Owner
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	Architect
§ 4.1.1.22 Security evaluation and planning	Architect
§ 4.1.1.23 Commissioning	TBD
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	TBD
§ 4.1.1.25 Fast-track design services	TBD
§ 4.1.1.26 Multiple bid packages	N/A
§ 4.1.1.27 Historic preservation	N/A
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect
§ 4.1.1.29 Other services provided by specialty Consultants	TBD
§ 4.1.1.30 Other Supplemental Services	TBD

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

.2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

.3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

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.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
.5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
.7 Preparation for, and attendance at, a public presentation, meeting or hearing;
.8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
.9 Evaluation of the qualifications of entities providing bids or proposals;
.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
.11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

.1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
.2 TBD ( ) visits to the site by the Architect during construction
.3 TBD ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
.4 TBD ( ) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within TBD ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs.

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The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative; Keith Francis authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall require the Architect to contract a professional surveyor to furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall require the Architect to contract professional geotechnical engineering firm to furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner has directed the Architect to coordinate the services required for these projects. The Architect shall require that its consultants maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

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ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner may

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 authorize rebidding or renegotiating of the Project within a reasonable time;
.3 terminate in accordance with Section 9.5;
.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
.5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

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ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

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§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 8.3 of this Agreement

[X] Litigation in a court of competent jurisdiction in the County where the project is located

[ ] Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§

(Paragraphs Deleted)

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation may be adjusted, as mutually agreed,

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to provide for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect as mutually agreed for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the fees for all work that has been produced prior to the termination date and any work required to prepare and package the information to be sent to the Owner. If the project is terminated by the Owner, the Owner does not have the right to use the Architect's tools of service without the expressed written permission of the Architect.
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

(Paragraphs Deleted)

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the

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Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§10.10: Any amount or item designated as "TBD" shall by determined once Phase I of this Agreement as defined in the Scope of Services has been completed by Architect and shall only made a part of the Agreement as an amendment pursuant to §10.11.

§10.11: No amendment or change to this Agreement shall be made except in writing executed by all parties prior to the change in work or terms being performed. No oral order or conduct by the Owner or Architect shall constitute a change to the
(Paragraph Deleted)

Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as outlined in the revised Exhibit "D", dated 9/26/2019, for the fees associated with the Phase I Scope of Services as outlined in Exhibit "A." The fees for the Phase II Scope of Services will be determined based on the findings of Phase I."

.1 Stipulated Sum
(Insert amount)

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.2 Percentage Basis
(Insert percentage value)

( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Thirty	percent (	30	%)
Construction Documents Phase	Twenty-five	percent (	25	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	one hundred	percent (	100	%)

The above related to Phase II services, which will be determined following the completion of Phase I. The services outlined above for Phase II are defined in Section 3 of this contract.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Init.

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See Exhibit "D"

Employee or Category	Rate ($0.00)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
.3 Permitting and other fees required by authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, and standard form documents;
.5 Postage, handling, and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
.9 All taxes levied on professional services and on reimbursable expenses;
.10 Site office expenses;
.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
.12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants, which will be based on the Missouri Office of Administration rates for travel, food, car and lodging, plus five percent (5%) of the expenses incurred to cover the administrative costs for coordination and billing.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

N/A

§ 11.10 Payments to the Architect

(Paragraphs Deleted)

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

9%

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in

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the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§11.10.2.4: The Architect shall provide complete documentation, including copies of all invoices by the Architect for those Reimbursable Expenses submitted to Owner for reimbursement.

§11.10.2.5: The Architect shall provide a detailed cost estimate for Reimbursable Expenses as defined in subparagraph 11.8 for both Phase I and Phase II of this Agreement as defined in the Scope of Services. The detailed cost estimate shall be attached and made a part of this Agreement prior to the beginning of each Phase. The cost estimate must be approved in writing by the Owner before the services are rendered. Any billings for Reimbursable Expenses shall not exceed the cost estimate without prior approval of the
(Paragraph Deleted)

Owner.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

§12.1: Compliance with Laws. The Architect shall comply with all applicable ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Agreement. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over the Scope of Services, the Architect shall notify the Owner of the nature and impact of such conflict. The Owner agrees to cooperate with the Architect in an effort to resolve any such conflict.

12.2: Indemnification. To the fullest extent permitted by law, the Architect agrees to indemnify and hold harmless the Owner, its officers, engineers, and employees from and against liabilities, damages, losses, including costs and reasonable attorneys' fees where recoverable by law, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the Owner or others, arising from breach of the Agreement or out of services and operations negligently performed hereunder by the Architect, or damages relating thereto, and including but not limited to the Owners' reliance on or use of the services or products provided by the Architect under the terms of this agreement. The Architect shall not be liable for any loss or damage attributable solely to the negligence of the Owner. To the extent required by law to enforce this provision, Architect agrees that this indemnification requires Architect to obtain insurance in amounts specified herein.

12.3: Nonappropriation. Notwithstanding any provision herein to the contrary, the Owner is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during the Owners' then current fiscal year at the discretion of the Owner. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year, this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the Owner to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

12.3: Compliance with State Immigration Statutes. As a condition of this Agreement, the Architect shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Agreement. The Architect shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Agreement. The Architect shall not be required to provide these affidavits to the Owner if such affidavits have been previously provided to the Owner within the past year. All words in this paragraph shall have the definitions as

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provided in §285.525, RSMo.

§13.2: Check other Exhibits incorporated into this Agreement box and then list Exhibit A-D along with names of those Exhibits.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

(Paragraphs Deleted)

[X] Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A – Scope of Services
Exhibit B – Information Needed
Exhibit C – Additional Services
Exhibit D – Fees and Hourly Rates

.4 Other documents:

(List other documents, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above. 2/13/2020

OWNER (Signature)	**ARCHITECT** (Signature)
E. Edd Akers, Mayor	Rodney McManus, LEED AP, Vice President of Operations
(Printed name and title)	*(Printed name, title, and license number, if required)*

Attest
Lisa Westfall, City Clerk

#51831 2/13/20

Approved as to Form
Chris Lebeck #51831, City Attorney

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Init.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Rodney McManus, LEED AP, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:37:48 ET on 02/12/2020 under Order No. 5048794382 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ - 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

Vice President of Operations
(Title)

2/12/2020
(Dated)

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EXHIBIT "A"
Scope of Services:
Branson Police Department Headquarters and Fire Station w/ Fire Administration
Branson, MO 65616
ADG Project No. 1035-19
December 19, 2019 (revised January 30, 2020)

General Description:

The project, and related Scope of Services, is generally described as the design and construction of the new Branson Police Department Headquarters and Fire Station with Fire Administration. These will be constructed as two (2) separate buildings, as outlined below:

A) **New Police Department Headquarters w/ Emergency Operations Center (estimated building size not to exceed 28,021 SF):** new Police Department Headquarters building on City owned property located on Forsythe Street. The Police Headquarters will include administration, field operations, criminal investigations, and support services working space. These areas will also include intake, two bay sally port and storage, evidence and processing, community room, soft lobby, training rooms, and a community room / emergency operations center, covered parking for patrol cars with solar power and lighting, and a natural-gas powered back-up generator for power. The estimated building size: not to exceed 28,021 square feet.

B) **A New 3-bay, saddlebag design Fire Station with Fire Administration (estimated building size not to exceed 10,924 SF):** new Fire Department Station #4 on City owned property located on Champagne Boulevard. The fire station will include three bays, living quarters, bunk room for 8 personnel, and a training / community room and a natural gas-powered back-up generator. The estimated building size: not to exceed 10,924 square feet.

The project, and related Scope of Services, is generally described as Programming, Site Analysis, Master Planning, Conceptual Design, and Standard and Architectural/Engineering Services for the Public Safety Facility, to include the following entities:

- Branson Police Department Headquarters and Emergency Operations Center (PSF/EOC) to be located at a City-owned site at Forsythe Street and Oak Creek Drive.
- Branson Fire Station w/ Fire Administration (FS/FA) to be located on a City-owned site at Terrace Road and Champagne Blvd.

The Scope of Services consists of the following timeline for services:

Current Scope:

1. Site Analyses of the City-owned PD site and Fire Station w/ Fire Administration site (need topographic, boundary and utility survey information)
2. Master Planning Concept for Public Safety Facility + Emergency Operations Center and Fire Station w/ Fire Administration Development & Presentation
3. Conceptual Building Design Concept (PSF/EOC + FS/FA) Development & Presentation
4. PSF/EOC + FS/FA Design/Engineering of selected Development Concept for each site
5. Bidding Phase Services
6. Construction Administration Phase Services

The Phases of Services are herein identified as follows:

1. **Phase I-A: Detailed Spatial Needs Assessment:**

1.1 The Consultant shall participate in an initial meeting with the respective entities to review the proposed projects and to establish project schedules for specific tasks. We assume that these two projects will run separately but concurrently.

1.2 The intent of this effort will be to identify synergies amongst the various program needs of the entities to combine elements for efficiencies and to develop a program that is cost-feasible.

1.3 A detailed comprehensive Spatial Needs Assessment shall then be conducted, providing documentation as to current and future needs; future need being defined as those anticipated for the years 2030 and 2040, and the current need being defined as the year 2020.

1.4 The Consultant, as a part of this phase, shall consider and provide documentation to the extent possible, current and future staffing level projections and their spatial need impact upon future needs of facilities.

1.5 Based upon the recommendations related to facility size(s), the Consultant shall identify the parking and related site requirements, such as stormwater retention, parking areas, landscape requirements, infrastructure improvements, and building setback requirements.

2. **Phase I-B: Site Analysis and Master Planning:**

2.1 The City shall submit to the consultant, any existing documentation relative to the two sites, which the City has identified and purchased for this project.

2.2 The Consultant shall then conduct an evaluation of the City's parcels utilizing nationally recognized criteria. The Consultant shall prepare, and distribute to the appropriate City personnel, a detailed form for evaluation by the City as well as the Consultant.

2.3 Items to be considered will include:

2.3.1 Ability of the site to accommodate appropriate public and staff parking.
2.3.2 Evaluation of property relative to a 100-year storm.
2.3.3 Identification of potential hazards.
2.3.4 Appropriateness (capacity) of existing utilities, such as power, gas, water, sewer, fiber optics, etc.
2.3.5 The ability of the site to accommodate identified future space needs as identified in Phase I-A.

2.4 Based upon the information assembled and documented, the Consultant shall prepare a written report noting the information herein contained, and make a specific recommendation as to the appropriateness of the property redevelopment. Eight (8) hard copies and one (1) electronic copy of this report shall be provided to the City.

2.5 Based upon the information obtained during development of the Spatial Needs Assessment, the Consultant shall participate in a meeting(s) with representatives of the City of Branson, the Branson Police Department, the Branson Emergency Management Department and the Branson Fire Department, to initiate the Master Planning effort. The premise of this meeting shall be to obtain consensus as to the appropriate land utilization of the designated properties and the proposed facilities, as well as future expansion requirements for both facilities.

2.6 Based upon the adopted Development Alternative, the Consultant shall prepare a Master Plan Document of the selected site, illustrating:

2.6.1 Proposed land utilization of the two City-owned sites.
2.6.2 Location and general configuration of "current need" facilities (PD/EOC & FS).
2.6.3 Areas of potential expansion for future need.
2.6.4 Location of vehicles access and egress, both staff and public.
2.6.5 Pedestrian areas and site circulation.
2.6.6 Vehicle Parking Areas (Staff, Public).
2.6.7 Area(s) designated for stormwater detention.
2.6.8 Required Standoff Distances

2.7 The Consultant shall then prepare final Master Planning Drawings illustrative of the proposed recommended solutions for the PD/EOC & FS/FA and present same to the staff of the City of Branson. These documents shall then, upon direction by the City Administration, be the focal point of a public outreach program with the purpose of explaining the importance of the project to the City Council.

3. **Phase I-C: Conceptual Design:**

The Consultant will prepare conceptual design documents consisting of preliminary elevations for each facility and illustrating the following items:

3.1 Confirm the site development layouts illustrating parking areas, vehicular/pedestrian circulation, public/private zones, site utility considerations, future expansion, etc.
3.2 Provide block diagrams of major programmed spaces showing functional relationships.
3.3 Provide building size/shape configuration showing major entry points for each facility.
3.4 Provide graphic representation of proposed exterior building envelope components for each facility.
3.5 Provide list of proposed energy efficient systems/building components proposed for each facility.

3.6 Provide optional solutions if necessary to address identified constraints for each site.
3.7 Illustrate the site and internal facility security zoning approach for each site/facility.

3.8 This phase shall result in a detailed report, which shall contain the following components:

3.8.1 Police Department Headquarters with Emergency Operations Center Spatial Needs Assessment.
3.8.2 Fire Station w/ Fire Administration Spatial Needs Assessment.
3.8.3 Exterior Facilities (If Requested).
3.8.4 Site Master Plans (PSB and FS sites)
3.8.5 Graphic Space Standards
3.8.6 Development Options.
3.8.7 Estimates of Probable Development Costs.
3.8.8 Phasing Plan(s) (as required by budget)
3.8.9 Analysis and Identification of all pertinent regulatory requirements.

The final report shall contain recommendations relative to potential solutions, and shall include up to three (3) alternative development options as to the size and associated potential costs of each such alternative for each facility. This report shall be issued to the City's Project Management Team for review and consideration, and subsequently, upon the City's direction at a public meeting.

4. **Phase II: Basic Architecture and Engineering Services:**

The scope outlined as part of the Phase II services will commence upon approval and written notice to proceed from the City.

4.1 The Consultant shall provide services for the standard phases, as defined in the Owner/Consultant agreement, for the proposed facility utilizing Revit as our BIM (Building Information Modeling) document development process. These shall include schematic design at 20% of the basic services fee, and design development at 30% of the basic services fee, construction documents at 25% of the basic services fee, bidding or GMP coordination at 5% of the basic services fee, and construction administration at 20% of the basic services fee.

4.2 The Consultant and the Client recognize that the requested services are of significant magnitude, scheduling and complexity, which may include the facility being developed in terms of "survivability" as may be required by the City.

EXHIBIT "B"
Information Requested
Branson Police Department Headquarters and Fire Station w/ Fire Administration
Branson, MO 65616
ADG Project No. 1035-19
December 19, 2019

General Description:

The information that the Architects Design Group (ADG) would need from the City of Branson in order to complete this project include:

1. The City shall submit to the consultant, any existing documentation relative to the proposed sites including, but not limited to:

    1.1. Aerial maps
    1.2. Floodplain maps
    1.3. Topographic maps
    1.4. Bench mark data
    1.5. Up to date, boundary, tree, and topographic survey of the property

2. The City is to provide the Design Team with any existing soil borings report of the properties (at the appropriate time).

3. The City is to provide the Design Team any land development regulations that the Design Team will need to comply with for each of the properties.

4. The City is to provide the Design Team a list of the Permitting Agencies that will be involved in reviewing and/or permitting the projects.

EXHIBIT "C"
Additional Services
Branson Police Department Headquarters and Fire Station w/ Fire Administration
Branson, MO 65616
ADG Project No. 1035-19
December 19, 2019

1. **Additional Services:**

The Architect, and/or its consultants, shall provide the following additional services for each of the projects (PSF/EOC & FS), if requested. These services shall be determined / confirmed following the conclusion of Phase I Services and prior to the start of Phase II Services.

1.1 **Interior Design:**

1.1.1 Interior design services related to the programming, conceptual design, bidding and supervision of installation of furnishings for each facility. The Fee for this service is identified in Exhibit "D".

1.1.2 Services related to the inventory of existing furnishings and equipment shall be provided billable on an hourly basis, utilizing the rate schedule identified in Exhibit "D", or at an agreed upon fixed fee amount. Said services are to be provided only when specifically requested by the Client in writing.

1.2 **On-Site Civil Engineering:**

The Civil Engineering discipline is responsible for the permitting of the site development packages, including the potential of managing a development review committee (DRC) processes. The Professional Compensation Fees for these services shall be as noted in Exhibit "D".

1.3 **Off-Site Civil Engineering:**

Upon acceptance of the Conceptual Site Plans for each project, if off-site services engineering is required, a scope of work shall be established. Work typically identified as the Scope of Services for Civil Engineering is construction falling outside the property lines or within on-site easements and/or the relocation of existing utilities. The Professional fee shall be agreed upon by the Client, the Architect and Civil Engineer based upon a defined Scope of Services.

1.4 **Landscape Architectural Services:**

Landscape Architectural Services shall be provided by a registered Landscape Architect, selected by the Architect, to provide the Scope of Services to be defined by the accepted Master Site Plans for each. The Professional Compensation Fees for these services shall be as noted in Exhibit "D".

1.5 **Site and Building Identification/Graphic Design:**

Provide graphic design services associated with the design and construction administration of building identification, graphics and signage for each facility. The Professional Compensation Fees for these services shall be as noted in Exhibit "D".

1.6 **Professional Liability Insurance:**
The Design Team shall maintain, during the term of this agreement, Professional Liability Insurance providing coverage for errors and omissions in the amount of $1,000,000.00. The Architect shall provide the Client with a certificate showing such coverage and providing that the insurance will not lapse or be canceled except upon thirty (30) days written notice to the Client. As compensation for the cost of such insurance, the Client will pay the Architect a value equating to 4% of the total Architectural and Engineering fee, excluding fees for the Building Program Update, Site Analysis and Master Planning, Conceptual Design, and Reimbursable Expense Allowance for each project. The Professional Compensation Fees for these services shall be as noted in Exhibit "D".

1.7 **Permitting Coordination Services:**
The Architect shall provide permitting coordination services as follows:
1.7.1 Define all permits and/or review agency requirements and provide a graphic chronological assessment for each project.
1.7.2 Monitor the permitting process and provide written progress reports to the Client for each project.
1.7.3 The Professional Fee for permitting associated with site and facilities shall be as noted in Exhibit "D".

1.8 **Facility Energy Analysis:**
The Architect shall prepare Supplementary Design Documents as to permit the accomplishment of a detailed energy analysis, to be conducted by an appropriate entity with expertise in providing this service, for each facility. The purpose of these analyses shall be to maximize energy efficient systems, including insulation, fenestration and similar passive energy applications, to the extent allowable by the project construction budgets. This service will be required if the Client elects to pursue LEED certification for the proposed projects. Services Fee shall be as noted in Exhibit "D".

1.9 **Facility or Site Model Computer Renderings:**
The Architect shall either have constructed up to 4 computer rendering(s) of the facilities or the overall Master Plans for each project, illustrating site utilization, building massing, access and egress roadways, parking areas, pedestrian walkways and stormwater retention areas. The Professional Services Fee shall be as noted in Exhibit "D".

1.10 **Special Engineering:**
Special Structural Engineering services will be provided by the Architect/Engineer, when authorized by the Client, if unusual site soil or geographical conditions are found to exist. An additional fee in an amount to be determined shall be established based upon the conditions discovered and the complexity of services necessary to correct said conditions. The Professional Compensation Fees for these services shall be as noted in Exhibit "D".

1.11 **Post Occupancy/Warranty Inspection:**
Eleven months after occupancy of the facilities the Architect and M/E/P Engineers shall conduct a warranty inspection of the facilities and shall document all systems and elements that are in need of corrective action on the part of the selected builder(s). The Architect shall subsequently re-inspect the facilities to establish that noted items have been satisfactorily resolved or if additional work is required on the part of the selected builder(s). The Professional Services Fee shall be as noted in Exhibit "D". Note that the fee for this service shall be due at the time such services are rendered.

1.12 **Community Outreach Program:**
If desired, the Architect and its team shall participate in public presentations in a collective effort of engaging the local community at large. The Architect will assist with the development of the necessary presentation materials and format and will provide one copy, both digital and hard copy version, to the Client for its records. A minimum of two (2) representatives of the Architect's team shall participate in each of the requested presentations. The professional fee is as noted in Exhibit "D".

1.13 **Computer Cable System Design Coordination:**
The Architect shall meet with the various entities Project Managers and the Office of Information Technology staff and establish the basic guide lines for a computer cable systems for each of the facilities and shall subsequently prepare cable plans with appropriate distribution spaces in the facilities. The professional fee shall be as noted in Exhibit "D".

1.14 **Security Consultant:**
The Architect shall obtain the services of a qualified Security Consultant for services related to site and building security systems, including C.C.T.V., access/egress controls, locking devices, and site security systems for each project. The professional fee shall be established based upon a defined Scope of Services as noted in Exhibit "D".

1.15 **Site Surveying:**

The Architect shall obtain the services of a Registered Land Surveyor, acceptable to the Client, for a site boundary and topographic survey for the subject properties. This service is provided to the Client with the understanding and agreement that the Architect shall have no liability for said services. The professional fee shall be established based upon a defined Scope of Services.

1.16 **Geotechnical Engineering:**
The Architect shall obtain the services of a Professional Geotechnical Engineering firm for purposes of sub-surface soils investigation, percolation testing, and foundation recommendations for each site. This service is provided to the Client with the understanding and agreement that the Architect shall have no liability for said services. The professional fee shall be established based upon a defined Scope of Services.

1.17 **Building Commissioning:**
The Architect and its Engineers, if so desired by the Client, shall provide complete building commissioning services of the Mechanical, Electrical, and low-voltage systems facility-wide including creating a commissioning plan, integrating the commission requirements into project specifications, creating functional test procedures, perform a test and balance verification, and create a training plan for each facility. The professional fee shall be as noted in Exhibit "D". This service is provided, upon the Client's request, at the conclusion of the construction period.

1.18 **Additional Construction Observation Services:**
The Client may elect to have the Architect provide additional on-site construction observation services if requested to provide Owner's Representative services. If the Client wishes for the Architect to provide more than the standard twice-monthly construction site visits, then the additional scope shall need to be determined and a professional fee shall be established.

1.19 **Record/Conformance Drawings:**
This service is typically provided by the selected builder entity, but in the event that the Client desires the Architect to develop a record or "as-built" set of construction documents, provided at the conclusion of construction, then the Architect shall be entitled to a professional fee as noted in Exhibit "D".

1.20 **Sustainable Design Concept Implementation / LEED Design:**

In the event the Client desires to pursue either LEED certification or Sustainable Design Concept Implementation of the projects; the Design Team will be responsible for identifying, documenting, and implementing a variety of sustainable design components that can be accomplished within the defined project budget. The Client will need to contract with an independent Certifying Agent in the event that LEED certification is desired by the Client. The professional fee shall be negotiated based upon the level of LEED certification, or the magnitude of the sustainable design concepts that are requested. The Professional Compensation Fees for this service shall be as noted in Exhibit "D".

1.21 **Communications Consultant:**
The Architect shall be responsible for all services related to the coordination of the communications system(s) for each facility including, but not limited to, transfer of existing equipment, selection and bidding of new equipment, itemization of facility services required (such as electrical, mechanical equipment, etc.) and any other criteria relative to the communications systems of this facility. The professional fee for this service is as noted in Exhibit "D".

1.22 **Audio-Visual Consultant:**
The Architect shall obtain the services of an individual/firm with expertise in audio-visual systems and, based upon a defined Scope, shall provide the Client with a proposed professional fee for each project, as noted in Exhibit "D".

EXHIBIT "D"
Fee Allocation & Hourly Rates
Branson Police Department Headquarters and Fire Station w/ Fire Administration
Branson, MO 65616
ADG Project No. 1035-19
December 19, 2019 (revised January 30, 2020)

Fee Allocation:
The following is the professional fee allocation for the various services defined in Exhibit "C". The Services outlined in Phase I relate to both of the projects – A) Police Department Headquarters with Emergency Operations Center and B) Fire Station. The services outlined for Phase II will be separated into two separate projects to allow for better project tracking.

1. **Summary:**

1.1	Phase I-A: Detailed Spatial Needs Assessment:	$	42,000.00
1.2	Phase I-B: Site Analysis & Master Planning:	$	24,000.00
1.3	Phase I-C: Conceptual Design	$	18,000.00
1.4	Phase I Reimbursable Expenses:	$	11,000.00
1.5	Phase I: Surveying/Geotech/Civil:[1]		26,500.00
1.6	**Phase I: Total:**	**$**	**121,500.00**
1.7	Phase II: Basic Architecture & Engineering Services - PD/EOC:	$	554,691.00
1.8	Phase II: Required Additional Services - PD /EOC:	$	117,733.00
1.9	Phase II: Requested Additional Services - PD /EOC:	$	168,802.00
1.10	**Phase II Subtotal - PD/EOC:**	**$**	**841,226.00**
1.11	Phase II: Reimbursable Expenses - PD/EOC:	$	20,000.00
1.12	**Phase II Total - PD/EOC:**	**$**	**861,226.00**
1.13	Phase II: Basic Architecture & Engineering Services - FS:	$	185,042.00
1.14	Phase II: Required Additional Services - FS:	$	75,692.00
1.15	Phase II: Requested Additional Services - FS:	$	113,972.00
1.16	**Phase II Subtotal - FS:**	**$**	**374,706.00**
1.17	Phase II: Reimbursable Expenses - FS:	$	20,000.00
1.18	**Phase II Total - FS:**	**$**	**394,706.00**
1.19	**Total for Phase II Services:**	**$**	**1,255,932.00**

The Architectural and Engineering services for the referenced projects (Fire and Police/EOC/911 Center) are based upon an estimated construction budget of $ 13,675,000 for the two facilities. If the project budget changes, the standard A/E services will be modified accordingly based on the percentages and formulas outlined below:

2. **Phase II-A: Basic Architectural and Engineering Services – PD /EOC:**

2.1 Basis of Fee: 28,021 SF @ $ 280/SF [2]= $ 7,845,880 plus Site Work/Technology Systems/Furnishings @ 3,247,934 = 11,093,814

Basic Architectural and Engineering Fee:
Estimated Construction Value of $ 11,093,814 @ 5% ..... $ 554,691.00

2.2	Reimbursable Expenses Allowance	$ 20,000.00
2.3	**Subtotal**	**$ 574,691.00**

3. **Phase II-B: Additional Services -PD/EOC:**
Additional Services, consisting of a variety of tasks, are itemized and described in Exhibit "E" of this Agreement. The following is a summary of these services and their related professional fee allocation.

TASK:		**TOTAL FEE:**
Required Additional Services – PD/EOC		
3.1.	Professional Liability Insurance: $ 574,691 @ 4%	$ 22,988.00
3.2.	On-Site Civil Engineering	$ 94,745.00
3.3.	**Subtotal:**	**$ 117,733.00**
Optional Additional Services – PD/EOC		
3.4.	Interior Design Services (FF&E Coordination): 28,021 SF @ $28/SF = $ 784,588 @ 5.5%	$ 43,152.00
3.5.	Off-Site Civil Engineering	$ TBD
3.6.	Landscape Architectural Services	$ By Owner
3.7.	Site and Building Identifications	$ 4,800.00
3.8.	Permitting Coordination Services	$ 12,200.00
3.9.	Facility Energy Analysis	$ 14,400.00
3.10.	Facility or Site Model / Renderings	$ 6,000.00
3.11.	Special Engineering	$ NA
3.12.	Post Occupancy/Warranty Inspection	$ TBD
	• Reimbursable Expenses	$ TBD

[2] The cost per square foot was determined with the City of Branson. If the construction cost is different than what is shown, the architectural design fees will be adjusted based on the fee percentage of the actual construction cost.

3.13.	Community Outreach Program ($2,500/event)	$	NA
3.14.	Computer Cable System Coordination	$	10,750.00
3.15.	Security Consultant	$	22,000.00
3.16.	Geotechnical Engineering Soils Report	$	7,200.00
3.17.	Building Commissioning	$	NA
3.18.	Additional Construction Observation Services	$	NA
3.19.	Record/Conformance As-Designed Drawings	$	NA
3.20.	LEED / Sustainable Design Implementation	$	NA
3.21.	Communications Consultant	$	19,100.00
3.22.	Audio-Visual Consultant	$	16,000.00
3.23.	Extended Construction Observation (if needed)	$	TBD
3.24.	Estimates of Probable Development Costs:		
	3.13.1 Schematic Design Phase	$	6,500.00
	3.13.2 Design Development Phase	$	6,700.00
3.25.	Site Surveying Allowance	$	NA
3.26.	Grants Application Assistance Allowance	$	NA
3.27.	As-Built Construction Documents Development	$	By GC/CM
3.28.	**Subtotal – PD/EOC:**	**$**	**168,802.00**

4. **Additional Construction Observation Services – PD/EOC:**
The City has the option of requesting construction observation services that are in addition to those provided under terms of the "standard services", which consist of on-site meetings twice per month, the following are options for consideration by the City:

4.1 **Option A: Weekly On-Site Construction Observation Services:**

4.1.1	TBD hrs @ $102.00/hr per month	$	TBD		
4.1.2	Reimbursable Expenses	$	TBD		
4.1.3	Subtotal	$	**TBD**		
4.1.4	Subtotal: $ TBD @ 12 months			$	TBD

5. Phase II-A: Basic Architectural and Engineering Services – Fire Station:

5.1 Basis of Fee: 10,924 SF @ $ 225/SF [3]= $ 2,457,900 plus Site Work/Technology Systems/Furnishings @ 1,242,930 = 3,700,830.

Basic Architectural and Engineering Fee:
Estimated Construction Value of $ 3,700,830 @ 5% ..... $ 185,042.00

5.2 Reimbursable Expenses Allowance ..... $ 20,000.00
5.3 Subtotal ..... $ 205,042.00

6. Phase II-B: Additional Services - Fire Station:
Additional Services, consisting of a variety of tasks, are itemized and described in Exhibit "E" of this Agreement. The following is a summary of these services and their related professional fee allocation.

TASK:		TOTAL FEE:
Required Additional Services – Fire Station		
6.1.	Professional Liability Insurance: $ 205,042 @ 4%	$ 8,202.00
6.2.	On-Site Civil Engineering	$ 67,490.00
6.3.	**Subtotal:**	**$ 75,692.00**
Optional Additional Services – Fire Station		
6.4.	Interior Design Services (FF&E Coordination): 10,924 SF @ $28/SF = $305,872 @ 5.5%	$ 16,822.00
6.5.	Off-Site Civil Engineering	$ TBD
6.6.	Landscape Architectural Services	$ By Owner
6.7.	Site and Building Identifications	$ 4,600.00
6.8.	Permitting Coordination Services	$ 7,400.00
6.9.	Facility Energy Analysis	$ 12,300.00
6.10.	Facility or Site Model / Renderings	$ 4,000.00
6.11.	Special Engineering	$ NA
6.12.	Post Occupancy/Warranty Inspection	$ TBD
	• Reimbursable Expenses	$ TBD
6.13.	Community Outreach Program ($2,500/event)	$ NA
6.14.	Computer Cable System Coordination	$ 8,750.00
6.15.	Security Consultant	$ 15,000.00
6.16.	Geotechnical Engineering Soils Report	$ 6,200.00
6.17.	Building Commissioning	$ NA

[3] The cost per square foot was determined with the City of Branson. If the construction cost is different than what is shown, the architectural design fees will be adjusted based on the fee percentage of the actual construction cost.

6.18.	Additional Construction Observation Services	$	NA
6.19.	Record/Conformance As-Designed Drawings	$	NA
6.20.	LEED / Sustainable Design Implementation	$	NA
6.21.	Communications Consultant	$	14,700.00
6.22.	Audio-Visual Consultant	$	11,000.00
6.23.	Extended Construction Observation (if needed)	$	TBD
6.24.	Estimates of Probable Development Costs:		
	3.13.1 Schematic Design Phase	$	6,500.00
	3.13.2 Design Development Phase	$	6,700.00
6.25.	Site Surveying Allowance	$	NA
6.26.	Grants Application Assistance Allowance	$	NA
6.27.	As-Built Construction Documents Development	$	NA
6.28.	**Subtotal – Fire Station:**	**$**	**113,972.00**

7. **Additional Construction Observation Services – Fire Station:**
The City has the option of requesting construction observation services that are in addition to those provided under terms of the "standard services", which consist of on-site meetings twice per month, the following are options for consideration by the City:

7.1 **Option A: Weekly On-Site Construction Observation Services:**

7.1.1	TBD hrs @ $102.00/hr per month	$	TBD		
7.1.2	Reimbursable Expenses	$	TBD		
7.1.3	Subtotal	$	**TBD**		
7.1.4	Subtotal: $ TBD @ 12 months			$	TBD

ARCHITECTS DESIGN GROUP / ADG, INC.
ADDITIONAL SERVICES HOURLY RATES

January 2020 through January 2021

Per hour rates of the Architects, Interior Designers and other personnel are established as follows:

Principals / Project Directors	205.00/hr.
Studio Department Principals/Project Architects	182.00/hr.
Associates	152.00/hr.
Project Managers	145.00/hr.
Staff Architect	145.00/hr.
Designers / Project Coordinator	87.00/hr.
Computer Draftsperson	65.00/hr.
Computer Supervisor	95.00/hr.
Threshold Inspector (Certified)	83.00/hr.
Construction Administrators	102.00/hr.
Specification Writer	98.00/hr.
Accounting Services	83.00/hr.
Administrative Support	50.00/hr.
Graphic Designer	72.00/hr.
Interior Design Director	105.00/hr.
Interior Designer	77.00/hr.
Interior Design Specification Writer	76.00/hr.

Note: Any changes in the above noted hourly rates, after March 2021 shall be provided to the Owner thirty (30) days prior to said date and cannot exceed the noted rates by an amount greater than ten (10%) percent.