

# NOTICE OF MEETING



## BOARD OF ALDERMEN

*Regular Meeting – Tuesday, November 24, 2020 – 6:00 p.m.*  
Council Chambers – Branson City Hall – 110 W. Maddux

NOTE: In an effort to follow the recommendations of the Centers for Disease Control to limit the spread of COVID-19 and to protect the health and safety of those in attendance, the City of Branson encourages the public to view the live streaming of this meeting on the City of Branson, Missouri, website at: [www.bransonmo.gov/livestream](http://www.bransonmo.gov/livestream). For those that wish to attend the Board meeting in person, face coverings are required inside the council chambers and the occupant load of the council chambers and viewing area(s) will be limited. Additionally, oral communications to the Board, comments and discussion on agenda items may be limited by the presiding officer of the meeting.

## AMENDED AGENDA

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### INVOCATION:

- **Jamie Rouch**

### ROLL CALL

### 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) **November 10, 2020 Regular Meeting**
- 2) **Acknowledge Receipt of Minutes:**
  - a) **Advisory Park Board meeting of October 20, 2020**
  - b) **Human Resources Committee meeting of October 21, 2020**
  - c) **Outside Program Assistance Committee meeting of November 5, 2020**
- 3) **Final Reading of Bill No. 5915 approving the amendment to the Lease Agreement with Recreational Investment & Management Corp. pertaining to a reduction in base rent for Fiscal Year 2020 and authorizing the Mayor to execute the contract.**

- 4) **Final Reading of Bill No. 5916 approving the renewal of the contract with Missouri American Water for water termination services and authorizing the Mayor to execute the contract.**
- 5) **Final Reading of Bill No. 5917 approving the renewal of the contract with Missouri American Water Company for the purchase of water usage data and authorizing the Mayor to execute the contract.**
- 6) **Final Reading of Bill No. 5918 approving the renewal of the contract with Utility Service Company, Inc. for ongoing maintenance and scheduled renovations of the City's Water Towers and authorizing the Mayor to execute the contract.**
- 7) **Final Reading of Bill No. 5919 approving a Time Extension Amendment for an Intergovernmental Agreement between Taney County and the City of Branson regarding funding of the City's Planned 2020 Sewer System Improvement Projects and authorizing the Mayor to execute the amendment.**
- 8) **Final Reading of Bill No. 5920 approving the Intergovernmental Cooperative Agreement between Taney County and the City of Branson pertaining to use of the Taney County Firearms Range and authorizing the Mayor to execute the contract.**
- 9) **Final Reading of Bill No. 5921 approving the renewal of the contract with Radiophone Engineering, Inc. to provide communication services and repairs and authorizing the Mayor to execute the contract.**
- 10) **Final Reading of Bill No. 5922 approving the renewal of the Memorandum of Understanding between the Alcohol and Drug Abuse Prevention Team (ADAPT), Branson Public Schools and Branson Police Department pertaining to alcohol compliance checks at businesses and authorizing the Mayor to execute the agreement.**
- 11) **Final Reading of Bill No. 5923 approving the Reimbursement Agreement between the City of Branson and the Taney County Airport and authorizing the Mayor to execute the contract.**
- 12) **Final Reading of Bill No. 5924 accepting the proposal of Unifirst Corporation pertaining to the rental of uniforms and shop towels for the City and authorizing the Mayor to execute the contract.**
- 13) **Final Reading of Bill No. 5925 amending the adopted 2020 Budget for the City of Branson to adjust monies for the Tourism Fund for the Branson, Missouri Regional Airport TDD.**

**REGULAR:**

- 14) **A Resolution for the appointment of a Representative and Alternate to the Tri-Lakes Biosolids Joint Municipal Utility Commission.**

- 15) **First Reading of Bill No. 5926 accepting the terms of an Agreement between the City of Branson and the Tri-Lakes Biosolids Joint Municipal Utility Commission for Branson to provide contract operation of the Biosolids Dewatering and Drying Facilities and authorizing the Mayor to execute the contract.**
- 16) **First Reading of Bill No. 5927 approving a contract with S & S Pumping, Inc. to accept holding tank and special waste for treatment at the Branson Wastewater Treatment Facilities and authorizing the Mayor to execute the contract.**
- 17) **First Reading of Bill No. 5929 accepting the proposal of Branson Regional Arts Council pertaining to the provision of services to provide Temporary Public Assistance and authorizing the Mayor to execute the contract.**
- 18) **First Reading of Bill No. 5930 accepting the proposal of Elevate Branson pertaining to the provision of services to provide Temporary Public Assistance and authorizing the Mayor to execute the contract.**
- 19) **First Reading of Bill No. 5931 accepting the proposal of Faith Community Health Center, Inc. pertaining to the provision of services to provide Temporary Public Assistance and authorizing the Mayor to execute the contract.**
- 20) **First Reading of Bill No. 5932 accepting the proposal of Taneyhills Community Library pertaining to the provision of services to provide Temporary Public Assistance and authorizing the Mayor to execute the contract.**
- 21) **First Reading of Bill No. 5933 accepting the proposal of Women’s Crisis Center of Taney County, Inc. pertaining to the provision of services to provide Temporary Public Assistance and authorizing the Mayor to execute the contract.**
- 22) **First Reading of Bill No. 5934 approving the contract with the Branson/Lakes Area Chamber of Commerce & Convention and Visitors Bureau pertaining to tourism and marketing services and authorizing the Mayor to execute the contract.**
- 23) **First Reading of Bill No. 5935 accepting the proposal of Suddenlink pertaining to data communications and authorizing the Mayor to execute the contract.**
- 24) **First Reading of Bill No. 5936 approving a contract with Thinkspace IT pertaining to the purchase of Microsoft Software Licensing and authorizing the Mayor to execute the contract.**
- 25) **First Reading of Bill No. 5937 accepting the proposal of Newman’s Signs, Inc. pertaining to the purchase of signage supplies and authorizing the Mayor to execute the contract.**
- 26) **First Reading of Bill No. 5938 approving the second renewal of the services contract with Tradebe Environmental Services, LLC pertaining to the transportation and disposal of household hazardous waste material and authorizing the Mayor to execute the contract.**

**APPOINTMENTS:**

27) **Appointments.**

**REPORTS**

**ADJOURN**

---

---

*Where Values are the Difference*

**NOVEMBER: INTEGRITY**

**Doing the right thing, even when no one is looking**

---

For more information please visit [www.bransonmo.gov](http://www.bransonmo.gov) or contact:

Lisa Westfall, City Clerk, 417-337-8522

# MINUTES

THE REGULAR MEETING OF THE  
BOARD OF ALDERMEN  
CITY OF BRANSON, MISSOURI  
November 10, 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 November 10, 2020, at 6:00 p.m. Mayor Akers called the meeting to order with the "Pledge of Allegiance," the Preamble of the Missouri Constitution and Ted Martin gave the invocation.

## ROLL CALL

City Clerk Lisa Westfall called roll: Mayor Akers presiding, Julia King, Jamie Whiteis, Bob Simmons, Bill Skains, Larry Milton and Jeff Seay.

## AWARDS / RECOGNITIONS

### Employee of the Month

Alderman Whiteis presented Fawn Rowe of the Public Works & Engineering Department as the November Employee of the Month in recognition for displaying City of Branson Values.

## PUBLIC COMMENT

Mayor Akers made a statement regarding decorum and asked that anyone wishing to speak this evening stay within the five minute guideline.

Doug Clark, 121 A Saint Andrews Street, Branson, Missouri, mentioned seeing the vaccination plans for California and Missouri which are pertinent, very involved and a lot of thought has gone in to them regarding how vaccinations are going to be done and who they'll be given to. He recalled asking the Board at the last meeting if any of the Aldermen had seen or examined the documents for Missouri and he stressed the importance of doing so because a new administration coming to power has a different concept of how it will treat COVID-19. He explained it's going to lock everyone down again which is already being done in different states and the World Health Organization (WHO) is involved in the same policy in England, New Zealand and Australia. He explained these countries have detention centers set up for people who don't cooperate; people can get arrested and it's becoming very draconian in those three areas specifically. Mr. Clark said there's a vaccine from Pfizer involved in this, which is a ribonucleic acid (RNA) type of vaccine that has to be kept at a 92 degrees below zero while stored. He pointed out the problem with this is it's a big logistical transfer that has to ensure everyone involved does their jobs. There have been instances with other vaccines that need to be kept at certain temperatures which have caused some real damage to kids and individuals, sometimes death. Mr. Clark explained it's a possibility with this vaccine since it's being rushed through. The process is being sped up and there are a lot of negative things that can happen; it hasn't been tested on animals and there's an attempt to get an emergency authorization use for it in order to bypass all of that and avoid liability of any damages caused to anyone it's used on. Mr. Clark commented

healthcare workers are going to be the first ones to experience this and the last time something like this was attempted was in 2001 and 2002 around the time of the attack on the World Trade Center Twin Towers. People were worried about biological warfare, anthrax and smallpox and were trying to prepare for smallpox. It was determined the only place with access to the smallpox virus was France where it had been frozen for 30 years and that's what was used. The people in the medical community listening to all the particulars had decided they didn't want to have any part of it which almost caused a mutiny in the healthcare system at the time. He remembered talking to people working for Cox and the other company in Springfield and many people had refused it, so it was withdrawn and was never required for the medical community to go through with it. Currently, of the people hearing about this vaccine, 60% of nurses are not willing to accept the RNA or messenger RNA (MRNA) vaccines for safety reasons and only 40% of doctors and 30% of the public is going to take it. He feels there's a quandary with the federal government letting the military distribute, manage inventory, control and trace everything pertaining to the vaccine and he cautioned everyone about this becoming an authoritarian situation in which people are forced to take the vaccine. He knows people who currently work in the local healthcare industry, employed as doctors and nurse practitioners, who say they're not going to take the vaccine. So what's going to happen is there's going to be a diminishing return on the number of people there are to take care of the COVID-19 situation itself which is just one aspect of what bothers him. Additionally, government has a track record of not being very invested in the liability of protecting people from vaccine damage which all started in 1986 with the liability exemption. He encouraged anyone interested to take the time to look this stuff up and not just take everything they hear from a government agency, health department, or anyone else on face value. He believes everyone needs to check things out for themselves to see who's telling the truth, because listening to the political climate people can hardly tell who's telling the truth. He expressed concerns over people trusting a medical community that doesn't have the same kind of oversight as politicians.

## CONSENT AGENDA

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 Milton requested Item Numbers 5 and 14 be removed from the Consent Agenda and placed 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) October 22, 2020 Study Session
- b) October 27, 2020 Regular Meeting

Acknowledge Receipt of Minutes:

- a) Planning Commission Regular Meeting of October 6, 2020

**BILL NO. 5900**  
**Ord. No. 2020-0145**

**Adopting a Budget, a Capital Program, a Pay/Merit Plan and a Reserve Policy for the City of Branson, Missouri, for the Fiscal Year January 1, 2021 through December 31, 2021.**

Final Reading of Bill No. 5900, an ordinance adopting a Budget, a Capital Program, a Pay/Merit Plan and a Reserve Policy for the City of Branson, Missouri, for the Fiscal Year January 1, 2021 through December 31, 2021, was read by title by City Clerk Lisa Westfall. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0145 was duly enacted.

**BILL NO. 5901**  
**Ord. No. 2020-0146**

**Amending the adopted 2020 Budget for the City of Branson, to adjust monies for various funds.**

Final Reading of Bill No. 5901, an ordinance amending the adopted 2020 Budget for the City of Branson, to adjust monies for various funds was read by title by City Clerk Lisa Westfall. Mayor Akers asked for a motion approving Bill No. 5901. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0146 was duly enacted.

**BILL NO. 5904**  
**Ord. No. 2020-0148**

**Approving an Intergovernmental Agreement with Branson/Lakes Area Tourism Community Enhancement District to license the ExploreBranson domain name.**

Final Reading of Bill No. 5904, an ordinance approving an Intergovernmental Agreement with Branson/Lakes Area Tourism Community Enhancement District to license the ExploreBranson domain name and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0148 was duly enacted.

**BILL NO. 5905**  
**Ord. No. 2020-0149**

**Approving a contract renewal with Dazzee Integrations pertaining to Information Technology Managed Network and Security Services.**

Final Reading of Bill No. 5905, an ordinance approving a contract renewal with Dazzee Integrations pertaining to Information Technology Managed Network and Security Services and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0149 was duly enacted.

**BILL NO. 5906**  
**Ord. No. 2020-0150**

**Appointing Thomas Motley as Municipal Court Judge.**

Final Reading of Bill No. 5906, an ordinance appointing Thomas Motley as Municipal Court Judge and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0150 was duly enacted.

**BILL NO. 5907**  
**Ord. No. 2020-0151**

**Appointing members to fill certain vacancies on the City of Branson Tax Increment Financing Commission.**

Final Reading of Bill No. 5907, an ordinance appointing members to fill certain vacancies on the City of Branson Tax Increment Financing Commission was read by title by City Clerk Lisa Westfall. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0151 was duly enacted.

**BILL NO. 5908**  
**Ord. No. 2020-0152**

**Approving the renewal of the contract with PepsiCo for vending services and merchandise resale.**

Final Reading of Bill No. 5908, an ordinance approving the renewal of the contract with PepsiCo for vending services and merchandise resale and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0152 was duly enacted.

**BILL NO. 5909**  
**Ord. No. 2020-0153**

**Accepting the proposal of Site One Landscape Supply pertaining to the purchase of agriculture supplies.**

Final Reading of Bill No. 5909, an ordinance accepting the proposal of Site One Landscape Supply pertaining to the purchase of agriculture supplies and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0153 was duly enacted.

**BILL NO. 5910**  
**Ord. No. 2020-0154**

**Amending Chapter 6 of the Branson Municipal Code pertaining to alcohol by weight of malt liquor.**

Final Reading of Bill No. 5910, an ordinance amending Chapter 6 of the Branson Municipal Code pertaining to alcohol by weight of malt liquor was read by title by City Clerk Lisa Westfall. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0154 was duly enacted.

**BILL NO. 5911**  
**Ord. No. 2020-0155**

**Amending Chapter 94 of the Branson Municipal Code pertaining to microbreweries.**

Final Reading of Bill No. 5911, an ordinance amending Chapter 94 of the Branson Municipal Code pertaining to microbreweries was read by title by City Clerk Lisa Westfall. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0155 was duly enacted.

**BILL NO. 5914**  
**Ord. No. 2020-0157**

**Accepting the proposal of Empire Energy, LLC pertaining to motor vehicle fuel.**

Final Reading of Bill No. 5914, an ordinance accepting the proposal of Empire Energy, LLC pertaining to motor vehicle fuel and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0157 was duly enacted.

Mayor Akers opened the floor for a motion to approve all items on the Consent Agenda as amended. Alderman Milton so moved, seconded by Alderman King. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

## **REGULAR AGENDA**

**BILL NO. 5902**  
**Ord. No. 2020-0147**

**Calling an Election in the City of Branson, Missouri on the question of authorizing the City to issue bonds and imposing a Tourism Tax.**

Final Reading of Bill No. 5902, an ordinance calling an Election in the City of Branson, Missouri on the question of authorizing the City to issue bonds and imposing a Tourism Tax was read by title by City Clerk Lisa Westfall. Mayor Akers asked for a motion approving Bill No. 5902. Alderman Skains so moved, seconded by Alderman Whiteis. 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: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried. Ordinance No. 2020-0147 was duly enacted.

**BILL NO. 5912**

**Ord. No. 2020-0156**

**Amending Chapter 94 of the Branson Municipal Code pertaining to special events.**

Final Reading of Bill No. 5912, an ordinance amending Chapter 94 of the Branson Municipal Code pertaining to special events was read by title by City Clerk Lisa Westfall. Mayor Akers asked for a motion approving Bill No. 5912. Alderman Whiteis 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 Milton moved to amend Bill No. 5912, Line 126 Appendix A - Fee Schedule, Line 127 to revert back to its original language. Motion died for the lack of a second. Voting aye: King, Whiteis, Simmons, Skains and Seay. Nays: Milton. Motion carried.

**Presentation on Third Quarter 2020 Financial Report.**

A presentation on Third Quarter 2020 Financial Report was provided by Finance Director Jamie Rouch. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion.

**BILL NO. 5915**

**Approving the amendment to the Lease Agreement with Recreational Investment & Management Corp. pertaining to a reduction in base rent for Fiscal Year 2020.**

First Reading of Bill No. 5915, an ordinance approving the amendment to the Lease Agreement with Recreational Investment & Management Corp. pertaining to a reduction in base rent for Fiscal Year 2020 and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was provided by Finance Director Jamie Rouch. Mayor Akers asked for a motion approving Bill No. 5915. Alderman King so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. No discussion. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

**BILL NO. 5916**

**Approving the renewal of the contract with Missouri American Water for water termination services.**

First Reading of Bill No. 5916, an ordinance approving the renewal of the contract with Missouri American Water 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 provided by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5916. Alderman Skains so moved, 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: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

**BILL NO. 5917**

**Approving the renewal of the contract with Missouri American Water Company for the purchase of water usage data.**

First Reading of Bill No. 5917, an ordinance approving the renewal of the contract 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 provided by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5917. Alderman King so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. No discussion. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

**BILL NO. 5918**

**Approving the renewal of the contract with Utility Service Company, Inc. for ongoing maintenance and scheduled renovations of the City's Water Towers.**

First Reading of Bill No. 5918, an ordinance approving the renewal of the contract with Utility Service Company, Inc. for ongoing maintenance and scheduled renovations of the City's Water Towers and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was provided by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5918. Alderman King so moved, seconded by Alderman Whiteis. 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: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

**BILL NO. 5919**

**Approving a Time Extension Amendment for an Intergovernmental Agreement between Taney County and the City of Branson regarding funding of the City's Planned 2020 Sewer System Improvement Projects.**

First Reading of Bill No. 5919, an ordinance approving a Time Extension Amendment for an Intergovernmental Agreement between Taney County and the City of Branson regarding funding of the City's Planned 2020 Sewer System Improvement Projects and authorizing the Mayor to execute the amendment was read by title by City Clerk Lisa Westfall and a staff report was provided by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5919. Alderman King so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

**BILL NO. 5920**

**Approving the Intergovernmental Cooperative Agreement between Taney County and the City of Branson pertaining to use of the Taney County Firearms Range.**

First Reading of Bill No. 5920, an ordinance approving the Intergovernmental Cooperative Agreement between Taney County and the City of Branson pertaining to use of the Taney County Firearms Range and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was provided by Police Chief Jeff Matthews. Mayor Akers asked for a motion approving Bill No. 5920. Alderman Milton so moved, seconded by Alderman Skains. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

**BILL NO. 5921**

**Approving the renewal of the contract with Radiophone Engineering, Inc. to provide communication services and repairs.**

First Reading of Bill No. 5921, an ordinance approving the renewal of the contract with Radiophone Engineering, Inc. to provide communication services and repairs and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was provided by Police Chief Jeff Matthews. Mayor Akers asked for a motion approving Bill No. 5921. Alderman King so moved, seconded by Alderman Whiteis. 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: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

**BILL NO. 5922**

**Approving the renewal of the Memorandum of Understanding between the Alcohol and Drug Abuse Prevention Team (ADAPT), Branson Public Schools and Branson Police Department pertaining to alcohol compliance checks at businesses.**

First Reading of Bill No. 5922, an ordinance approving the renewal of the Memorandum of Understanding between the Alcohol and Drug Abuse Prevention Team (ADAPT), Branson Public Schools and Branson Police Department pertaining to alcohol compliance checks at businesses and authorizing the Mayor to execute the agreement was read by title by City Clerk Lisa Westfall and a staff report was provided by Police Chief Jeff Matthews. Mayor Akers asked for a motion approving Bill No. 5922. Alderman Whiteis so moved, seconded by Alderman King. 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: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

**BILL NO. 5923**

**Approving the Reimbursement Agreement between the City of Branson and the Taney County Airport.**

First Reading of Bill No. 5923, an ordinance approving the Reimbursement Agreement between the City of Branson and the Taney County Airport and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was provided by Finance Director Jamie Rouch. Mayor Akers asked for a motion approving Bill No. 5923. Alderman Skains so moved, 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: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

**BILL NO. 5924**

**Accepting the proposal of Unifirst Corporation pertaining to the rental of uniforms and shop towels for the City.**

First Reading of Bill No. 5924, an ordinance accepting the proposal of Unifirst Corporation pertaining to the rental of uniforms and shop towels for the City and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was provided by Public Works Director and City Engineer Keith Francis. Mayor Akers asked for a motion approving Bill No. 5924. Alderman Milton so moved, seconded by Alderman Skains. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

## **BILL NO. 5925**

### **Amending the adopted 2020 Budget for the City of Branson to adjust monies for the Tourism Fund for the Branson, Missouri Regional Airport TDD.**

First Reading of Bill No. 5925, an ordinance amending the adopted 2020 Budget for the City of Branson to adjust monies for the Tourism Fund for the Branson, Missouri Regional Airport TDD was read by title by City Clerk Lisa Westfall and a staff report was provided by Finance Director Jamie Rouch. Mayor Akers asked for a motion approving Bill No. 5925. Alderman Skains so moved, seconded by Alderman Whiteis. 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: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: None. Motion carried.

## **DISBURSEMENTS**

Mayor Akers stated the next item is the review of disbursements [(October 3, 2020 through October 30, 2020) See Master File for copies of disbursements] Mayor Akers asked if there were any questions regarding the disbursements. No discussion. Mayor Akers asked for a motion to acknowledge the receipt of disbursements from October 3, 2020 through October 30, 2020. Alderman King so moved, seconded by Alderman Skains. Mayor Akers asked for any comments. No discussion. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: none. Motion carried.

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

Alderman Milton wished the United States Marine Corps a happy birthday.

Alderman Seay said he's hoping for sunshine tomorrow.

City Administrator Stan Dobbins reminded everyone City Hall will be closed tomorrow in observance of Veterans Day. He announced the Veterans Day Parade is also tomorrow and the Grand Marshall of the parade is Assistant City Administrator John Manning. He mentioned Friday there will be a group visiting from Leesville, Louisiana, consisting of its Mayor, City Administrator, Aldermen and people from its chamber of commerce. He informed the Board they will be here at 10:00 a.m. on Friday to take a tour of the City's facilities and he welcomed any Board members interested to stop by. City Administrator Stan Dobbins reminded the Board legislative priorities will be discussed at the upcoming Study Session and Representative Seitz and Senator Moon elect will be meeting with them regarding this item.

Mayor Akers expressed appreciation for the recognition of City Staff in various state organizations and that they're pursuing further education and are doing well. He feels it's an honor for them to be recognized by their peers in their jobs. He commented Christmas lights are all turned on and the Veterans Day Parade is tomorrow which is 88 years of recognition for the veterans of this community. He reminded everyone Thanksgiving is coming up, the Adoration Parade is December 6<sup>th</sup> and the tourism tax is on the ballot for the April election. He explained the tourism tax generates the funds needed for Branson to be able to perform as a City of 12,000 people, inviting 9 million visitors a year. He commented on the group from Louisiana coming Friday and said he hopes the City lives up to their standards and he invited any Aldermen available Friday morning to please come.

# ADJOURN

Mayor Akers asked for a motion to adjourn. Alderman Skains so moved, seconded by Alderman Milton. Voting aye: King, Whiteis, Simmons, Skains, Milton and Seay. Nays: none. Motion carried. Meeting adjourned at 7:23 p.m.

---

E. Edd Akers  
Mayor

---

Lisa Westfall  
City Clerk

**BRANSON ADVISORY PARK BOARD**

**REGULAR MEETING**

October 20, 2020

5:15pm

Branson RecPlex

**CALL TO ORDER**

**ROLL CALL**

Board Members Present: Clark Harris, Andrew Brown, Scott Wuest, Julie Wolfe, Mica Farley, Jennifer Holder, David Parrish

Board Members Absent: Candy Sullinger, Jamie Whiteis, Scott McCauley

Staff Present: Cindy Shook, Brien Halterman, Carlie Allison, Marsha Fulton

**REGULAR AGENDA ITEMS**

**1. Approve Minutes**

Motion made by Mica Farley and seconded by Andrew Brown to approve the September 15, 2020 minutes as presented. Motion carried.

**2. Review of Annual Revenue Contracts - PepsiCo.**

Cindy reviewed the contract with PepsiCo with the Board, sharing that this was the first renewal option of a five year agreement. The contract includes a 4% increase in case cost, which is allowable under the agreement. Based on 2019 totals, the anticipated revenue is \$85,745.00. Discussion was held among the board members. Julie Wolfe made a motion to approve the PepsiCo. Contract. Scott Wuest seconded the motion. Motion carried.

**3. Budget Update**

Cindy provided a review of the September financials with the board, noting COVID had impacted many areas. Cindy highlighted that the expenditure increase in administration was due to Jason Reinsch's payout, in addition to there being three pay periods in September. Discussion was held among the board members. Cindy then went to share some of the budget assumptions and decisions for the City of Branson for the 2021. These include freezing some of the positions that were vacant before the COVID-19 shutdown, no new capital improvements for any department in 2021, and no cost of living increases.

Additionally, Cindy shared that Finance Director Jamie Rouch was budgeting for the 2021 general fund sales tax to be down 22% from fiscal year 2019 actuals, causing everyone to tighten their belts. This projection has resulted in the Parks Department general fund subsidy being reduced by 25% in 2021, which means they will either need to decrease expenditures or increase revenues. There was no discussion or comments

#### **4. Presentation of 2021 Proposed Fee Schedule**

Cindy reviewed the proposed fee changes for 2021 that address increased fiscal demands to sustain the current level of service. Cindy reported that new fees are being recommended for youth sports, aquatic fees, field rentals, the Dog Park and the campground. The fee increases represent a multi-year plan designed to off-set the mandated minimum wage increases of \$12.00 in 2023. The fees are designed to cover a phased in wage increases for seasonal workers such as lifeguards, concessionaires and seasonal maintenance workers.

Cindy stated that another big factor, in addition to minimum wage increase, is that the Park's Department is facing a 25% decrease in our subsidy from the General Fund due to a decline in sales tax revenues due to the impact of COVID-19. Therefore, additional fees are necessary to off-set operational expenses. Cindy reviewed the survey of fees from area park's departments and campgrounds with similar amenities.

Discussion was held among the board members. A few board members expressed opinions that the proposed fees for the campground might be too low. Cindy responded that she was proposing an incremental increase at the campground, but was open to varying opinions and indicated that we could relook at fees again next year.

Andrew Brown made a motion to recommend the 2021 fee schedule as presented to the Board of Alderman. Jennifer Holder seconded the motion. Motion unanimously carried.

#### **5. Marketing Presentation**

Park Business Supervisor, Carlie Allison, provided a review to the board of our current multi-faceted approach to marketing the department's programs, events and parks. Carlie shared information on facebook analytics that helps to provide feedback as to our marketing efforts.

#### **6. Presentation of new Outdoor Initiatives**

Cindy shared with the board information about some new outdoor initiatives that include trails, biking and possible skate park improvements. Carlie provided additional detail to the board about the new 20in20 Hiking Program and her plans to expand the program in 2021.

#### **7. Member's Reports**

Julie Wolfe complimented Clark on his leadership during the meeting and Cindy and the Parks Department on everything that they had accomplished.

Mica Farley complimented Carlie and everyone involved on the recent youth flag football program. Mica added that she would like to see the program opened to older ages as well. Mica then brought attention to issues at the Branson North Park and suggested possible outdoor lighting at the park.

Scott Wuest complimented Carlie and the 20in20 Hiking Program and encouraged everyone on the board to participate in the new program and use the hiking trails. Scott also shared his concerns about the tax decrease within the City. Scott commented that he hoped the City's projections of a 20% decline are not correct and remarked that he is aware of several businesses were doing well.

Clark Harris shared with the board that an Arbor Day Celebration had taken place earlier today under the guidance of Amy Jackson. Clark encouraged others to get involved with TreeKeepers and other parks programs.

<b>ADJOURN</b>
----------------

Motion was made by Andrew Brown, and seconded by Clark Harris, to adjourn the meeting.  
All were in favor.

Meeting adjourned 6:37 pm

# MINUTES

HUMAN RESOURCES COMMITTEE

CITY OF BRANSON, MISSOURI

October 21, 2020

**1) Call to Order**

The Human Resources Committee met in the Council Chambers of City Hall, Wednesday, October 21, 2020. The meeting was called to order by Alderman Bill Skains at 9:35 a.m.

**2) Roll Call**

Committee Members present: City Administrator Stan Dobbins, Alderman Bill Skains, Alderman Jeff Seay, Bryan Cossiboom and Kenn Tilus, which provided a quorum.

Also present: Assistant City Administrator John Manning, Human Resources Director Jan Fischer, Kimberly Cooper, Gina Stech, Sonya Seitz, Melody Pettit, Jamie Rouch, Marcia Chapman and Brien Halterman.

**3) Acknowledgement of August 19, 2020 Minutes.**

Motion to approve: Kenn Tilus; Second: City Administrator Stan Dobbins; Vote: 5 yes, 0 no.

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

Discussion led by Human Resources Director Jan Fischer.

**5) Review Wellness Appeal.**

Discussion introduced by Jan Fischer and led by Kimberly Cooper.

Motion to recommend approval of Appeal Application Number 20-1021-A with confirmation that the doctor appointment is completed: Alderman Bill Skains; Second: Kenn Tilus; Vote: 5 yes, 0 no.

Motion to deny Appeal Application Number 20-1021-B as the Tier would not be affected due to none of the required wellness items being completed: City Administrator Stan Dobbins; Second: Alderman Bill Skains; Vote: 5 yes, 0 no

Appeal Application Numbers 20-1021-C, 20-1021-D, 20-1021-E and 20-1021-F are already in Tier 1 so no motion is needed.

Motion to deny Appeal Application Number 20-1021-G as Health Risk Assessment was due before the effects of COVID-19 and was not completed: City Administrator Stan Dobbins; Second: Kenn Tilus; Vote: 5 yes, 0 no.

Alderman Bill Skains stated that if the Wellness Appeal does not affect the Tier, it is not necessary to present it to the Human Resources Committee. That protocol will be followed going forward.

**6) Article 15 – Work Period, Overtime, Compensatory Time and Holiday Pay.**

Discussion led by Jan Fischer.

Article 15 revisions discussed with the final version to be presented at the November Human Resources Committee Meeting. The revisions will be presented to the Employee Human Resources Committee before presenting at the November Human Resources Meeting.

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

Update given by Jan Fischer.

# MINUTES

HUMAN RESOURCES COMMITTEE

CITY OF BRANSON, MISSOURI

October 21, 2020

City Administrator has directed to revise the compensation schedule for the City as minimum wage will be increasing for the next few years and will affect the bottom end of the pay scale. Modification of the pay scale is needed for the City to remain competitive with other local entities.

Open Enrollment is underway and the feedback has been positive. It is an all virtual open enrollment for the first time and enrollment is almost complete.

City Administrator has directed for the Human Resources Department to review modification of the Disciplinary process. Modifications will address punishment versus coaching and discipline without punishment, with the focus on supervisors increasing engagement with employees.

The transition to NeoGov for applicant tracking continues with consideration of information and pricing. Elements should impact Human Resources onboarding and both employee and management development.

## **8) Adjourn.**

Motion to adjourn: City Administrator Stan Dobbins; Second: Alderman Bill Skains; Vote: 5 yes, 0 no.

Time Adjourned: 10:18 a.m.

# MINUTES

## MEETING OF THE OUTSIDE PROGRAM ASSISTANCE COMMITTEE CITY OF BRANSON, MISSOURI November 5, 2020

### INTRODUCTORY

The Outside Program Assistance Committee of the City of Branson, Missouri met for a committee meeting in the Municipal Courtroom of Branson City Hall, Branson, Missouri, on November 5, 2020, at 8:30 a.m. The following members were present:

Ted Martin presiding, Larry Milton, Jeff Matthews, Melody Pettit, Cris Bohinc and Howard Boyd.  
Absent: Edd Akers.

### AGENDA

Discussion of selection process by the Committee.

Larry Milton moved to proceed with review of the five applications received and assign funding amounts, seconded by Melody Pettit. The motion passed unanimously.

Review of agencies requests for proposals and make recommendation for consideration of the Board of Aldermen.

Cris Bohinc moved to recommend the amounts be awarded as follows:

Branson Regional Arts Council - \$3,000

- To provide funding for youth scholarship opportunities for underprivileged or gifted students in the visual arts and theater arts for Branson youth residents and funding for educational youth symphony experience.

Elevate Branson - \$7,000

- To provide transportation for Branson residents to get to essential medical appointments, health & mental health services, and to obtain necessary documents to gain employment (ie; social security cards and birth certificates)

Faith Community Health - \$12,000

- To assist Branson residents when the patient is unable to obtain a prescribed medication for an urgent dental or medical need when the patient would otherwise go untreated.

Taneyhills Library - \$5,000

- To provide funding to purchase Children's and Young Adult books.

The Crisis Center - \$5,000

- To assist with prescription assistance, food, personal hygiene supplies, clothing, diapers and basic necessities for women and their children staying in the women's shelter.

---

Total amount awarded - \$32,000

Seconded by Howard Boyd. The motion passed unanimously.

Larry Milton moved to recommend the City send out a second RFP to use remaining budgeted funds for the Outside Assistance Program, seconded by Melody Pettit. No discussion. The motion passed unanimously.

## **ADJOURN**

Cris Bohinc moved to adjourn, seconded by Larry Milton. The motion passed unanimously. The meeting adjourned at 10:20 a.m.



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE AMENDMENT TO THE LEASE AGREEMENT WITH RECREATIONAL INVESTMENT & MANAGEMENT CORP. PERTAINING TO A REDUCTION IN BASE RENT FOR FISCAL YEAR 2020 AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** FINANCE DEPARTMENT

**FIRST READING:** NOVEMBER 10, 2020      **FINAL READING:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- In response to the COVID-19 pandemic and the city-wide mandated shut-down of nonessential businesses, the city has evaluated the lease agreements collectively known as the “Airport” properties.
- These properties owe rents to the city, including both base rental amounts and rents based on gross receipts. The city proposes to amend the base rent amounts for the following properties in a good-faith effort due to the pandemic as follows:
  - The contract amendment for Recreational Investment & Management Corp., reduces the base rent amount of \$80,000 by \$13,600 to \$66,400 for 2020 only. This also reduces the annual minimum rental payment due from \$145,000 to \$131,400. No other changes in rents will result for any subsequent year.
  - This agreement represents an additional \$4,000 decrease to the base rent per Board request.
- Rents return to their normal schedules beginning January 1, 2021.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** 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:**

**AN ORDINANCE APPROVING THE AMENDMENT TO THE LEASE AGREEMENT WITH RECREATIONAL INVESTMENT & MANAGEMENT CORP. PERTAINING TO A REDUCTION IN BASE RENT FOR FISCAL YEAR 2020 AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

**WHEREAS**, the City of Branson currently leases property to Recreational Investment & Management Corp; and

**WHEREAS**, the COVID-19 global pandemic has caused economic hardship, including a mandatory city-wide shut-down of non-essential businesses; and

**WHEREAS**, the city wishes to make a good-faith effort through the reduction of base rent amounts for the lease for FY2020; and

**WHEREAS**, after a re-evaluation of the lease agreement, an additional reduction of \$4,000 to the base rent for Recreational Investment & Management Corp. was deemed to be more equitable to the airport lease property amendments;

**WHEREAS**, the Board of Aldermen desires to approve the contract.

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

Section 1: The Board of Aldermen hereby approves the amendment to the contract with Recreational Investment & Management Corp. to reduce the base rent amount due for FY 2020 and authorizes the Mayor to execute the contract in the form attached as Exhibit "1".

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*Chris Lebeck* #51831 11/4/20  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

## FOURTH ADDENDUM TO LEASE AGREEMENT

This agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2020 between Recreational Investment & Management Corp., of Branson, the "Lessee", and the City Branson, Taney County, Missouri, the "Lessor".

### WITNESSETH:

1. That said parties desire to amend said First Amended Ground Lease dated September 7, 1983, Addendum to Lease Agreement dated November 28, 1988, and Addendum to Lease Agreement dated May 18, 2010, and Third Addendum to Lease Agreement dated November 26, 2019 as hereinafter described.
2. That said lease agreement shall be amended as follows:
  - a. Section 1(i)(j) of said lease shall be modified to read as follows:

For the year beginning January 1, 2020 and ending December 31, 2020, base rental shall be shall be \$66,400 plus the sum of the following: Three and Three Quarter percent (3.75%) of the Gross Receipts of sublessees Magic Memories USA, LLC (formerly owned by SharpShooter/Spectrum Venture, LLC), Rogers Enterprises of Missouri, Inc. d/b/a Pizza World, and Andy's Frozen Custard Branson, LLC, Four Percent (4%) of all other Gross Receipts up to \$5,000,000 and Three Percent (3%) of all other Gross Receipts that exceed \$5,000,000, provided however, that the minimum rental payment shall be at least equal to \$131,400 for the year period described above. For the next two years of the lease beginning January 1, 2021 and ending December 31, 2022 base rent shall be \$80,000 plus the sum of the following: Three and Three Quarter percent (3.75%) of the Gross Receipts of sublessees Magic Memories USA, LLC (formerly owned by SharpShooter/Spectrum Venture, LLC), Rogers Enterprises of Missouri, Inc. d/b/a Pizza World, and Andy's Frozen Custard Branson, LLC, Four Percent (4%) of all other Gross Receipts up to \$5,000,000 and Three Percent (3%) of all other Gross Receipts that exceed \$5,000,000, provided however, that the minimum rental payment shall be at least equal to \$145,000 each year of the two (2) year period above described.

3. In all other respects the First Amended Ground Lease dated September 7, 1983, the Addendum to Lease Agreement dated November 28, 1988, the Addendum to the Lease Agreement dated May 18, 2010, and the Third Addendum to the Lease Agreement dated November 26, 2019 shall remain in full force and effect, except as otherwise amended hereby.

This agreement shall be binding upon Personal Representatives, Heirs, and Assigns of Lessee and upon the Successors and Assigns of Lessor.

IN WITNESS THEREOF, Lessee has hereunto affixed his signature and Lessor has caused this instrument to be duly executed, all in duplicate, as of the day and year first written above.



Craig Wescott, Vice President  
Recreational Management & Investment Corp.

E. Edd Akers, Mayor  
City of Branson

ATTEST:

APPROVE TO FORM:



10/29/20

Lisa K Westfall  
City Clerk

Chris Lebeck #51831  
City Attorney



# STAFF REPORT

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

**INITIATED BY:** UTILITIES DEPARTMENT

**FIRST READING:** NOVEMBER 10, 2020      **FINAL READING:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- Missouri American Water Company supplies public drinking water to residents and businesses in areas of Branson 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 Missouri American since 2013 for Missouri American to provide water termination services to their water customers for nonpayment of City sewer bills in accordance with RSMo Chapter 393.
- Under this agreement, Missouri American, at the request of the City, will 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 sewer bill. Termination will occur after 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.
- Missouri American will charge the City for its costs to perform the water termination service as allowed in the referenced statute. Costs incurred by the City for termination services; will be transferred to the individual customer responsible for the nonpayment of their sewer bill.
- Missouri American will restore water service to the customer following the City’s receipt of the required payment for sewer services and the termination charges assessed by Missouri American.
- If approved, the agreement for this service will be for the fiscal year 2021 period. Applicable fee amounts and stipulations are as indicated in the Agreement Fee Schedule.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the 2021 budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
  - Not Recommended
  - Neutral/None
- JD*

**COMMUNITY PLAN 2030:** E1 1.3

**ATTACHED EXHIBITS:**

BILL NO. 5916

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

**AN ORDINANCE APPROVING THE RENEWAL OF THE CONTRACT WITH MISSOURI AMERICAN WATER 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 desires to approve the renewal of the contract.

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

Section 1: The Board of Aldermen hereby approves the renewal of the contract with Missouri American Water for water termination services in the amount not to exceed \$28,000.00 and authorizes the Mayor to execute the contract in the form attached hereto as Exhibit "A".

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

 #51831 11/4/20

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

Master Contract Number: C2020-0122  
Sub-Contract Number: \_\_\_\_\_

**NOTICE OF CONTRACT RENEWAL  
SERVICES CONTRACT**

**THIS RENEWAL** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Branson, Missouri (the "City") and **Missouri-American Water Company** ("Service Provider") for renewal period **One** from **January 1, 2021** to **December 31, 2021**.

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

1. **Renewal.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities as referenced in the original contract attached as **Exhibit 1**.

2. **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 Eight Thousand Dollars (\$28,000.00)**, all of which is dependent upon budget appropriations.

3. **Bonds and Insurance.** The Service Provider shall procure and maintain all insurance and bonds (if applicable) to satisfy statutory bonding requirements, and to protect the City from any liability exposure resulting from the Service Provider's activities as outlined in the original contract and provide the City the most up-to-date insurance certificates and to keep them current.

4. **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.

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

**SERVICE PROVIDER:**

**CITY OF BRANSON, MISSOURI**

By: *Jeffrey T Kaiser* 10/9/2020  
(Signature) Date

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

Name: JEFFREY T KAISER  
(Printed Name)

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

Title: VICE PRES. OPERATIONS

Company Name: MISSOURI AMERICAN WATER

Address: 727 CRAIG RD CREVE COEUR MO 63141

Phone: 314 996 2319

APPROVED AS TO FORM:  
*Chris Lebeck* #51831 9/25/20  
Chris Lebeck #51831 City Attorney Date

E-Mail: jeffrey.kaiser@amwater.com

TERMINATION OF WATER SERVICE AGREEMENT

Made as of the 23<sup>rd</sup> 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

E. Edd Akers, Mayor

ATTEST:

Lisa K Westfall

Lisa K Westfall, City Clerk

APPROVED AS TO FORM:

Chris Lebeck #51831 12/20/15

Chris Lebeck #51831, City Attorney

MISSOURI-AMERICAN WATER COMPANY

ATTEST:

By: Grant Evitts

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

Mary Beth Hercules  
Assistant Secretary

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.



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE RENEWAL OF THE CONTRACT 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:** NOVEMBER 10, 2020      **FINAL READING:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- Missouri American Water Company supplies public drinking water to residents and businesses in areas of Branson 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, Missouri American will supply their monthly water usage data to the City of Branson from each Missouri American customer that has a connection 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.
- Missouri American agrees to assemble and supply the water usage data during the fiscal year 2021 at a total not to exceed cost of \$3,000.00.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the 2021 budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
  - Not Recommended
  - Neutral/None
- JD

**COMMUNITY PLAN 2030:** E1 1.3

**ATTACHED EXHIBITS:**

BILL NO. 5917

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

**AN ORDINANCE APPROVING THE RENEWAL OF THE CONTRACT 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 desires to approve the renewal of the contract.

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

Section 1: The Board of Aldermen hereby approves the renewal of the contract with Missouri American Water Company for purchase of Water Usage Data in the amount not to exceed \$3,000.00 and authorizes the Mayor to execute the contract in the form attached hereto as Exhibit "A".

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

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

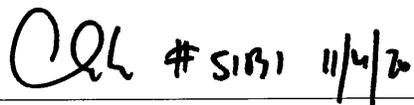
Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

ATTEST:

APPROVED AS TO FORM:

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

 # 51831 11/4/20  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

**NOTICE OF CONTRACT RENEWAL  
SERVICES CONTRACT**

**THIS RENEWAL** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Branson, Missouri (the "City") and **Missouri-American Water Company** ("Service Provider") for renewal period **One** from **January 1, 2021** to **December 31, 2021**.

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

1. **Renewal.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities as referenced in the original contract attached as **Exhibit 1**.

2. **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 **Three Thousand Dollars (\$3,000.00)**, all of which is dependent upon budget appropriations.

3. **Bonds and Insurance.** The Service Provider shall procure and maintain all insurance and bonds (if applicable) to satisfy statutory bonding requirements, and to protect the City from any liability exposure resulting from the Service Provider's activities as outlined in the original contract and provide the City the most up-to-date insurance certificates and to keep them current.

4. **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.

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

**SERVICE PROVIDER:**

**CITY OF BRANSON, MISSOURI**

By: *Jeffrey T Kaiser* 10/8/2020  
(Signature) Date

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

Name: JEFFREY T KAISER  
(Printed Name)

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

Title: VICE PRES OPERATIONS

Company Name: Missouri American Water

Address: 727 CRAIG RD CREVE COEUR MO 63141

Phone: 314 996 2319

APPROVED AS TO FORM:  
*Chris Lebeck* #51831 9/23/20  
Chris Lebeck #51831 Date  
City Attorney

E-Mail: jeffrey.kaiser@amwater.com

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 23<sup>rd</sup> 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 or 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 *Scott A. Erbe*

ATTEST:

*Mary Beth Hercules*  
Assistant Secretary

CITY OF BRANSON, MISSOURI



*E. Edd Akers*  
E. Edd Akers, Mayor

ATTEST:

APPROVED AS TO FORM:

*Lisa K Westfall*  
Lisa K Westfall, City Clerk

*Chris Lebeck* #51831 12/20/15  
Chris Lebeck, #51831 City Attorney

EXHIBIT A  
FEE SCHEDULE

Annual Data Usage Rate	\$3,000
------------------------	---------



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE RENEWAL OF THE CONTRACT WITH UTILITY SERVICE COMPANY, INC. FOR ONGOING MAINTENANCE AND SCHEDULED RENOVATIONS OF THE CITY'S WATER TOWERS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** UTILITIES DEPARTMENT

**FIRST READING:** NOVEMBER 10, 2020      **FINAL READING:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- In 2012, Utilities implemented a program for a qualified contractor to perform water tower renovations and ongoing maintenance for the City's eight water towers. Utility Service Company, Inc. was selected to perform this service under a management agreement that is reviewed by the City each year. The City has the option to renew the contract on an annual basis for an indefinite period of time. The City is the only party to the contract that has the option to cancel or not renew.
- Under this contract, two of the City's water towers are maintained under a Complete Service Program. The Landmark Tower located at Hwy 165 & 76 Country Music Blvd and the Junior High Tower, located on N Highway 65; both towers were renovated by Utility Services in 2012. Under the ongoing service program, Utility Service performs all necessary inspections, repairs, cleaning, and maintenance of these two towers. Annual services fees cover the cost of annual maintenance and 10-year cycle renovations. Both the Landmark and Junior High Towers are scheduled for painting renovations in 2021.
- The City's six remaining water towers are maintained by Utility Service, under an alternate Modified Service portion of the contract which addresses specific repair and cleaning needs each year for each of those towers as determined and recommended by City staff.
- Total program cost are set not to exceed \$87,947.52 for fiscal year 2021, which includes the annual Complete Service fees of \$58,260.48 for the Landmark Tower and \$27,543.04 for the Junior High Tower, \$1072.00 for exterior washing of the Pacific Street Tower, \$1072.00 for exterior washing of the Walmart Water Tower (located on 76 Country Music Blvd).
- Funds for these expenses have been included in the 2021 fiscal year budget.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the 2021 budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** E1 1.1

**ATTACHED EXHIBITS:**

BILL NO. 5918

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

**AN ORDINANCE APPROVING THE RENEWAL OF THE CONTRACT WITH UTILITY SERVICE COMPANY, INC. FOR ONGOING MAINTENANCE AND SCHEDULED RENOVATIONS OF THE CITY'S WATER TOWERS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

**WHEREAS**, the City of Branson advertised for proposals for an ongoing water tower renovation and maintenance program on April 26, 2012; and

**WHEREAS**, upon accepting the proposal, a contract was executed in 2012 with Utility Service Company, Inc., to be reviewed annually for renewal by the Board of Aldermen; and

**WHEREAS**, with Staff's recommendation the Board of Aldermen desires to approve the 9<sup>th</sup> renewal period of the contract.

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

Section 1: The Board of Aldermen hereby approves the renewal of the contract with Utility Service Company, Inc., for water tower maintenance and future renovation program in the amount not to exceed \$87,947.52 and authorizes the Mayor to execute the contract in the form attached hereto as Exhibit "A".

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

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

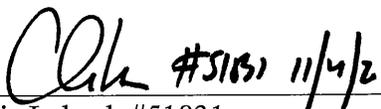
Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

ATTEST:

APPROVED AS TO FORM:

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

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

Master Contract Number: C2012-0175  
Sub-Contract Number: \_\_\_\_\_  
Prevailing Wage Project Number: \_\_\_\_\_

**NOTICE OF CONTRACT RENEWAL  
SERVICES CONTRACT**

**THIS RENEWAL** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Branson, Missouri (the "City") and **Utility Service Company, Inc.** ("Service Provider") for renewal period **Nine** from **January 1, 2021 to December 31, 2021.**

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

1. **Renewal.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the ongoing services and assume the responsibilities under the terms as outlined in the original Master Services Contract dated June 14, 2012 attached as **Exhibit 1, with the exception of amending the prevailing wage annual wage order to the current wage order number in effect and the 2021 Scope of Work, as amended by Exhibit "A", Contract Renewal Period Number Nine, Pricing Page, attached hereto.**

2. **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 renewal exceed the sum of **Eighty Seven Thousand Nine Hundred Forty Seven Dollars and Fifty Two Cents (\$87,947.52), all of which is dependent upon budget appropriations,** for the work outlined and described in the Contract Renewal Period Number Nine Pricing Page, attached hereto as Exhibit "A", unless the City terminates or does not renew the contract.

3. **Bonds and Insurance.** The Service Provider shall procure and maintain all insurance and bonds to satisfy statutory bonding requirements, and to protect the City from any liability exposure resulting from the Service Provider's activities as outlined in the original contract and provide the City the most up-to-date insurance certificates and to keep them current.

4. **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.

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

**SERVICE PROVIDER:**

**CITY OF BRANSON, MISSOURI**

By: J. Shane Albritton 10/27/20  
(Signature) Date

E. Edd Akers, Mayor Date

Name: J. Shane Albritton  
(Printed Name)

**ATTEST:**

Title: VP, Legal

Lisa K Westfall, City Clerk Date

Company Name: Utility Service Co. Inc.

**APPROVED AS TO FORM:**

Address: 535 Courtney Hodges Blvd

Chris Lebeck #51831 10/27  
Date

Phone: 418-988-5226

City Attorney

Master Contract Number: C2012-0175  
Sub-Contract Number: \_\_\_\_\_  
Prevailing Wage Project Number: \_\_\_\_\_

Exhibit "A"  
Contract Renewal Period Number Nine  
Pricing Page

**Year 2021**

**Complete Service:**

Landmark Tower – Well #11  
Annual Maintenance Fee

\$ 58,260.48

**Exterior Overcoat**

1. A containment system shall be utilized to meet the emission control requirements of a Class 4A System, as specified in SSPC-Guide 6 (CON), Guide for Containing Debris Generated during Paint Removal Operations, dated October 1, 2004.
2. All exterior surfaces must be pressure washed with a minimum of 4,000 P.S.I. washer to remove any surface contamination.
3. All rusted areas must be Hand/Power tool cleaned per SSPC-SP2, SP3 cleaning methods.
4. All rusted or bare areas must be spot primed with Tnemec Series 135 Chembuild primer.
5. One (1) full intermediate coat of a Tnemec Series 135 Chembuild shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness.
6. One (1) full finish coat of a Tnemec Series 72 Polyurethane coating shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness. Color to be determined.
7. Repaint all logos using Tnemec Series 72 Polyurethane coating.

**Interior Dry - Overcoat**

1. All interior dry surfaces must be properly cleaned and prepped to remove any surface contamination.
2. All rusted areas must be Hand/Power tool cleaned per SSPC-SP2, SP3 cleaning methods.
3. All rusted or bare areas must be spot primed with Tnemec Series 135 Chembuild primer.
1. One (1) full finish coat of a Tnemec Series FC 20 Pota-Pox coating shall be applied to complete interior dry surfaces (100%) at the manufacturer's recommended thickness. Color to be determined.

Master Contract Number: C2012-0175  
Sub-Contract Number: \_\_\_\_\_  
Prevailing Wage Project Number: \_\_\_\_\_

### **Interior Wet**

1. The complete interior (100%) shall be abrasive blast cleaned to SSPC-SP No. 10 "Near White" finish.
2. After abrasive cleaning, all surfaces shall be cleaned of any dust residue or foreign debris.
3. A high build epoxy liner manufactured by the Tnemec Company shall be applied as follows:
  - a. Primer Coat: One [1] complete coat of Tnemec Series N140 Epoxy shall be applied to achieve a dry film thickness of 3 to 5 mils.
  - b. Finish Coat: One [1] complete finish coat of Tnemec Series N140 Epoxy shall be applied to achieve a dry film thickness of 4 to 6 mils.
  - c. Contrasting Color: Each coat of epoxy paint shall be of contrasting color.
  - d. Stripe Coat: One additional coat of epoxy shall be applied by brush and roller to all weld seams.
4. After the liner has properly cured in accordance with paint manufacturers specifications, the interior surfaces shall be disinfected per AWWA Spray Method No. 2 (200 PPM).
5. The spent abrasive media shall be tested by the Service provider per TCLP-(8) Heavy Metals as mandated by the State regulations.
6. The Service Provider shall properly dispose of the spent abrasive waste at the Service Provider's expense.
7. The Service Provider shall seal the tank and make ready for service.

Junior High School Tank-Well #5  
Annual Maintenance Fee

\$ 27,543.04

### **Exterior Overcoat**

1. All exterior surfaces must be pressure washed with a minimum of 4,000 P.S.I. washer to remove any surface contamination.
2. All rusted areas must be Hand/Power tool cleaned per SSPC-SP2, SP3 cleaning methods.
3. All rusted or bare areas must be spot primed with a Tnemec Series 135 Chembuild metal primer.
4. One (1) full intermediate coat of a Tnemec Series 135 Chembuild shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness.
5. One (1) full finish coat of a Tnemec Series 72 Polyurethane shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness. Color to be determined.
6. Repaint logo using Tnemec Series 72 Polyurethane.

Master Contract Number: C2012-0175  
Sub-Contract Number: \_\_\_\_\_  
Prevailing Wage Project Number: \_\_\_\_\_

**Interior Wet**

1. The complete interior (100%) shall be abrasive blast cleaned to SSPC-SP No. 10 "Near White" finish.
2. After abrasive cleaning, all surfaces shall be cleaned of any dust residue or foreign debris.
3. A high build epoxy liner manufactured by the Themec Company shall be applied as follows:
  - a. Primer Coat: One [1] complete coat of Themec Series N140 Epoxy shall be applied to achieve a dry film thickness of 3 to 5 mils.
  - b. Finish Coat: One [1] complete finish coat of Themec Series N140 Epoxy shall be applied to achieve a dry film thickness of 4 to 6 mils.
  - c. Contrasting Color: Each coat of epoxy paint shall be of contrasting color.
  - d. Stripe Coat: One additional coat of epoxy shall be applied by brush and roller to all weld seams.
4. After the liner has properly cured in accordance with paint manufacturers specifications, the interior surfaces shall be disinfected per AWWA Spray Method No. 2 (200 PPM).
5. The spent abrasive media shall be tested by the Service provider per TCLP-(8) Heavy Metals as mandated by the State regulations.
6. The Service Provider shall properly dispose of the spent abrasive waste at the Service Provider's expense.
7. The Service Provider shall seal the tank and make ready for service.

**ALTERNATES Modified Service:**

**Wal-Mart Tower**

Interior Wash \$ 1,072.00

**Pacific Street Tower**

Interior Wash \$ 1,072.00

Total \$ 87,947.52

Prevailing Wage Project No. VW 1204

**MASTER SERVICES CONTRACT**

**THIS CONTRACT** made and entered into this 14th day of June, 2012, by and between the City of Branson, Missouri (the "City") and **Utility Service Company, 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 hereinafter set forth in **Exhibit A**.
2. **Addition to Work.** The City and the Service Provider may amend the scope of work set forth in **Exhibit A**, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 7B of this contract. Any amendments shall be in written form and prepared and approved by the appointed City Officials and countersigned by the Service Provider.
3. **Exchange of Data.** All information, data, and reports as are existing, available and necessary for the carrying out of the work, shall be furnished to the requesting party without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of work.
4. **Payment for Labor and Materials.** The Service Provider agrees and binds itself to secure and pay for all personnel, labor, materials and supplies required to perform the services called for under this contract by Service Provider. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Service Provider. All of the work required hereunder will be performed by the Service Provider or under Service Provider's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such work. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.
5. **Term.** The work of the Service Provider shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract. **The initial term of the contract will be from the execution date of this contract to December 31, 2012. Thereafter, the City may renew this contract for successive renewal terms of one (1) year each. Additional one year terms will require City Board of Alderman approval and the issuance of a Notice to Proceed in accordance with item 7C of this section.**

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 billing statement as scheduled in **Exhibit A**, Scope of Work, Section 12d and 12e.

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**, for all work to be rendered under this contract; provided, that where payments are to be made as scheduled in **Exhibit A** 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**. Upon satisfactory completion the City shall pay the Service Provider in full for all work performed as outlined in **Exhibit B** with exception of the total initial renovation costs of the Landmark Tower – Well #11 and the Junior High School Tank – Well #5 which shall be amortized over a five (5) year period as described in **Exhibit A** section 2a and as set forth by amounts in **Exhibit C**. Should the City terminate or not renew this contract or any successive contracts prior to the end of the agreed amortized period as set forth in **Exhibit C**, any remaining balance of the initial renovation cost for individual tanks shall be paid in full at the termination of the contract.

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 first year contract exceed the sum of **Two Hundred Thirteen Thousand Four Hundred Twenty Three Dollars and Forty Cents (\$213,423.40)** unless the City terminates or does not renew this contract. Should the City terminate or not renew this contract at the end of the first year term it is expressly understood that in no event will the total compensation and reimbursement to be paid to the Service Provider under this contract exceed the sum of **Six Hundred Forty Seven Thousand Four Hundred Thirteen Dollars (\$647,413.00)** which shall include payment of the remaining total balance of the initial renovation costs for the Landmark Tower – Well #11 and the Junior High School Tank – Well #5 as set forth in **Exhibit C**.

C. Future contract renewals, approved by the City Board of Aldermen, shall incorporate not to exceed sums including agreed renovation cost payments which are amortized over a five (5) year period beginning with this contract and agreed annual maintenance fees as set forth in **Exhibit C**. Not to exceed sum language shall also be incorporated to include any remaining balance that must be paid for initial renovations should the City cancel or not renew any successive contract prior to the end of the agreed amortized period. Maintenance fees beyond year five (5) shall also be included if contract renewals are made in effect at that time and are subject to the agreed annual percent increase. Not to exceed sums for work to be performed on towers included under Alternates Modified Service may also be included as defined under the Service Provider's submitted Pricing Page in RFP 1898-26 - Water Storage Tank Maintenance & Asset Management Program, copy attached hereto as Exhibit "F" reference.

## 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. N/A

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.

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 licensed to do business in the State of Missouri with limits of liability not less than two million six hundred eighteen thousand two hundred thirty dollars (\$2,618,230.00) per occurrence for personal injuries (including death) and property damage. The City of Branson must be named as an additional insured.

B. Automobile liability insurance with a company authorized to do business in the State of Missouri having limits of liability not less than two million six hundred eighteen thousand two hundred thirty dollars (\$2,618,230.00) 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. **Prevailing Wages:** It is agreed that all labor utilized in the installation of this project shall be paid a wage of no less than the "prevailing hourly rate of wages" for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri. (Please see annual wage order no. 18 for current wage rates.) The contractor will forfeit the penalty to the City of Branson of \$100 per day (or portion of a day) if a worker is paid less than the prevailing rate for any work done under the contract by the contractor or by any subcontractor.

20. **Safety Training.** The Service Provider is informed that this project is subject to the requirements of section 292.675, of the Missouri Revised Statutes, which requires all contractors or subcontractors doing work on the project to provide, and require its on-site employees to complete, a ten (10) hour course in construction safety and health approved by the Occupational Safety and Health Administration ("OSHA") or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program. The training must be completed within sixty (60) days of the date work on the project commences. On-site employees found on the worksite without documentation of the required training shall have twenty (20) days to produce such documentation. Contractors and subcontractors in violation of this provision will forfeit to the public body two thousand five hundred dollars (\$2500.00) plus one hundred dollars (\$100.00) a day for each employee who is employed without training.

A. In the event that the Missouri Department of Labor and Industrial Relations has determined that a violation of sections 292.675, of the Missouri Revised Statutes, has occurred and that a penalty as described in section 19 will be assessed, the City shall withhold and retain all sums and amounts due and owing when making payments to the Service Provider under the contract.

21. **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.

22. **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.

23. **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.

24. **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.

25. **Contact Information:** City of Branson  
Attn: Contract Management  
110 W Maddux St., Ste 205  
Branson, MO 65616  
417-337-8522  
fax: 417-335-4354 -- Attn: Contract Management

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

**SERVICE PROVIDER:**  
Utility Service Co., Inc.  
By: [Signature]  
Name: Sheldon Shelton  
Sr. Vice President of Sales  
Address: 535 Courtney Hodges Blvd.  
Perry, GA 31069  
Phone: (478) 987-0303  
Fax: (478) 987-2991  
Tax ID: 58-1920989

CITY OF BRANSON, MISSOURI

[Signature]  
Raeanne Presley,  
Mayor

ATTEST:

[Signature]  
Lisa K Westfall-Hillary Bergman  
Deputy City Clerk

APPROVED AS TO FORM:

[Signature]  
William T. Duston  
City Attorney



SCOPE OF WORK1. PURPOSE

These professional services are to include, but are not limited to: annual inspection services, rehabilitation, repair, component replacements, repainting, and interior and exterior washing, as part of a custom designed water storage tank preventative maintenance program. Utility Service Company, Inc. shall assume all responsibility and accountability for maintenance of the City's water storage tanks which are listed under a Complete Service Maintenance Program (Complete Service).

2. TERMS

- 2a. Services shall be provided by Utility Service Company, Inc. until the contract is either terminated or not renewed by the City. Utility Service Company, Inc. shall not, for any reason, terminate the contract. The contract shall be issued for one (1) year and shall be renewable on an annual basis, at the City's discretion, to provide ongoing maintenance and repair of each water storage tank. This contract term shall commence upon signing of the contract. Future contract renewals, approved by the City Board of Aldermen, shall commence on January 1<sup>st</sup> of each year thereafter. Maintenance of each water storage tank under Complete Service shall begin with an initial renovation. Initial renovation cost for each water storage tank shall be amortized over five (5) years as set forth in Exhibit C. Should the City terminate or not renew this contract or any successive contracts prior to the end of the agreed amortized period as set forth in Exhibit C, any remaining balance of the initial renovation cost for individual tanks shall be paid in full at the termination of the contract. Costs for future scheduled renovations of individual water storage tanks included under Complete Service shall be included as part of an annual maintenance fee of each individual water storage tank. Should the contract be terminated by the City at the end of any contract term the City shall not be liable for any cost of maintenance services beyond the end of that said term. Notice of termination shall be sent by certified mail to:

Utility Service Company, Inc.  
Post Office Box 1350  
535 General Courtney Hodges Boulevard  
Perry, Georgia 31069  
ATTN: Customer Service

- 2b. If Utility Service Company, Inc. fails to perform or continue the agreed maintenance and duties of the contract, the contract shall be terminated by the City and Utility Service Company, Inc. shall be liable for reimbursement to the City seventy-five percent (75%) of the annual maintenance fees, for each water storage tank included under Complete Service, which have been paid to Utility Service Company, Inc. prior to the completion of the next scheduled exterior and interior renovation.

- 2c. Utility Service Company, Inc. shall provide and maintain required bonds as listed in the Terms and Conditions for Services.
- 2d. Utility Service Company, Inc. shall not transfer or assign the contract to a third party without receiving prior written approval by the City.
- 2e. The initial renovation shall include work to bring individual water storage tanks up to the quality standards as established by the American Water Works Association (AWWA), the regulatory requirements of the Missouri Department of Natural Resources (MDNR) and the specifications herein. A continuing and ongoing maintenance program for each water storage tank listed under Complete Service shall commence in the year following the initial renovation for the purpose of maintaining compliance of each tank with MDNR regulations, protection of the structural integrity of the tank and to maintain necessary and expected aesthetics of each tank.
- 2f. This contract will include two of the City's tanks under Complete Service. The City reserves the right to phase additional city owned water storage tank(s) into the Complete Service program. The addition of water storage tanks to Complete Service would occur at the beginning of a renewal contract term. The renewed contract shall be modified, following Board of Alderman approval, to reflect necessary changes. Each water storage tank added to Complete Service shall begin with an initial renovation, the cost of which shall be amortized over five (5) years.
- 2g. The City reserves the right to remove individual water storage tanks from the Complete Service program. Any removal of an individual tank from the Complete Service program will be effective at the end of a contract term. Should a water storage tank be removed from Complete Service prior to the end of an agreed amortized renovation cost period, any remaining balance of the renovation cost shall be paid in full prior to removal.
- 2h. Other City water storage tanks may be included under a Modified Service Program (Modified Service). Water storage tanks which may be included under Modified Service shall require maintenance as specifically described herein.
- 2i. The City reserves the right to add or remove individual water storage tanks from the Modified Service program. Any addition or removal of an individual tank from the Modified Service program would be effective at a contract renewal.

3. SERVICE PROVIDER

Utility Service Company, Inc. serves at the discretion, direction and the pleasure of the City.

4. QUALIFICATIONS

- 4a. Utility Service Company, Inc.'s employees assigned to maintenance responsibility for the City's water storage tanks shall be listed. An update of personnel shall be submitted with each contract renewal.
- 4b. Appropriate computer systems must be in place and utilized by Utility Service Company, Inc. to track and record the activities of the maintenance plan.
- 4c. If necessary, the City may request Utility Service Company, Inc. to inspect communication equipment installations or perform actual assistance with removal and installation of city owned communication equipment.
- 4d. Subservice providers performing work under this contract shall act as a representative of Utility Service Company, Inc. and shall follow all the same rules, regulations and requirements as Utility Service Company, Inc. while performing work under this contract. A list of all subservice providers which may be utilized to perform work under the contract shall be submitted.

5. WATER STORAGE TANKS INCLUDED FOR COMPLETE SERVICE

Utility Service Company, Inc. shall assume full responsibility and accountability for maintenance under Complete Service for these water storage tanks:

Landmark Tower -- Well #11 . 1.0 Million Gallon Hydro Pillar

Junior High School -- Well #5 .50 Million Gallon Standpipe

6. MINIMUM SERVICES FOR WATER STORAGE TANKS INCLUDED UNDER COMPLETE SERVICE

6a. Landmark Tower -- Well #11 Hydro-Pillar

NOTE: This tank will require containment for the initial renovation and future recoating under the Complete Service program.

Year 1 - 2012

Complete Service Renovation -- Minimum Requirements

Exterior Overcoat

- 1. A containment system shall be utilized to meet the emission control requirements of a Class 4A System, as specified in SSPC-Guide 6 (CON), Guide for Containing Debris Generated during Paint Removal Operations, dated October 1, 2004.

2. All exterior surfaces must be pressure washed with a minimum of 4,000 P.S.I. washer to remove any surface contamination.
3. All rusted areas must be Hand/Power tool cleaned per SSPC-SP2, SP3 cleaning methods.
4. All rusted or bare areas must be spot primed with Themec Series 135 Chembuild primer.
5. One (1) full intermediate coat of a Themec Series 135 Chembuild shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness.
6. One (1) full finish coat of a Themec Series 72 Polyurethane shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness. Color to be determined.
7. Paint three (3) logos as per specification using Themec Series 72 Polyurethane.

#### Repairs and Additions

1. Provide and install three (3) LED logo lighting systems as per specification.
2. Provide and install new LED aircraft beacon lighting meeting current FAA requirements.
3. Provide and install MDNR compliant freeze proof/insect proof roof vent.
4. Remove any unused antenna equipment and return to City.
5. Provide and install access ladder Cable Safety Climbs on all access ladders.
6. Provide and install replacement louver at vent opening at top of concrete pedestal for proper fit of opening.
7. Remove existing logo lighting system and return materials to City.

#### Interior Dry - Overcoat

1. All interior dry surfaces must be properly cleaned and prepped to remove any surface contamination.
2. All rusted areas must be Hand/Power tool cleaned per SSPC-SP2, SP3 cleaning methods.
3. All rusted or bare areas must be spot primed with Themec Series 135 Chembuild primer.

4. One (1) full finish coat of a Tnemec Series FC 20 Pota-Pox coating shall be applied to complete interior dry surfaces (100%) at the manufacturer's recommended thickness. Color to be determined.

#### Interior Wet

1. The complete interior (100%) shall be abrasive blast cleaned to SSPC-SP No. 10 "Near White" finish.
2. After abrasive cleaning, all surfaces shall be cleaned of any dust residue or foreign debris.
3. A high build epoxy liner manufactured by the Tnemec Company shall be applied as follows:
  - a. Primer Coat: One [1] complete coat of Tnemec Series N140 Epoxy shall be applied to achieve a dry film thickness of 3 to 5 mils.
  - b. Finish Coat: One [1] complete finish coat of Tnemec Series N140 Epoxy shall be applied to achieve a dry film thickness of 4 to 6 mils.
  - c. Contrasting Color: Each coat of epoxy paint shall be of contrasting color.
  - d. Stripe Coat: One additional coat of epoxy shall be applied by brush and roller to all weld seams.
4. After the liner has properly cured in accordance with paint manufacturer's specifications, the interior surfaces shall be disinfected per AWWA Spray Method No. 2 (200 PPM).
5. The spent abrasive media shall be tested by Utility Service Company, Inc. per TCLP-(8) Heavy Metals as mandated by the State regulations.
6. Utility Service Company, Inc. shall properly dispose of the spent abrasive waste at the Utility Service Company, Inc.'s expense.
7. Utility Service Company, Inc. shall seal the tank and make ready for service.

#### Complete Service Maintenance Program – Minimum Requirements

NOTE: The following years of listed minimum required maintenance is contingent upon contract renewal.

##### Year 2 – 2013

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program

**Year 3 – 2014**

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program
6. Pressure wash the exterior with a minimum of 4,000 P.S.I.

**Year 4 – 2015**

1. Washout tank interior, disinfect, and inspect the tank.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program

**Year 5 – 2016**

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program
6. Pressure wash the exterior with a minimum of 4,000 P.S.I.

**Year 6 – 2017**

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program

**Year 7 – 2018**

1. Washout tank interior, disinfect, and inspect the tank.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program
6. Pressure wash the exterior with a minimum of 4,000 P.S.I.

**Year 8 – 2019**

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program

Year 9 – 2020

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program
6. Pressure wash the exterior with a minimum of 4,000 P.S.I.

Year 10 – 2021

Note: Should advancements in technology allow for this tank to be renovated without containment at year 10, or dates beyond, a credit shall be given to the City in the form of a reduced annual maintenance fee beginning in the year following said renovation for the difference of the current cost of containment and the lesser cost of newer paint removal and application techniques. The current cost for containment of this water storage tank is equal to \$10,000 of the per annual maintenance fee.

Exterior Overcoat

1. A containment system shall be utilized to meet the emission control requirements of a Class 4A System, as specified in SSPC-Guide 6 (CON), Guide for Containing Debris Generated during Paint Removal Operations, dated October 1, 2004.
2. All exterior surfaces must be pressure washed with a minimum of 4,000 P.S.I. washer to remove any surface contamination.
3. All rusted areas must be Hand/Power tool cleaned per SSPC-SP2, SP3 cleaning methods.
4. All rusted or bare areas must be spot primed with Themec Series 135 Chembuild primer.
5. One (1) full intermediate coat of a Themec Series 135 Chembuild shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness.
6. One (1) full finish coat of a Themec Series 72 Polyurethane coating shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness. Color to be determined.
7. Repaint all logos using Themec Series 72 Polyurethane coating.

Interior Dry - Overcoat

1. All interior dry surfaces must be properly cleaned and prepped to remove any surface contamination.

2. All rusted areas must be Hand/Power tool cleaned per SSPC-SP2, SP3 cleaning methods.
3. All rusted or bare areas must be spot primed with Themec Series 135-Chembuild primer.
4. One (1) full finish coat of a Themec Series FC 20 Pota-Pox coating shall be applied to complete interior dry surfaces (100%) at the manufacturer's recommended thickness. Color to be determined.

Interior Wet

1. The complete interior (100%) shall be abrasive blast cleaned to SSPC-SP No. 10 "Near White" finish.
2. After abrasive cleaning, all surfaces shall be cleaned of any dust residue or foreign debris.
3. A high build epoxy liner manufactured by the Themec Company shall be applied as follows:
  - a. Primer Coat: One [1] complete coat of Themec Series N140 Epoxy shall be applied to achieve a dry film thickness of 3 to 5 mils.
  - b. Finish Coat: One [1] complete finish coat of Themec Series N140 Epoxy shall be applied to achieve a dry film thickness of 4 to 6 mils.
  - c. Contrasting Color: Each coat of epoxy paint shall be of contrasting color.
  - d. Stripe Coat: One additional coat of epoxy shall be applied by brush and roller to all weld seams.
4. After the liner has properly cured in accordance with paint manufacturers specifications, the interior surfaces shall be disinfected per AWWA Spray Method No. 2 (200 PPM).
5. The spent abrasive media shall be tested by Utility Service Company, Inc. per TCLP-(8) Heavy Metals as mandated by the State regulations.
6. Utility Service Company, Inc. shall properly dispose of the spent abrasive waste at Utility Service Company, Inc.'s expense.
7. Utility Service Company, Inc. shall seal the tank and make ready for service.

6b. Junior High School Tank -- Well #5 Standpipe

NOTE: The existing paint on this tank contains levels of lead which will require necessary containment and lead abatement if the paint is removed. It shall be the intent under this proposal to properly prepare, overcoat and encapsulate the existing paint.

Year 1 – 2012

Complete Service Renovation – Minimum Requirements

Exterior Overcoat

1. All exterior surfaces shall be pressure washed with a minimum of 4,000 P.S.I. washer to remove any surface contamination.
2. All rusted areas must be Hand/Power tool cleaned per SSPC-SP2, SP3 cleaning methods.
3. All rusted or bare areas must be spot primed with Tnemec Series 135 Chembuild metal primer.
4. One (1) full intermediate coat of a Tnemec Series 135 Chembuild shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness.
5. One (1) full finish coat of a Tnemec Series 72 Polyurethane shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness. Color to be determined.
6. Paint one (1) logo as per specification using Tnemec Series 72 Polyurethane.

Exterior Repairs and Additions

1. Provide and install one (1) LED logo lighting system as per specification.
2. Provide and install anti-climb gate device on the access ladder.
3. Provide and install new anti-fall cable and safety appurtenance on access ladder.
4. Replace overflow flapper and screen (18 mesh) assembly.
5. Coat top of concrete foundation with epoxy.
6. Repair caulk and grout at tank base.
7. Provide and install MDNR compliant 24" freeze proof/insect proof roof vent.

Interior Wet

1. The complete interior (100%) shall be abrasive blast cleaned to SSPC-SP No. 10 "Near White" finish.
2. After abrasive cleaning, all surfaces shall be cleaned of any dust residue or foreign

debris.

3. A high build epoxy liner manufactured by the Themec Company shall be applied as follows:
  - a. Primer Coat: One [1] complete coat of Themec Series N140 Epoxy shall be applied to achieve a dry film thickness of 3 to 5 mils.
  - b. Finish Coat: One [1] complete finish coat of Themec Series N140 Epoxy shall be applied to achieve a dry film thickness of 4 to 6 mils.
  - c. Contrasting Color: Each coat of epoxy paint shall be of contrasting color.
  - d. Stripe Coat: One additional coat of epoxy shall be applied by brush and roller to all weld seams.
4. After the liner has properly cured in accordance with paint manufacturers specifications, the interior surfaces shall be disinfected per AWWA Spray Method No. 2 (200 PPM).
5. The spent abrasive media shall be tested by Utility Service Company, Inc. per TCLP-(8) Heavy Metals as mandated by the State regulations.
6. Utility Service Company, Inc. shall properly dispose of the spent abrasive waste at Utility Service Company, Inc.'s expense.
7. Utility Service Company, Inc. shall seal the tank and make ready for service.

Complete Service Maintenance Program – Minimum Requirements

NOTE: The following years of listed minimum required maintenance is contingent upon contract renewal.

Year 2 – 2013

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program

Year 3 – 2014

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program
6. Pressure wash the exterior with a minimum of 4,000 P.S.I.

Year 4 – 2015

1. Washout tank interior, disinfect, and inspect the tank.

2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program

#### Year 5 – 2016

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program
6. Pressure wash the exterior with a minimum of 4,000 P.S.I.

#### Year 6 – 2017

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program

#### Year 7 – 2018

1. Washout tank interior, disinfect, and inspect the tank.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as necessary.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program
6. Pressure wash the exterior with a minimum of 4,000 P.S.I.

#### Year 8 – 2019

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as needed.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program

#### Year 9 – 2020

1. Perform inspection and preventive maintenance.
2. Perform any needed repairs/touchup.
3. Provide emergency repair service as needed.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the maintenance program
6. Pressure wash the exterior with a minimum of 4,000 P.S.I.

#### Year 10 – 2021

Note: Should advancements in technology allow for this tank to be renovated without containment at year 10, or dates beyond, a credit shall be given to the City in the form of a reduced annual maintenance fee beginning in the year following said renovation for the difference of the current cost of containment and the lesser cost of newer paint removal and application techniques. The current cost for containment of this water storage tank is equal to \$9,000 of the per annual maintenance fee.

#### Exterior Overcoat

1. All exterior surfaces must be pressure washed with a minimum of 4,000 P.S.I. washer to remove any surface contamination.
2. All rusted areas must be Hand/Power tool cleaned per SSPC-SP2, SP3 cleaning methods.
3. All rusted or bare areas must be spot primed with a Tnemec Series 135 Chembuild metal primer.
4. One (1) full intermediate coat of a Tnemec Series 135 Chembuild shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness.
5. One (1) full finish coat of a Tnemec Series 72 Polyurethane shall be applied to the complete exterior surfaces (100%) at the manufacturer's recommended thickness. Color to be determined.
6. Repaint logo using Tnemec Series 72 Polyurethane.

#### Interior Wet

1. The complete interior (100%) shall be abrasive blast cleaned to SSPC-SP No. 10 "Near White" finish.
2. After abrasive cleaning, all surfaces shall be cleaned of any dust residue or foreign debris.
3. A high build epoxy liner manufactured by the Tnemec Company shall be applied as follows:
  - a. Primer Coat: One [1] complete coat of Tnemec Series N140 Epoxy shall be applied to achieve a dry film thickness of 3 to 5 mils.
  - b. Finish Coat: One [1] complete finish coat of Tnemec Series N140 Epoxy shall be applied to achieve a dry film thickness of 4 to 6 mils.
  - c. Contrasting Color: Each coat of epoxy paint shall be of contrasting color.
  - d. Stripe Coat: One additional coat of epoxy shall be applied by brush and roller to all weld seams.

4. After the liner has properly cured in accordance with paint manufacturers specifications; the interior surfaces shall be disinfected per AWWA Spray Method No. 2 (200 PPM).
  5. The spent abrasive media shall be tested by Utility Service Company, Inc. per TCLP-(8) Heavy Metals as mandated by the State regulations.
  6. Utility Service Company, Inc. shall properly dispose of the spent abrasive waste at Utility Service Company, Inc.'s expense.
  7. Utility Service Company, Inc. shall seal the tank and make ready for service.
7. Complete Service -- Minimum Requirements - General
- 7a. The water storage tank components, and labor to provide maintenance and repair of the components, covered in Complete Service shall include, at a minimum, steel parts such as tank walls-floor and top, roof supports, beams, sway rods, support rods, manhole covers and hatches, overflow piping, support legs, columns, anchor chairs and bolts, hand rails, catwalks, man-ways, ladders, climbing cages and any other steel surface component. Maintenance and repair of components such as gaskets, painting systems, including logos, aircraft beacon lights, logo lighting systems, vents, screens, foundation grouting and expansion joints, shall also be included.
  - 7b. Utility Service Company, Inc. shall be responsible for installation and cost of containment of water storage tanks where it is specifically listed as required for renovations, repair and painting.
  - 7c. Utility Service Company, Inc. shall be responsible for any necessary removal and reinstallation of the logo lighting system(s) for the purpose of repair, maintenance, washing or repainting.
  - 7d. The agreed annual maintenance fee shall cover cost of future blasting and complete repainting as necessary for proper adhesion of the painting system.
  - 7e. Utility Service Company, Inc. shall apply a Themec Series paint system approved by the City and suitable for repainting when tank is blasted to steel.
  - 7f. Subject to annual renewals the ongoing Complete Service program cycle shall commence again following year 10 and shall follow the same pattern as described herein for years 2 - 10 of each water storage tank under Complete Service.
  - 7g. If at any time the specified Themec Series products are discontinued Utility Service Company, Inc. shall use an equivalent or better Themec Series product approved by the City.

- 7h. Utility Service Company, Inc. shall assume responsibility for all corrections and repairs to each water storage tank necessitated by acts of vandalism and through normal deterioration.
- 7i. Utility Service Company, Inc. shall respond within twenty four (24) hours to address and perform any necessary emergency services for items covered under the contract. Utility Service Company, Inc. shall charge no additional costs for emergency response.
- 7j. Utility Service Company, Inc. shall follow all rules and regulations of the State of Missouri for all work performed under the contract. Obtaining all permits and approvals required by the State of Missouri and the local municipality will be the responsibility of the Utility Service Company, Inc.
- 7k. Utility Service Company, Inc. shall accept each water storage tank listed and perform the agreed maintenance and repair based on the existing structure and components. Any major structural modification to a water storage tank listed under Complete or Modified Service may allow for an adjustment increase for the annual maintenance cost for that individual tank. Major modifications would include any modification changing the amount of surface area or components to be maintained. Any adjustment in maintenance cost would be submitted and made effective at the beginning of the contract renewal period following the completed modification and shall be subject to Board of Aldermen approval.
- 7l. Utility Service Company, Inc. shall furnish any and all services, including inspection and construction services, needed to ensure the water storage tanks are in good repair and working order, according to design specifications, and compliance with all federal and state regulations.
- 7m. Utility Service Company, Inc. shall inspect the exterior and interior areas of each tank, at the frequency listed above, to ensure that the structure is in a sound watertight condition and provide the city with a comprehensive report of inspection and proposed corrective actions (if any) within thirty (30) days from date of inspection. Utility Service Company, Inc. shall notify the City thirty (30) days prior to the date of a scheduled inspection. Complete corrective action shall be performed by Utility Service Company, Inc. within a period of time designated by the City which is dependent upon the action and weather conditions.
- 7n. Utility Service Company, Inc. shall completely pressure wash the exterior of each tank, including steel and concrete surfaces, at the frequency listed above, utilizing a minimum of 4,000 psi to remove mold, mildew, and other accumulated materials.
- 7o. Utility Service Company, Inc. shall completely pressure wash, utilizing a minimum pressure of 4,000 psi the interior steel surfaces of each tank, at the frequency listed above, to remove all mud, silt, and other accumulations. After pressure washing is

completed, Utility Service Company, Inc. shall thoroughly inspect and disinfect each tank in accordance with AWWA standards and MDNR requirements.

- 7p. Paint touch up shall require hand tool, water jet or abrasive blast to remove any corroded steel surface areas to maintain integrity of painting system.
- 7q. Utility Service Company, Inc. shall paint the interior and/or the exterior of the tanks, including logos, at the frequency listed above.
- 7r. Utility Service Company, Inc. shall maintain and repair as necessary LED logo lighting systems installed on the tanks. Repairs shall be completed within fourteen (14) calendar days following notification by the City.
- 7s. Utility Service Company, Inc. shall install locks on the roof hatches following inspections and maintenance.
- 7t. Utility Service Company, Inc. shall provide the City with a minimum notice of thirty (30) days in advance of performing any maintenance, repair or painting services on any water storage tank, which does not require the removal of telecommunication equipment.
- 7u. The City in coordination with Utility Service Company, Inc. shall provide 120 days' notice to telecommunications lessees having equipment installed on an individual tank structure which must be removed to facilitate painting or repair of the tank exterior.

8. LOGO SPECIFICATION

Lettering and graphics of logo(s) shall be applied under this contract in accordance to the current design. Dimensions of the logo may vary depending on the shape and design of the individual water storage tank. Color to be determined.

9. LOGO LIGHTING SPECIFICATION

- 9a. Utility Service Company, Inc. shall install LED logo lighting where specified and shall outline the letters and graphics as indicated.
- 9b. The logo lighting shall consist of 2 wire, 1/2 inch diameter LED rope light. Color to be determined.
- 9c. Each outline run shall consist of 2 – LED rope lights.
- 9d. No lighting shall be exposed between letters or symbols.
- 9e. The LED rope light shall be supported by magnetic hooks having a minimum pull of 26 pounds. Rope lighting shall be attached to magnets with a minimum of 2

UV resistant zip ties. Magnets shall be placed at a maximum distance of 24 inches on straight runs and a 6 inch maximum distance on curves in design.

9f. The lighting will be supplied by 120 volt AC power at a receptacle located at the top of the tank.

9g. All electrical components shall be UL listed.

## 10. RESPONSIBILITY

10a. Utility Service Company, Inc. shall be responsible for locking any and all tank doors, access hatches and fence gates following any inspection, maintenance or repair activity conducted by Utility Service Company, Inc. Utility Service Company, Inc. shall be responsible for damages and any repair costs resulting from facilities being left unsecured by Utility Service Company, Inc.

10b. Utilities Department personnel will be responsible for closing and opening water valves to isolate a tank from service and to restore service.

10c. The City shall provide water and electricity at no cost to Utility Service Company, Inc. for all water storage tank renovation and maintenance activities. Utilities will furnish a water meter to measure water amount consumed.

10d. Utility Service Company, Inc. shall furnish all equipment, personnel, tools and labor for work to be performed by Utility Service Company, Inc.

10e. City staff will notify adjacent property owners in advance of any painting, repair or maintenance to be performed on a water storage tank site.

10f. Adequate care shall be taken by Utility Service Company, Inc. to protect all adjacent properties, structures, materials, or equipment from damage as a result of the work performed. Any and all damage to adjacent properties, caused as a result of the work performed by Utility Service Company, Inc. shall be the responsibility of Utility Service Company, Inc. to repair or replace at no additional cost to the City.

10g. Utility Service Company, Inc. shall keep the premises free at all times from accumulations of unnecessary debris and rubbish. Site cleanup shall be completed in a prompt and timely manner.

10h. Waste materials shall not be buried or burned on the site. Waste materials generated as a result of work performed by Utility Service Company, Inc. shall be removed from the site by Utility Service Company, Inc. and disposed of in a manner complying with all local ordinances and regulatory laws.

- 10i. Utility Service Company, Inc. shall be responsible for all areas of the work site used by their employees and all subservice providers in the performance of work. Utility Service Company, Inc. has the right to exclude from the work site all persons (except City employees) who have no purpose related to the work being performed, and shall require all persons allowed within the work site to observe the same regulations as required of Utility Service Company, Inc.'s own employees.
- 10j. The City is not responsible in any way for the protection of Utility Service Company, Inc.'s equipment while attended or unattended.
- 10k. Utility Service Company, Inc. shall be responsible for protection of the site by implementation of all necessary safety precautions to protect the general public. Erection of barriers, placement of cones and signage, and other necessary measures shall be taken to prevent unauthorized persons from entering the worksite at all times.
- 10l. No claim shall be made against the City by Utility Service Company, Inc. by reason of any act of Utility Service Company, Inc.'s employee, Subcontractor, Contractor representative or any trespasser.
- 10m. Utility Service Company, Inc. shall pay costs to repair damage to City property resulting from damage caused by Utility Service Company, Inc.
- 10n. The City requires very specific schedules for the work to be performed. Utility Service Company, Inc. will be required to follow instructions from the Utilities department in regards to the schedules.
- 10o. Utility Service Company, Inc. shall be responsible for any arrangement with property owners adjacent to worksites for the use of additional property for work or staging of equipment. Any rental or lease cost for use of adjacent properties shall be borne by the Utility Service Company, Inc.
- 10p. Any difficulties shall be reported to the Utilities Director immediately.
- 10q. The Utilities Director has the right to reject any unsatisfactory work performed. Corrective action must immediately be taken by the Utility Service Company, Inc..

## 11. WAGE REQUIREMENTS

It is agreed that all labor utilized in the construction of the aforementioned improvements shall be paid a wage of no less than the "prevailing hourly rate of wages" for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri. Utility Service Company, Inc. shall be required to submit Certified Payroll with each pay request. Weeks

not worked shall indicate "No Work this Week". No payment shall be made if Certified Payroll is not on file with City.

12. INITIAL/ANNUAL CHARGES AND PAYMENTS

- 12a. A cost breakdown shall be provided indicating the amortization of the initial renovation costs over five (5) years for each water storage tank included in Complete Service.
- 12b. The starting bid for the annual fee, as indicated on the pricing page of the RFP, for the continuing and ongoing maintenance and the next scheduled renovation of each water storage tank under Complete Service shall be made effective beginning in year two (2), contingent upon contract renewal.
- 12c. The Complete Service program annual maintenance fee, beginning in year two (2) for each individual water storage tank may be adjusted at the beginning of each renewable contract term and shall not exceed a maximum of three and one-half percent (3.5%) increase on an annual basis. The annual maintenance fee shall remain constant in years two (2) through five (5) as set forth in Exhibit C. The annual fee shall remain constant for three (3) year periods beginning in year six (6). The total of each annual percent increase during years two (2) through five (5) shall be added to the annual fee for year six (6). The total of each annual percent increase during each three (3) year period beginning in year six (6) shall be added to the annual fee at the beginning of the subsequent three (3) year period. The 3.5% maximum allowed annual increase shall not be considered an automatic implementation. A cost analysis indicating justification for any requested fee increase shall be submitted to the City no less than one hundred twenty (120) days prior to the end of a contract term and shall be subject to review and approval by the City Board of Aldermen. It shall not be considered breach of contract on the part of Utility Service Company if the City disapproves a percent of increase up to the 3.5% maximum, however, the City may elect not to renew the contract if the accumulation of increase percentages escalates the annual maintenance fee for any individual water tower under Complete Service beyond an amount acceptable to the City.
- 12d. First year payment of the amortized charges for Complete Service renovations shall be made to Utility Service Company, Inc. upon satisfactory completion of the initial renovation. Subject to renewal, the second year and subsequent year payments for annual service fees shall be made at the beginning of each quarter.
- 12e. Payment for work performed on water storage tanks under a Modified Service program, as described below, shall commence in the first year contract term and shall be paid per quarter after the work is performed.
- 12f. Stated pricing for services shall include all costs for labor, insurance, overhead, profit, mobilization, travel time, mileage, and exclude taxes.

13. ALTERNATE PROPOSAL: WATER STORAGE TANKS INCLUDED FOR MODIFIED SERVICE

*Specific installations and maintenance shall be performed on the City water storage tanks listed below.*

Where exterior washing is specified on the tanks listed below, Utility Service Company, Inc. shall completely pressure wash the exterior of each tank, including steel and concrete surfaces, utilizing a minimum of 4,000 psi to remove mold, mildew, and other accumulated materials.

Where interior washing is specified on the tanks listed below, Utility Service Company, Inc. shall completely pressure wash, utilizing a minimum pressure of 4,000 psi the interior steel surfaces of each tank to remove all mud, silt, and other accumulations. After interior pressure washing is completed, Utility Service Company, Inc. shall thoroughly inspect and disinfect each tank in accordance with AWWA standards and MDNR requirements.

Modified Service under this contract shall include:

13a. Dewey Bald Tank – Well #10 1.0 MG Ground Storage

1. Provide and install one (1) LED logo lighting system as specified herein.
2. Wash tank exterior steel and concrete surfaces.

13b. Wal-mart Tower .50 MG Elevated Tank

1. Painting of one (1) logo as per specification using Themec Series 72 Polyurethane.
2. Provide and install two (2) LED logo lighting systems as specified herein.
3. Provide and install new LED aircraft beacon lighting
4. Wash tank exterior steel and concrete surfaces.

13c. High Tower .10 MG Elevated Tank

1. Provide and install new lock attachment on roof hatch.
2. Provide and install MDNR compliant freeze proof/insect proof roof vent.

13d. Crosby – Well #3 .30 MG Ground Storage

1. Wash tank exterior steel and concrete surfaces.
2. Washing tank interior steel surfaces.

13e. Pacific St Tower 1.0 MG Hydro Pillar

1. Provide and install three (3) LED logo lighting systems as specified herein.
2. Provide and install MDNR compliant freeze proof/insect proof roof vent.
3. Repair interior painting system in areas where adhesion is failing.
4. Wash tank exterior steel and concrete surfaces.
5. Wash tank interior steel surfaces.

#### Additional Terms and Conditions for Services

**Bonding.** Bids were received on a lump sum and unit price basis. Utility Service Company, Inc. filed with his bid a bidder's bond in the amount of \$38,000.00 made payable to the City of Branson, Missouri.

Utility Service Company, Inc. to whom a contract is awarded will be required to furnish a performance bond and payment bond in the forms attached as Exhibit D and Exhibit E respectively, which are acceptable to the City of Branson, Missouri, in the amount of 100 percent (100%) of the total contract price for the first contract period, in conformity with the requirements of the General Conditions. Subsequent renewed contracts will require a performance and payment bond effective for the duration of each contract period. The performance and payment bond shall be renewed by Utility Service Company, Inc. at each contract renewal period and adjusted to the amount of 100% of the total contract price, including all maintenance fees for that period, plus seventy-five percent (75%) of the total to date accumulated annual maintenance fees for each water storage tank under Complete Service. The annual maintenance fee shall accumulate for each water storage tank under Complete Service from the year following a water storage tank renovation or repainting through the ninth (9<sup>th</sup>) year of each maintenance cycle.

PRICING PAGE

Utility Service Company, Inc. has specified below first year prices for a professional maintenance and asset management service contract for water storage tanks in accordance with the terms and conditions as specified.

Prices are as follows for the 1<sup>st</sup> Year Contract.

Complete Service:Landmark Tower – Well #11

1 <sup>st</sup> Year Amortized Renovation Cost	<u>\$80,824.40</u>
------------------------------------------------	--------------------

Junior High School Tank – Well #5

1 <sup>st</sup> Year Amortized Renovation Cost	<u>\$27,673.00</u>
------------------------------------------------	--------------------

ALTERNATES Modified Service:Dewey Bald

LED Logo lighting system installation (1)	<u>\$ 5,500.00</u>
Wash tank exterior steel & concrete surfaces	<u>\$ 7,500.00</u>

Wal-Mart Tower

Painting of Logo (1)	<u>\$6,500.00</u>
LED Logo lighting system installation (2)	<u>\$11,000.00</u>
Provide and install new LED aircraft beacon lighting (1)	<u>\$ 6,500.00</u>
Wash tank exterior steel & concrete surfaces	<u>\$17,000.00</u>

High Tower

Lock attachment installation	<u>\$ 500.00</u>
Provide and install MDNR compliant freeze proof/insect proof roof vent	<u>\$ 3,944.00</u>

Crosby – Well #3

Wash tank exterior steel & concrete surfaces	<u>\$ 4,200.00</u>
Wash tank interior steel surfaces	<u>\$ 1,000.00</u>

Pacific St Tower

LED Logo lighting system installation (3)	<u>\$16,500.00</u>
Provide and install MDNR compliant freeze proof/insect proof roof vent	<u>\$ 3,944.00</u>
Repair Interior Painting System	<u>\$ 7,000.00</u>
Wash tank exterior steel & concrete surfaces	<u>\$12,838.00</u>
Wash tank interior steel surfaces	<u>\$ 1,000.00</u>

Contract Total	\$213,423.40
----------------	--------------

City of Branson, Missouri  
 Schedule of Renovation and Maintenance Fees  
 Complete Service

Landmark Tower Well #11	Year 1 2012	Year 2 2013	Year 3 2014	Year 4 2015	Year 5 2016
Renovation Fee Spread over 5 Contract Years	\$80,824.40	\$80,824.40	\$80,824.40	\$80,824.40	\$80,824.40
Annual Maintenance Fee Beginning in Contract Year 2	\$0	\$44,820.00	\$44,820.00	\$44,820.00	\$44,820.00
Total Annual Fee for Each Contract Year	\$80,824.40	\$125,644.40	\$125,644.40	\$125,644.40	\$125,644.40

Junior High School Tank Well # 5	Year 1 2012	Year 2 2013	Year 3 2014	Year 4 2015	Year 5 2016
Renovation Spread over 5 Contract Years	\$27,673.00	\$27,673.00	\$27,673.00	\$27,673.00	\$27,673.00
Annual Maintenance Fee Beginning in Contract Year 2	\$0	\$24,971.00	\$24,971.00	\$24,971.00	\$24,971.00
Total Annual Fee for Each Contract Year	\$27,673.00	\$52,644.00	\$52,644.00	\$52,644.00	\$52,644.00

PERFORMANCE  
BOND

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA  
Hartford, Connecticut 06183

Bond No.: 105788559

KNOWN ALL ME BY THESE PRESENTS, That we, Utility Service Co., Inc., as Principal, and Travelers Casualty and Surety Company of America, a Connecticut corporation, as Surety, are held and firmly bound unto the City of Branson, Missouri, as Oblige, in the sum of Two Hundred Thirteen Thousand Four Hundred Twenty Three & 40/100 ----- Dollars (\$213,423.40) for the payment whereof said Principal and Surety bind themselves firmly by these presents.

WHEREAS, Principal has, by written Agreement, dated June 14, 2012, entered into a contract with Oblige, for Water Storage Tanks Included for Complete Service, Landmark Tower - Well #11 and the Junior High School Tank - Well #5 ("Contract"), and the Oblige and Principal have agreed that the work to be performed under the Contract shall be divided into separate terms ("Term" or "Terms") each for a one year (1) duration and each in a penal sum amount equal to the dollar amount of the work for which the Principal agreed to perform during the applicable Term;

NOW, THEREFORE, the condition of this obligation is such that if Principal shall faithfully perform the Contract according to its terms and conditions during the effective dates of this bond, then this obligation shall be void, otherwise to remain in full force and effect. Surety's obligation hereunder shall not arise unless Principal is in default under the Contract, and has been declared by Oblige to be in default under the Contract; and Oblige has performed its obligations under the Contract. The Surety's obligation is also subject to the following conditions:

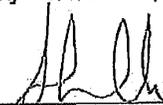
1. The obligations of Surety and Principal hereunder shall be limited to the work performed under the contract during the effective dates of June 14, 2012 to December 31, 2012, and Surety shall not be liable for any defaults arising under any other prior or subsequent Terms. Surety, at its sole option, may extend the obligation for subsequent Terms of the Contract by continuation certificate or rider setting forth new scopes of work, and the increased penal sum. Any failure of Principal to provide a bond for any such contract extension shall not be considered a breach within the effective period of this bond.
2. Surety's aggregate liability under this bond shall in no event exceed the penal sum of the bond. If the bond is renewed by Surety, it shall be considered one continuous bond and in no event shall the penal sum, or any portion thereof, at any two points be added together in determining Surety's liability. Surety's liability hereunder shall not cumulate. Surety shall be entitled to a dollar for dollar reduction of its liability under this Bond to the extent that Surety sustains losses related to the Contract that exceed the Contract balance paid to Surety by Oblige.
3. No suit shall be commenced under this bond after the expiration of one (1) year following the earlier of (a) the expiration date of this bond, or (b) the date that Principal ceased work under the Contract, excluding warranty work. If this bond is provided to comply with bond statutes in the location where the construction work is being performed, and the bond statutes contain a statute of limitations for suits on the performance bond, then the limitation period set forth herein shall be read out of this bond and the statute of limitation set forth in the bond statutes shall be read into this bond. If the limitation set forth in this bond is void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable, and said period of limitation shall be deemed to have accrued and shall commence to run no later than the earlier of (y) the expiration date of this bond, or (z) the date Principal ceased work under the Contract, excluding warranty work.
4. Notwithstanding anything in the Contract to the contrary, this does not inure to the benefit of or confer any right of action upon any person other than the named Oblige. This bond shall not be liable for any liability of Principal for tortious acts, whether or not said liability is direct or is

imposed by the Contract, and shall not serve as or be a substitute for or supplemental to any liability or other insurance required under the Contract.

Signed this 15<sup>th</sup> day of June, 2012.

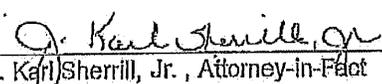
Utility Service Co., Inc.

(Principal)

By:  \_\_\_\_\_

Sheldon Shelton, Sr. Vice President of Sales

Travelers Casualty and Surety Company of America

By:  \_\_\_\_\_

J. Karl Sherrill, Jr., Attorney-in-Fact

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA  
Hartford, Connecticut 06183

PAYMENT BOND

Bond No.: 105788559

KNOWN ALL ME BY THESE PRESENTS, That we, Utility Service Co., Inc., as Principal, and Travelers Casualty and Surety Company of America, a Connecticut corporation, as Surety, are held and firmly bound unto the City of Branson, Missouri, as Oblige, in the sum of Two Hundred Thirteen Thousand Four Hundred Twenty Three & 40/100 ----- Dollars (\$ 213,423.40) for the payment whereof said Principal and Surety bind themselves firmly by these presents.

WHEREAS, Principal has, by written Agreement, dated June 14, 2012, entered into a contract with Oblige, for Water Storage Tanks included for Complete Service, Landmark Tower – Well #11 and the Junior High School Tank – Well #5 ("Contract"), and the Oblige and Principal have agreed that the work to be performed under the Contract shall be divided into separate terms ("Term" or "Terms") each for a one year (1) duration, and each in a penal sum amount equal to the dollar amount of the work for which the Principal agreed to perform during the applicable Term;

WHEREAS, pursuant to the Contract, the Principal is obligated to provide a payment bond ("Bond") covering each Term of the Contract, which Bond shall only cover labor and/or material used or consumed in the performance of the construction work during the effective dates of the bond for each Term;

WHEREAS, the scope of work to be performed under the Contract shall consist of Water Storage Tanks included for Complete Service, Landmark Tower – Well #11 and the Junior High School Tank – Well #5 ;

WHEREAS, the effective dates of the Bond shall be from June 14, 2012 to December 31, 2012.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all Claimants as hereinafter defined for all labor and material used, consumed or incorporated in the performance of the construction work to be performed under of the Contract during the effective dates of this Bond, then this obligation shall be void; otherwise to remain in full force and effect, subject, however, to the following conditions:

2. A Claimant is defined as one other than the Oblige having a contract with the Principal or with a direct subcontractor of the Principal to supply labor and/or materials and said labor and/or materials are actually used, consumed or incorporated in the performance of the construction work under the Contract.

3. The above-named Principal and Surety hereby jointly and severally agree with the Oblige that every Claimant as herein defined who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor was done or performed or materials were furnished by such Claimant, may bring suit on this bond, prosecute the suit to final judgment for the amount due under Claimant's contract for the labor and/or materials supplied by the

Claimant which were used, consumed or incorporated in the performance of the work, and have execution thereon; provided, however, that a Claimant having a direct contractual relationship with a subcontractor of the Principal shall have a right of action on this bond only if said Claimant notifies the Surety in writing of its claim within ninety (90) days from the date on which said Claimant did or performed the last labor and/or materials for which the claim is made. The Oblige shall not be liable for the payment of any costs or expenses of any such suit.

4. No suit or action shall be commenced hereunder by any Claimant:

a. After the expiration of the earlier of: (1) one year after the day on which the Claimant last supplied the labor and/or materials for which the claim is made; or (2) the limitation period set forth in the public works bond statutes, if any, in the location where the construction work is being performed. Any limitation contained in this bond which is prohibited by any law controlling in the state where the suit is filed shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by the law of that state, and said period of limitation shall be deemed to have accrued and shall commence to run on the day the Claimant last supplied the labor and/or materials for which the claim is made; and

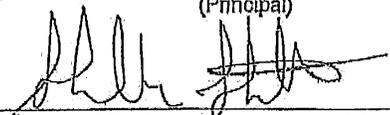
b. Other than in a state court of competent jurisdiction in the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

5. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder. Surety's aggregate liability under this bond shall in no event exceed the penal sum of the bond. If the bond is renewed or extended by Surety for additional Terms, it shall be considered one continuous bond and in no event shall the penal sum, or any portion thereof, at any two points be added together in determining Surety's liability. Surety's liability hereunder shall not cumulate.

Signed this 15th day of June, 2012

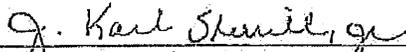
Utility Service Co., Inc.

(Principal)

By: 

Sheldon Shelton, Sr. Vice President of Sales

Travelers Casualty and Surety Company of America

By: 

J. Karl Sherrill, Jr., Attorney-in-Fact

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 223385

Certificate No. 004432342

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Larry B. Roland, Anne B. Theodore, J. Karl Sherrill, Jr., and Robert J. Allonier

of the City of Highpoint, State of North Carolina, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 14th day of July, 2011

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: George W. Thompson, Senior Vice President

On this the 14th day of July, 2011, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 30th day of June, 2016.



Marie C. Tetreault
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin B. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 15th day of June, 2012

*Kevin B. Hughes*  
Kevin B. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

AS REFERENCED IN SECTION 7C  
PRICING PAGE FOR FUTURE  
CONTRACTS

RFP 1898-26	April 5, 2012	Page 36 of 38
-------------	---------------	---------------

PRICING PAGE

The service provider must provide pricing information as specified below for a long-term professional maintenance and asset management services contract for water storage tanks in accordance with the terms and conditions of the Request for Proposal.

Complete Services

Landmark Tower - Well #11 ..... 1.0 Million Gallon Hydro Pillar

Renovation: Total cost bid \$ 707,122.00

Renovation cost amortized over five (5) years

Year 1. \$ 80,824.42 2. \$ 80,824.42 3. \$ 80,824.42 4. \$ 80,824.42 5. \$ 80,824.42

Complete Service Maintenance Program:

Annual maintenance cost beginning in year two (2) \$ 52,820.00

Jordan High School Tank - Well #5 ..... 50 Million Gallon Standpipe

Renovation: Total cost bid \$ 198,363.00

Renovation cost amortized over five (5) years

Year 1. \$ 27,673.00 2. \$ 27,673.00 3. \$ 27,673.00 4. \$ 27,673.00 5. \$ 27,673.00

Complete Service Maintenance Program:

Annual maintenance cost beginning in year two (2) \$ 22,771.00

ALTERNATE'S Modified Services:

Dewey Ball - Well #10 - 1.0 MG Ground Storage

LED Logo lighting system installation (1) \$ 5,500 each

Annual cost for maintenance of Logo Lighting System \$ 1,000

Annual cost for washing tank exterior steel & concrete surfaces \$ 2,500

Cost for washing tank interior steel surfaces one time w/in every 36 months \$ 1,200

Wak-Arort Tower - 50 MG Elevated Tank

Painting of Logo (1) \$ 4,500 each

LED Logo lighting system installation (2) \$ 3,000 each

Provide and install new LED aircraft beacon lighting (1) \$ 6,500 each

Annual cost for maintenance of Logo Lighting Systems \$ 2,000

Annual cost for washing tank exterior steel & concrete surfaces \$ 17,000

Cost for washing tank interior steel surfaces one time w/in every 36 months \$ 1,000

High Tower - .10 MG Elevated Tank

Lock attachment installation \$ 300  
 Provide and install MDNR compliant freeze proof/insect proof roof vent \$ 2,944  
 Annual cost for Washing exterior steel and concrete surfaces \$ 6,400  
 Cost for washing tank interior steel surfaces one time w/in every 36 months \$ 1,000

Crosby - Well #3 - 30 MG Ground Storage  
 Annual cost for Washing tank exterior steel & concrete surfaces \$ 4,200  
 Cost for washing tank interior steel surfaces one time w/in every 36 months \$ 1,000

Pacific SI Tower - 1.0 MG Hydro-Pillar  
 LED Logo lighting system installation (3) \$ 3,300 each  
 Annual cost for maintenance of Logo Lighting Systems \$ 3,000  
 Provide and install MDNR compliant freeze proof/insect proof roof vent \$ 2,944  
 Repair Interior Painting System \$ 7,000  
 Annual cost for washing tank exterior steel & concrete surfaces \$ 13,838  
 Cost for washing tank interior steel surfaces one time w/in every 36 months \$ 1,000

ReoPlex Tower - Well #12 - 40 MG Elevated Tank  
 Annual cost for washing tank exterior steel & concrete surfaces \$ 14,700  
 Cost for washing tank interior steel surfaces one time w/in every 36 months \$ 1,000

Attachments:  
 Missouri Division of Labor Standards Annual Wage Order No. 18.  
 Logo/Logo lighting  
 The above pricing information is hereby provided in accordance with the terms and conditions of this Request for Proposal.

**SIGNATURE AND IDENTITY OF BIDDER:** The undersigned states that the correct LEGAL NAME and ADDRESS of (1) the individual proposer, (2) each partner or joint venture (whether individuals or corporations, and whether doing business under a fictitious name), or (3) the corporation (with the state in which it is incorporated) are shown below; that (if not signing the intention of binding himself to become the responsible and sole contractor) he is the agent of, and duly authorized in writing to sign for the proposer or proposers; and that he is signing and executing this (as indicated in the proper spaces below) as the proposal of a (check one):

- sole individual     partnership     joint venture
- corporation, incorporated under laws of State of Missouri

Respectfully submitted,  
 Signed John F. Schaub Title Director of Pricing Date 4-25-2012

CONTACT PERSON:  
 Printed Name Tara Steckman  
 Email TSteckman@utilityservice.com Phone (314) 420-1491  
 Address 525 Country Ridge Blvd. Perry, GA 31069



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING A TIME EXTENSION AMENDMENT FOR AN INTERGOVERNMENTAL AGREEMENT BETWEEN TANEY COUNTY AND THE CITY OF BRANSON REGARDING FUNDING OF THE CITY'S PLANNED 2020 SEWER SYSTEM IMPROVEMENT PROJECTS AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT.

**INITIATED BY:** UTILITIES DEPARTMENT

**FIRST READING:** NOVEMBER 10, 2020

**FINAL READING:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- On June 1, 2020, the City of Branson entered into an agreement with the Taney County Commission to obtain a portion of the County's ½ cent Sewer Sales Tax to be used for Branson's planned 2020 sewer system improvement projects. This funding is provided for municipal projects within Taney County that meet capital improvement criteria as described in the County's Sewer Sales Tax Usage Guidelines.
- Due to the unforeseen circumstances of COVID-19 resulting in budget restrictions, the 2020 sewer improvement projects were paused for a period of time, or in some cases the start time was delayed until continued availability of County funding was confirmed.
- This amendment will allow time to fully complete all eligible sewer projects that the City is moving forward. The 2020 funding agreement was approved for an amount not to exceed \$1,000,000.00. Projects and costs under this funding agreement are as follows:

Upgrade Force Main Lift Station #17 – Engineering	\$ 66,245
Compton Drive WWTP Flood Protection – Engineering	\$456,145
Sewer Main Extension – Spring Creek North Subdivision – Engineering	\$ 31,038
Sewer Collection System – Pipe Lining and Manhole Sealing – Construction	\$182,392
Harmony Lane 8" Sewer Main Extension – Construction	\$197,430
Sewer Main Extension – Branson Hills, Aldi's Project – Construction	<u>\$ 66,000</u>
<b>Total Cost</b>	<b>\$999,250</b>

- Taney County has prepared an extension request for City approval and signatures. With final approval of the County Commission, the agreement termination date will be extended from December 31, 2020 to March 31, 2021.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** El-1.1

**ATTACHED EXHIBITS:**



**AMENDMENT TO INTER-GOVERNMENTAL FUNDING AGREEMENT  
BETWEEN  
TANEY COUNTY, MISSOURI  
AND  
THE CITY OF BRANSON**

**2020 CITY WASTEWATER SYSTEM IMPROVEMENT PROJECT**

**THIS AGREEMENT** is made and entered into between Taney County, Missouri (hereinafter referred to as "County") and the City of Branson (hereinafter referred to as "City").

**WITNESSETH:**

**WHEREAS**, the County and City entered into an Inter-Governmental Funding Agreement effective June 01, 2020, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, for the purpose of completing the items as outlined in the above referenced funding agreement by December 31, 2020.

**WHEREAS**, due to delays related to COVID-19 a portion of the aforementioned work will not be completed by December 31, 2020, and the City has requested additional time to complete the project.

**WHEREAS**, the County agrees to extend the agreement termination date of the above referenced funding agreement to March 31, 2021.

**WHEREAS, THE PARTIES AGREE** that all other aspects of the agreement for this project remain in effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates set opposite the signatures of their respective authorized representatives.

**County of Taney, Missouri**

By \_\_\_\_\_  
Mike Scofield, Presiding  
Presiding Commissioner of Taney County

Date: \_\_\_\_\_

**ATTEST:** I, Donna Neeley, the Clerk of the Taney County Commission hereby attest that the above agreement was executed by the Taney County Presiding Commissioner Mike Scofield, pursuant to a duly passed motion of the Taney County Commission approving the agreement.

By: \_\_\_\_\_  
Donna Neeley, County Clerk

Date: \_\_\_\_\_



**INTER-GOVERNMENTAL FUNDING AGREEMENT  
BETWEEN  
TANEY COUNTY, MISSOURI  
AND  
THE CITY OF BRANSON**

**BRANSON SANITARY SEWER INFRASTRUCTURE IMPROVEMENT  
PROJECT FUNDING AGREEMENT**

**THIS AGREEMENT** is made and entered into between Taney County, Missouri (hereinafter referred to as “County”) and the City of Branson (hereinafter referred to as “City”).

**WITNESSETH:**

**WHEREAS**, the County is a political subdivision of the State of Missouri; and

**WHEREAS**, the City is a political subdivision of the State of Missouri; and

**WHEREAS**, pursuant to section 70.220 RSMo, the County and City are authorized to enter into agreements for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; and

**WHEREAS**, pursuant to the above stated authority the County may enter into agreements for the purpose of making improvements to sewer systems within Taney County through projects utilizing expenditures of Sewer Sales Tax Funds (hereinafter “Sewer Sales Tax”); and

**WHEREAS**, the County shall oversee sewer sales tax funds which may be made available for use in areas of Taney County to finance capital improvements to their waste water infrastructure. It has been determined that the sanitary sewer infrastructure improvement project being undertaken by the City is feasible and meets the criteria necessary under the Sewer Sales Tax Guidelines. The following planned 2020 fiscal year projects will be included under this funding agreement:

1. Upgrade Force Main Lift Station #17 (Engineering Phase)
2. Compton Drive WWTF Flood Protection (Subgrade & Preliminary Design Engineering Phase)
3. Spring Creek North Subdivision – Sewer Main Extension (Engineering)
4. Upgrades to Lift Station #21 Force Main (Engineering)

5. Upgrade Lift Station #46 (Construction)
6. Sewer Collection System – Pipe Lining & Manhole Sealing (Construction)
7. Harmony Lane 8” Sewer Main Extension (Construction)
8. Sewer Main Extension – Branson Hills, Aldi’s Project (Construction)

**NOW, THEREFORE**, the County and City, in exchange for the mutual obligations and covenants contained herein, agree as follows:

The Whereas clauses above are fully incorporated herein and considered a part of this Agreement.

## **I. Scope of Agreement**

### **A. The County Agrees:**

1. To provide funding for the Branson Sanitary Sewer Infrastructure Improvement Project (hereinafter “the Project”) up to **\$1,000,000.00**. No additional Sewer Sales Tax funds above that stated in this agreement will be allocated to the project without prior written approval from the County Commission prior to any additional work being performed.
2. Unless an invoice requires immediate payment under the terms of the Project contract or due to an emergency, the County will pay the City, by the fifteenth of each month, for all invoices received and remaining unpaid on the Project since the County’s last monthly payment, which have been approved by the City’s Engineer. The invoices must be presented to the County Commission, for its approval, at least fourteen days prior to payment. All invoices must meet all applicable laws, regulations and requirements before the County is obligated to issue payment.
3. That the Taney County Environmental Services Project Coordinator will review the final Project plan with the City and verify for the County Commission that this Project meets the criteria necessary to be funded through the Sewer Sales Tax. The Taney County Environmental Services Project Coordinator will review engineering reports submitted by the Project Engineer, and approved by the City Engineer, to ensure the Project is satisfactorily completed.
4. That the Taney County Environmental Services Project Coordinator will review written progress reports submitted by the Project Engineer, and approved by the City Engineer, on a monthly basis.

5. That the Taney County Environmental Services Project Coordinator will review all Project invoices and provide timely written approval to be submitted to the County Commission confirming that the work has been completed.
6. That the Taney County Environmental Services Project Coordinator will advise the County Commission in writing if additional Sewer Sales Tax funds will be needed to complete the Project, and, if so, shall assist the City in requesting from the County Commission a written order, on the record, approving the additional Sewer Sales Tax funds required to complete the Project.

**B. The City Agrees:**

1. Upon receipt of the County's written approval of the Project, the City shall proceed with the steps necessary to oversee and complete the Project.
2. To provide the Taney County Environmental Services Project Coordinator and the Commission with written monthly reports to ensure the Project is being satisfactorily completed.
3. To advise the Taney County Environmental Services Project Coordinator and the Commission in writing if additional Sewer Sales Tax funds will be needed to complete the Project. City shall obtain the County Commission's written order, on the record, prior to any work being performed which requires additional compensation to be paid in excess of the funds recited in Section I (A).
4. To inform the Contractor in its initial contract, that no additional money above the amount stated in Section 1 (A), above, will be allocated to the Project without prior written approval from the County Commission prior to any additional work being performed for which payment of additional money is requested.
5. Submit invoices generated by the Project to the Taney County Environmental Services Project Coordinator for submission to the Commission.

**II. Term**

This Agreement shall become effective upon execution by the parties, the passage of any ordinances and/or resolutions as may be required to approve of this Agreement shall be the responsibility of each party and shall be adopted in advance of executing the Agreement. This Agreement shall remain in full force and effect

until the Project is complete, but no later than **December 31, 2020**, unless terminated earlier in accordance with the terms hereof. In the event of delay resulting from interrupting weather conditions, strikes, material shortages or supply delays, or other unforeseen acts or conditions uncontrollable by any of the parties, the City shall communicate such in writing to the County with supporting documents so that the County may review the circumstances of the delay and approve an extension of the deadline for the Project.

### **III. Termination**

If the City believes that the Project contemplated in this Agreement should not go forward because the Project is no longer feasible, the City may request that the Agreement be mutually terminated; which mutual termination request shall be in writing and shall not be unreasonably withheld by the County. Further, any such termination of the Agreement is without prejudice to any obligations or liabilities of any party already accrued or incurred prior to such termination. However, failure of the City to fulfill its obligations under this Agreement in a satisfactory manner shall constitute a breach of contract and the County shall have the right to terminate the agreement after giving the City 30 days written notice of any breach in the City's fulfillment of the requirements outlined in the Agreement. In the event that the recognized deficiency has not been cured within said 30 day period, this Agreement shall be terminated unless additional time is mutually agreed upon, in writing, to cure said breach. In the event this Agreement is terminated by failure of the City to perform its obligations under this Agreement, the City shall return all money or proceeds to the Sewer Tax Account which were expended on the Project but which did not benefit or improve the City's sewer system, and therefore, do not comply with the capital improvement requirement for expenditure of the Sewer Sales Tax funds.

### **IV. Amendment**

Amendments to this Agreement may be proposed by either party upon written notice to the other party. However, such amendments shall become effective only upon execution by both parties hereto.

## V. Notices

Any notices required hereunder shall be addressed as follows:

### To County:

Mike Scofield, Presiding  
Commissioner  
Taney County, Missouri  
P.O. Box 1086  
Forsyth, Missouri

John Souttee, Project Manager  
Taney County Environmental  
Services  
P.O. Box 944  
Forsyth, MO 65653

### With copy to:

Shanna Tilley  
Commissioners Assistant  
P.O. Box 1086  
Forsyth, MO 65653

### To City:

Lisa K Westfall, City Clerk  
City of Branson  
110 West Maddux  
Branson, MO 65616

## VI. Allocation of Liability

The County and City agree that each party will assume its own liability for all claims, judgments, causes of action, damages, and expenses of whatsoever nature incident to, or resulting from, each entity's individual activities or required performance of the terms of this Agreement or liability, damages and expenses arising out of performance of the obligations stated in this Agreement or the sewer improvement Project.

## VII. Attorney Fees

In the event of any lawsuit or legal action to enforce or interpret any provision of this Agreement, the prevailing party is entitled to recover, in addition to other costs, reasonable attorney fees in connection with the lawsuit, legal action, or arbitration, and in any appeals. The determination of who is the prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party will be decided by the court or courts, including any appellate courts, in which the matter is ultimately and finally decided, with no further appeal.

## VIII. Indemnity/ Liability Insurance

Without limiting any other obligations under this Agreement, the City shall secure and maintain at its own individual cost, throughout the duration of this Agreement, liability insurance of such type and in such amounts as may be

necessary to protect them and the interests of the County against all risks of loss and liability which may arise out of the City's performance of this Agreement, or the project to be funded by this Agreement, including but not limited to general liability coverage, wrongful termination, employee rights under federal or state statutes, or Missouri common law.

In no event shall the language or requirements of this Agreement constitute or be construed as a waiver or limitation of the County's, the City's rights or defenses with regard to each entities' applicable sovereign, governmental or official immunities and protections as provided by federal and state constitutions, statutes, and laws.

In the event that any lawsuit based upon a claim, action, loss, cost, expense or damage arising out of the project contemplated in this Agreement is filed against the County based on the City's actions, the City shall defend and indemnify the County, its elected officials and employees at its sole cost and expense; provided that the County retains the right to participate in such suit, at its expense. If any question or interpretation of law is involved, the County may, at its expense, participate in and prosecute or defend such action. If final judgment be rendered against the County or its officers, agents or employees, finding them liable for the sole and direct actions of the City, then the City shall satisfy the same in full.

However, in the event that said lawsuit is filed based upon the County's actions, the County shall defend and indemnify the City, its elected officials, and employees at its cost. Also, if any question or interpretation of law is involved, the City may, at its expense, participate in and prosecute or defend such action. If final judgment be rendered against the City or its officers, agents, or employees, finding them liable for the sole and direct actions of the County, then the County shall satisfy the same in full.

This Project is not a joint venture or undertaking and the County shall not be responsible for the City as agents of the County, nor shall the City be responsible for the County's actions.

## **IX. Miscellaneous**

- A. The parties agree that they are not entering into a legal partnership, joint venture or other such arrangement, nor is it the purpose of the parties to enter into a commercial undertaking for monetary gain. Nothing in this Agreement shall be construed to place a financial commitment or obligation upon the parties except as herein provided or as amended by unanimous written agreement.

- B. The officials executing this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of the County and City respectively to enter into this agreement, and that the terms and provisions hereof constitute valid and enforceable obligations of each.
- C. No transfer or assignment of this Agreement, or any part hereof or interest herein, shall be made unless all of the parties unanimously approve such transfer or assignment in writing.
- D. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement.

**INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates set opposite the signatures of their respective authorized representatives.

**County of Taney, Missouri**

By: Mike Scofield  
Mike Scofield, Presiding  
Commissioner of Taney County

Date: 6/01/2020

**ATTEST:** I, Donna Neeley, the Clerk of the Taney County Commission hereby attest that the above agreement was executed by the Taney County Presiding Commissioner Mike Scofield, pursuant to a duly passed motion of the Taney County Commission approving the agreement.

By: Donna Neeley  
Donna Neeley, County Clerk

Date: 6/1/2020

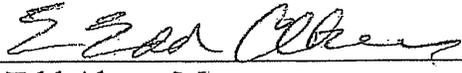
**CERTIFICATION OF TANEY COUNTY ACCOUNTING OFFICER**

The undersigned, as Budget Officer and Accounting Officer for the County of Taney, State of Missouri, hereby certifies, pursuant to Section 50.660 RSMo, that there is a balance otherwise unencumbered in the county treasury to the credit of the appropriation to which the financial obligation imposed upon the county by this Agreement is to be charged, and there is a cash balance otherwise unencumbered in the county treasury to the credit of the fund from which payment is to be made, when taken together with expected revenues from the sewer sales tax, each sufficient to meet the obligation incurred by this Agreement for the Branson Sanitary Sewer Infrastructure Improvement Project.

By: David Clark  
David Clark  
Taney County Auditor

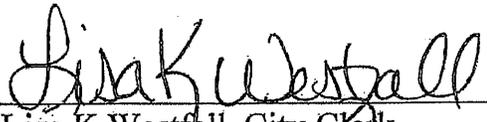
Date: 6/1/2020

**City of Branson**

By:   
E. Edd Akers, Mayor

Date: 5/26/20

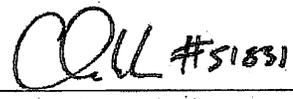
**ATTEST:**

By:   
Lisa K Westfall, City Clerk

Date: 5/26/20



**APPROVED AS TO FORM:**

By:  #51831  
Chris Lebeck #51831, City Attorney

Date: 2/4/20

By:   
Attorney for County Commission

Date: 1/27/20



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE INTERGOVERNMENTAL COOPERATIVE AGREEMENT BETWEEN TANEY COUNTY AND THE CITY OF BRANSON PERTAINING TO THE USE OF THE TANEY COUNTY FIREARMS RANGE AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** POLICE DEPARTMENT

**FIRST READING:** NOVEMBER 10, 2020

**FINAL READING:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- This Intergovernmental Cooperative Agreement was first approved in 2018 and requires renewal from both parties.
- This Intergovernmental Cooperative Agreement between the Police Department and the Taney County is to continue to utilize the Firearms Range, located at 255 Critter Trail, Hollister, Missouri, for conducting approved firearms training and certification for Police Department personnel.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** G-2 – Action 2.1.1 Continue to work with Taney County and other jurisdictions to revise intergovernmental agreements as needed.

**ATTACHED EXHIBITS:**

BILL NO. 5920

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

**AN ORDINANCE APPROVING THE INTERGOVERNMENTAL COOPERATIVE AGREEMENT BETWEEN TANEY COUNTY AND THE CITY OF BRANSON PERTAINING TO USE OF THE TANEY COUNTY FIREARMS RANGE AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the City of Branson enters into an Intergovernmental Agreement with Taney County for the use of the Firearms Range, located at 255 Critter Trail, Hollister, Missouri; and

**WHEREAS**, this Intergovernmental Agreement will allow the Branson Police Department to conduct required firearms training and certification; and

**WHEREAS**, the Board of Aldermen desires to approve the contract.

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

Section 1: The Board of Aldermen hereby approves the contract with Taney County for Intergovernmental Cooperative Agreement for the use of a Firearms Range in the amount not to exceed \$0.00 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 City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

ATTEST:

APPROVED AS TO FORM:

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

*CLL #51831 11/4/20*  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

**INTERGOVERNMENTAL COOPERATIVE AGREEMENT**

THIS AGREEMENT, made and entered into on this \_\_\_\_ day of November, 2020 ("Effective Date"), by and between Taney County, Missouri ("County"), a county of the first classification, and the City of Branson, Missouri ("City").

WHEREAS, section 70.220, RSMo. permits political subdivisions to contract and cooperate with one another for the planning, development, construction, acquisition or operation of any public improvement or facility or common service; and

WHEREAS, the County owns and operates a shooting range, located at 255 Critter Trail, Hollister, Missouri ("Range"), for the use of performing training exercises and firearms practice and qualifications for law enforcement officers; and

WHEREAS, the City desires to utilize the Range for the performance of training exercises and firearms practice and qualifications for law enforcement officers; and

WHEREAS, the County and City desire to set forth the terms and conditions of the use of the Range by City; and

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

1. Use of Range. County agrees to permit use of the Range by the City, and its Commissioned Law Enforcement Officers, subject to the terms and conditions of this Agreement, for the purposes of performing training exercises, and firearms practice and qualifications, and for no other purposes without the express written consent of County, which consent may be withheld in the sole discretion of County. City acknowledges that other local and state government entities utilize the Range pursuant to other Intergovernmental Cooperative Agreements, and the use of the Range is subject to availability and scheduling the use of the Range based on the parties to this Agreement as well as the parties to the other Intergovernmental Cooperative Agreements relating to use of the Range. The City acknowledges and agrees that this Agreement does not constitute a license for the exclusive use of any portion of the Range by City, or its officers, agents, or employees. City acknowledges and agrees that this Agreement does not constitute a lease or other interest in the real property on which the Range is located, and that by the use or occupancy of the Range, neither the City, nor its officers, agents, or employees have acquired and will not acquire any rights or interest in or to the Range, nor shall the City obtain any right or claim to the continued use of the Range beyond that specifically provided for in this Agreement.

2. Term. The term of this Agreement shall be from the effective date set forth above and shall run for a period of one (1) year. The term of this Agreement may be extended by the parties, at the option of the parties, for additional periods of one (1) year.

3. Obligations of the City.

a. The City must have a certified firearms/range instructor (“Range Officer”) present at all times during training exercises, firearms practice, and qualifications while on the premises of the Range. The Range Officer shall be designated by the City, and shall have appropriate training and certifications, and who shall be responsible for the oversight and control the proper use of the Range, including any and all training exercises, firearms practice and qualifications. The commands and instructions of the Range Officer shall be obeyed at all times in accordance with the terms and conditions of this Agreement and the Range Officer shall be responsible for immediate removal of any City officer, agent, or employee from the premise of the Range in the event of non-compliance or violations of the terms of this Agreement, or the direction of the Range Officer. The County reserves the right to prohibit or remove any individual from using or accessing the premises of the Range for violations or breaches of the terms of this Agreement at any time, in its sole and absolute discretion.

b. During any periods the City is utilizing the Range and/or is present on the premises of the Range, the City and its designated Range Officer shall be responsible for oversight and enforcement of the requirements of this Agreement.

c. The City may permit only Commissioned Law Enforcement Officers to utilize the Range, and shall be obligated to require any unauthorized persons to immediately leave the premises of the Range.

d. The City shall immediately report any and all damage to property, injury to persons, or violations of the terms of this Agreement to the County while on or about the premises of the Range.

4. Days and Hours of Operation. The City shall be permitted to utilize the Range during the days and times permitted, subject to availability and scheduling the use of the Range, as follows:

a. The City may only utilize the Range during the hours of operation from 8:00 a.m. to 8:00 p.m., Monday through Saturday. The City may not utilize the Range on Sundays.

b. Use of the Range on Saturdays shall be limited to required qualifications by law enforcement officers and shall not be utilized for practice.

c. The Range shall be closed on New Year’s Day, July 4, Thanksgiving Day, and Christmas Day.

5. Range Rules. While on the premises of the Range, the City, and its officers, agents, and employees, shall be obligated to monitor, supervise and enforce the following range rules:

- a. All federal, state, and local firearm laws must be obeyed.
- b. Any person handling a firearm in an unsafe, careless, or reckless manner, in the judgment and discretion of the Range Officer, will be required to immediately leave the premises of the Range.
- c. All persons must wear approved eye and ear protection while on the Range.
- d. The discharge of firearms at the Range may only be made to the north. Any person discharging a firearm at lights, baffles, buildings, or any other range property or equipment shall be removed from the Range immediately and expelled from future use, and such conduct shall be reported immediately to the County.
- e. The use of automatic firearms is prohibited, however, the use of select-fire, three round burst is permitted.
- f. City law enforcement officers shall be responsible for the safe functioning and operation of firearms at all times while on the premises of the Range, including the selection and use of particular firearms, and the selection and use of ammunition.
- g. Only targets authorized by the Range Officer shall be permitted. However, in any event, the use of explosive targets is prohibited.
- h. The use of the "high ready" position with the firearm barrel pointed up is prohibited, due to the possibility of accidental or inadvertent discharges over or beyond the Range backstop.
- i. All firearms and ammunition are subject to inspection by the Range Officer.
- j. The use or possession of alcohol or controlled substances is prohibited on the premises of the Range, including being under the influence of alcohol or controlled substances.

6. Insurance. City agrees to obtain and maintain public and general liability or a combination of general liability and excess liability insurance coverage which names Taney County, Missouri, the County Commission, and their officers and employees as additional insureds (collectively "County"), subject to and without waiving County's sovereign, governmental and official immunity. Such policy or policies shall provide coverage of at least one million dollars (\$1,000,000) per person and two million dollars (\$2,000,000) in the aggregate, and shall be written by a company authorized to do business in the State of Missouri and reasonably approved by the County. The certificate or other proof of insurance provided to County shall state unconditionally that County will be provided at least thirty (30) days written notice of any cancellation, termination, or expiration of such insurance coverage. Failure to provide a certificate of insurance evidencing such coverage at least thirty (30) days prior to the

Event shall constitute a material breach of the Agreement and may result in immediate termination of this Agreement by the County.

7. Damage and Injury to Property or Persons. During any periods for which City, its officers, agents, or employees are utilizing or on the premises of the Range, to the fullest extent permitted by law, and without waiving the sovereign or official immunity of the City, or its officers, agents, or employees, respectively, City shall be responsible for, and shall indemnify and hold harmless the County, and its officers, agents, and employees, from and against any and all claims, liabilities, damages, losses, injury, death, costs, and expenses, including, but not limited to amounts paid in satisfaction of judgments, compromises, and settlements, fines, penalties, reasonable attorneys' fees and costs, and expenses of investigating or defending against any claim or alleged claim of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by County and that arise out of any act, omission or violation by City, or its officers, agents, or employees who use the Range, or anyone acting under City's direction or control or on City's behalf, during, in connection with, or incident to or arising out of the performance of this Agreement or any of the activities in connection therewith. The provisions of this paragraph shall survive the expiration or termination of this Agreement. This indemnity and hold harmless provision, insofar as it may be adjudged to be against public policy, shall be unenforceable and void only to the minimum extent necessary so that the remaining terms of this provision shall be enforceable.

8. Enforcement of Terms of Agreement. Any delay or failure by County, its officers, agents, and employees to require performance, or failure to insist upon strict compliance with any of the terms, covenants, conditions or provisions of this Agreement shall not constitute or be deemed a waiver of such term, covenant, conditions or provision, nor shall any waiver or relinquishment of any right or authority hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

9. Compliance with Law. This Agreement shall be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules, and regulations. In the event of any changes in the law, ordinances, codes or regulations applicable to this Agreement, the parties shall use all reasonable efforts, to the extent required, to revise this Agreement to conform and comply with such changes. The City shall be liable and solely responsible for paying for all damages, fines, costs, and expenses caused by the violation of any applicable federal, state, and local laws, ordinances, codes, regulations and guidelines.

10. Partnership; Joint Venture. Nothing contained in this Agreement shall be construed to create a partnership, agency or joint venture relationship between the County and City, or to authorize the parties to act as a general or special agent of the other party in any respect.

11. Assignment. This Agreement may not be assigned by either party without written consent by the other party. The parties do not intend to confer and this Agreement shall not be construed or deemed to confer any rights or benefits to any person or entity other than the parties to this Agreement.

12. Termination. The County may terminate this Agreement for cause at any time due to a material breach of any term or condition of this Agreement or if appropriations are not made available and budgeted for any calendar year with respect to the subject matter of this Agreement. Either party may terminate this Agreement at any time, without cause, during the term, by providing thirty (30) days advance written notice of termination.

13. Notices. All notices, demands and requests to be given hereunder by either party shall be in writing and must be sent by certified mail and shall be deemed properly given if tendered at the addresses set forth below or at such other address as either party shall designate by written notice to the other:

If to County: 132 David St.  
Forsyth, MO  
65653

If to City: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Binding Effect. This Agreement shall be binding upon the parties hereto and their successors and assigns for so long as this Agreement remains in full force and effect.

15. Amendments. This Agreement may not be amended, altered, or modified except by an instrument in writing duly executed by the parties hereto.

16. Force Majeure. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions, or any other similar cause beyond the reasonable control of either party.

17. Severability. If any provision of this Agreement or any application thereof is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions or any application thereof shall not be affected or impaired.

18. Section Headings. Section headings are for convenience only and shall have no legal effect or significance.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior negotiations, written or verbal, and any other bid or bid specifications or contractual agreement.

20. Governing Law; Venue. This Agreement shall be governed by the laws of the state of Missouri. Venue for any dispute arising out of the formation, interpretation, or claims

regarding a breach of this Agreement shall be solely and exclusively in the Circuit Court of Taney County, Missouri.

21. Authority. The parties represent and warranty that all actions necessary in order to create a legal, valid, and binding agreement between the parties have been taken.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their representative officers or officials.

THE CITY OF BRANSON

TANEY COUNTY, MISSOURI

By: \_\_\_\_\_  
MAYOR

Mike Scofield  
By: MIKE SCOFIELD  
PRESIDING COMMISSIONER

ATTEST:

ATTEST:

\_\_\_\_\_  
CITY CLERK

Donna Neeley  
DONNA NEELEY  
TANEY COUNTY CLERK

APPROVED AS TO FORM:

Clara # 5131 10/21/22

City Attorney



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE RENEWAL OF THE CONTRACT WITH RADIOPHONE ENGINEERING, INC. TO PROVIDE COMMUNICATION SERVICES AND REPAIRS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** POLICE DEPARTMENT

**FIRST READING:** NOVEMBER 10, 2020      **FINAL READING:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- In 2018, the City of Branson released RFB 2471-03 which was a request for proposal for normal repair and installation of mobile and fixed communications equipment. In addition to technical support, preventative maintenance and/or emergency repairs for existing and future communications equipment.
- An ordinance accepting the bid of Radiophone Engineering Inc. was approved by the Board of Alderman on February 26, 2019, and was renewed again in 2020.
- This is the second renewal of this contract that would cover January 1, 2021 to December 31, 2021.
- The total amount of the contract is estimated to be \$15,000.00 for all departments that use this contract.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

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

**ATTACHED EXHIBITS:**

BILL NO. 5921

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

**AN ORDINANCE APPROVING THE RENEWAL OF THE CONTRACT WITH  
RADIOPHONE ENGINEERING, INC. TO PROVIDE COMMUNICATION SERVICES  
AND REPAIRS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the City of Branson wishes to renew a contract with Radiophone Engineering Inc. to provide communication services and repair; and

**WHEREAS**, the contract was executed for a term of one year, with the City’s option to renew the contract for the following two subsequent years (2020 and 2021); and

**WHEREAS**, the City now desires to renew the contract with Radiophone Engineering Inc. for the 2nd Renewal Period from January 1, 2021 through December 31, 2021.; and

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

Section 1: The Board of Aldermen hereby approves the 2nd Renewal Period (January 1, 2021 through December 31, 2021) of the contract with Radiophone Engineering Inc. to provide communication services and repairs in the amount not to exceed \$15,000.00 and authorizes the Mayor to execute the contract attached hereto as Exhibit “A”.

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
*Chris Lebeck* #51831 11/4/20  
Chris Lebeck #51831  
City Attorney

**NOTICE OF CONTRACT RENEWAL  
SERVICES CONTRACT**

**THIS RENEWAL** made and entered into this 7<sup>th</sup> day of October, 2020, by and between the City of Branson, Missouri (the "City") and **Radiophone Engineering, Inc.** ("Service Provider") for renewal period **Two** from **January 1, 2021** to **December 31, 2021**.

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

1. **Renewal.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities as referenced in the original contract attached as **Exhibit 1**.

2. **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 **Fifteen Thousand Dollars (\$15,000.00)**, all of which is **dependent upon budget appropriations**.

3. **Bonds and Insurance.** The Service Provider shall procure and maintain all insurance and bonds (if applicable) to satisfy statutory bonding requirements, and to protect the City from any liability exposure resulting from the Service Provider's activities as outlined in the original contract and provide the City the most up-to-date insurance certificates and to keep them current.

4. **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.

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

**SERVICE PROVIDER:**

By: John George 10-7-20  
(Signature) Date

Name: John George  
(Printed Name)

Title: President

Company Name: Radiophone

Address: 534 W. Walnut St.  
SPfld., Mo 65806

Phone: 417 862 6653

E-Mail: john@radiophone.com

**CITY OF BRANSON, MISSOURI**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

Chris Lebeck #51831 8/4/20  
Chris Lebeck #51831 Date  
City Attorney

Master Contract Number: C2019-0128

### SERVICES CONTRACT

THIS CONTRACT made and entered into this 26<sup>th</sup> day of March, 2019, by and between the City of Branson, Missouri (the "City") and Radiophone Engineering, 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. **The term of the contract will be from a date beginning on the execution date of this contract to a date ending December 31, 2019, with the option to renew the contract for up to three (3) additional successive one-year terms unless Service Provider has notified the City at least ninety (90) days prior to the end of the then contract term or extensions thereto that Service Provider will not renew the contract. Each additional year will require a contract and Board of Aldermen approval. The**

**contract shall not bind, nor purport to bind, the City for any contract term beyond the original term of the contract.**

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 **Fifteen Thousand Dollars (\$15,000.00)**, all of which is dependent upon budget appropriations.

#### 8. **Termination of Contract.**

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

B. Right to terminate in the absence of breach. Either party may terminate this contract for any reason, by serving notice of intent to terminate upon the other party by the means specified in paragraph A of this section. Such notice shall specify the date of termination, but in no event shall either party terminate the contract under this provision upon less than thirty (30)

days' notice to the other party; provided, that the parties may mutually agree to waive the thirty (30) day requirement and to shorten the time for notice of termination, in the event of termination in the absence of breach.

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

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

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

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

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

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

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

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

A. In no event shall the City be liable to the Service Provider for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid by the City under this contract. All of the provisions in the agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.

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

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

16. **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. 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  
Fax: 417-335-4354 – Attn: Contract Management

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

**SERVICE PROVIDER:**

**CITY OF BRANSON, MISSOURI**

By: *John George* 2-14-19  
(Signature) Date  
Name: John George  
(Printed Name)

*Karen Best* 3/26/2019  
Karen Best Date  
Mayor

Title: President  
Company Name: Radiophone  
Address: 534 W. Walnut  
Springfield, MO 65806  
Phone: 417 862 6653  
E-Mail: john@radiophonewireless.com  
Tax ID: 45 0972492

ATTEST:  
*Lisa K Westfall*  
Lisa K Westfall  
City Clerk



APPROVED AS TO FORM:  
*Chris Lebeck* #51831  
Chris Lebeck #51831  
Associate City Attorney

Date

Radiophone Engineering  
534 W. Walnut  
Springfield, MO 65806

### SCOPE OF WORK

1. Purpose: Radiophone Engineering agrees to provide normal repair and installation of mobile and fixed equipment for the period beginning from January 1, 2019 through December 31, 2019. In addition to technical support, preventative maintenance and/or emergency repair for existing and future communications equipment in accordance with the following general requirements.

#### General Requirements:

2. Invoicing: The City agrees to pay Radiophone Engineering 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 Radiophone Engineering and subject to approval by the requesting department that Radiophone Engineering fully performed the work satisfactorily.
3. Subcontracting: Radiophone Engineering must function as the single point of responsibility for the City, regardless of any subcontractor arrangements for all services provided. Radiophone Engineering must submit a list of subcontractors to the City 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.

PRICING PAGE

Radiophone Engineering provided pricing information as specified below to provide normal repair and installation of mobile communications equipment, in addition to technical support, preventative maintenance and/or emergency repair for existing and future communications equipment in accordance with the terms and conditions of the contract.

- |     |                                                                                                                                                                                                          |                                                |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| 1.  | Normal trip charge to Branson                                                                                                                                                                            | \$ 40.00 per<br>person each direction          |
| 2.  | After-hours and holiday trip charge to Branson                                                                                                                                                           | \$ 60.00 per<br>person each direction          |
| 3.  | What is the cost of radio pick-up and delivery service                                                                                                                                                   | \$ 7.00 first<br>radio, \$3.00 each additional |
| 4.  | Shipping costs                                                                                                                                                                                           | \$ cost + 10%                                  |
| 5.  | Normal hourly rate for troubleshooting and repair of hand held and mobile radios, Zetron consoles and common control equipment, repeaters, antenna systems, RF links, grounding systems                  | \$ 70.00                                       |
| 6.  | After-hours and holiday hourly rate for troubleshooting and repair of hand held and mobile radios, Zetron consoles and common control equipment, repeaters, antenna systems, RF links, grounding systems | \$ 105.00                                      |
| 7.  | Normal hourly rate for installation of fixed communications equipment                                                                                                                                    | \$ 80.00                                       |
| 8.  | After-hours and holiday hourly rate for installation of fixed communications equipment                                                                                                                   | \$ 120.00                                      |
| 9.  | Per radio charge for programming a mobile radio                                                                                                                                                          | \$ 17.50                                       |
|     | codeplug development is not included in per unit price                                                                                                                                                   |                                                |
| 10. | Per unit charge for programming communications equipment                                                                                                                                                 | \$ 21.00                                       |
|     | codeplug development is not included in per unit price                                                                                                                                                   |                                                |
| 11. | Per radio charge for programming a portable radio                                                                                                                                                        | \$ 17.50                                       |
|     | codeplug development is not included in per unit price                                                                                                                                                   |                                                |
| 12. | MSRP less 15%                                                                                                                                                                                            |                                                |
| 14. | Tower climbing costs?                                                                                                                                                                                    | \$ quoted per<br>project                       |
| 15. | What would the cost be for use of VHF fixed loaner equipment, such as repeaters, duplexers, antennas and amplifiers that could be used to support the fixed equipment of the City of Branson?            | \$ 1 <sup>st</sup> mo. free                    |
| 16. | What would the cost be for use of UHF fixed loaner equipment,                                                                                                                                            | \$ 1 <sup>st</sup> mo. free                    |

such as repeaters, duplexers, antennas and amplifiers that could be used to support the fixed equipment of the City of Branson?

- |     |                                                                  |                      |
|-----|------------------------------------------------------------------|----------------------|
| 17. | Computer generated propagation study of existing fixed equipment | \$ 80.00             |
|     |                                                                  | per channel per site |
| 18. | Per map cost of future computer generated propagation studies    | \$ 80.00             |
|     |                                                                  | per channel per site |
| 19. | Licensing assistance services                                    | \$ 110.00            |
|     | per form 601 other licensing services billed @ \$70.00 per hour  |                      |

Public Works-Related Installation Tasks

- |     |                                                                      |           |
|-----|----------------------------------------------------------------------|-----------|
| 20. | Installation of mobile radios in passenger vehicles and light trucks | \$ 120.00 |
| 21. | Removal of mobile radios in passenger vehicles and light trucks      | \$ 30.00  |
| 22. | Installation of mobile radios in heavy-duty trucks                   | \$ 190.00 |
| 23. | Removal of mobile radios in heavy-duty trucks                        | \$ 30.00  |
| 24. | Installation of mobile radios in rubber tired heavy equipment        | \$ 190.00 |
| 25. | Removal of mobile radios in rubber tired heavy equipment             | \$ 30.00  |

Police and Fire Department Vehicle-Related installation tasks

- |     |                                                                                                                                                                                                                            |                 |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 26. | Mobile Radio-Console mount, install only                                                                                                                                                                                   | \$ 120.00       |
| 27. | Mobile Radio-Console mount, remove only                                                                                                                                                                                    | \$ 33.00        |
| 28. | Mobile Radio-Dual Head mount, install only                                                                                                                                                                                 | \$ 180.00       |
| 29. | Mobile Radio-Dual Head mount, remove only                                                                                                                                                                                  | \$ 100.00       |
|     | includes removal of control head cable                                                                                                                                                                                     |                 |
| 30. | Motorola SR600 video camera, install only                                                                                                                                                                                  | \$ 150.00       |
| 31. | Motorola SR600 video camera, remove only                                                                                                                                                                                   | \$30.00         |
| 32. | Annual preventive maintenance of transmit sites (checked by factory certified technicians) test antennas and coax cable, test and align receiver multi-coupler, test and align duplexer, test and inspect power amplifier. | \$ 1,360.00     |
| 33. | Annual preventive maintenance of Motorola repeaters (checked by factory certified technicians) and check battery backup (if equipped).                                                                                     | \$included in32 |
| 34. | Annual preventive maintenance or receiver site(s) (checked by factory certified technicians) test antennas and coax cable, test and align receiver multi-coupler.                                                          | \$ 2,550.00     |
| 35. | Annual preventive maintenance or Motorola receiver radios (checked by factory certified technicians) and check battery backup (if equipped).                                                                               | \$included in34 |



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE RENEWAL OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE ALCOHOL AND DRUG ABUSE PREVENTION TEAM (ADAPT), BRANSON PUBLIC SCHOOLS, AND THE BRANSON POLICE DEPARTMENT PERTAINING TO ALCOHOL COMPLIANCE CHECKS AT BUSINESSES AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT.

**INITIATED BY:** POLICE DEPARTMENT

**FIRST READING:** NOVEMBER 10, 2020      **FINAL READING:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- The MOU provides funding for the Branson Police Department to conduct alcohol compliance checks at Branson businesses in conjunction with the Alcohol and Drug Abuse Prevention Team (ADAPT) Branson Public Schools.
- This agreement will expire September 5<sup>th</sup>, 2021.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

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

**ATTACHED EXHIBITS:**

BILL NO. 5922

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

**AN ORDINANCE APPROVING THE RENEWAL OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE ALCOHOL AND DRUG ABUSE PREVENTION TEAM (ADAPT), BRANSON PUBLIC SCHOOLS AND BRANSON POLICE DEPARTMENT PERTAINING TO ALCOHOL COMPLIANCE CHECKS AT BUSINESSES AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT.**

---

**WHEREAS**, the City of Branson wishes to enter an Intergovernmental Cooperative Agreement with the Alcohol and Drug Abuse Prevention Team (ADAPT) Branson Public Schools to provide funding for officers to conduct alcohol compliance checks at Branson businesses; and

**WHEREAS**, the Intergovernmental Cooperative Agreement between the Alcohol and Drug Abuse Prevention Team (ADAPT) Branson Public Schools and the City of Branson has been recommended for approval by staff; and

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

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

Section 1: The Board of Aldermen hereby accepts the proposed Intergovernmental Cooperative Agreement with the Alcohol and Drug Abuse Prevention Team (ADAPT) Branson Public Schools and authorizes the Mayor to execute the Intergovernmental Cooperative Agreement attached hereto as Exhibit "1".

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*Chris Lebeck #51831 11/4/20*  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

# ADAPT

Alcohol & Drug Abuse **Prevention** Team

## Memorandum of Understanding

This memorandum of understanding between the City of Branson and Branson Public Schools (BPS) is entered into for the purpose of identifying the responsibilities of the Branson Police Department (BPD) in the implementation and execution of underage and binge drinking prevention efforts, in collaboration with the Alcohol and Drug Abuse Prevention Team (ADAPT), a coalition under fiscal management by Branson Public Schools. As a partner in ADAPT, BPD agrees to actively participate in a comprehensive, multi-strategy process designed to better integrate and coordinate local, state, and federal resources designed to reduce underage and binge drinking throughout Branson. BPD assumes responsibility for fulfilling these specific functions:

1. Conduct compliance checks throughout Branson, MO.
2. Participate in regular meetings of ADAPT as appropriate.
3. Maintain regular communication with BPS staff, ADAPT and community partners as needed throughout all phases of the prevention efforts.
4. Appropriately report all acts of underage drinking and other alcohol violations through the proper channels to ADAPT, ensuring maintenance of a coordinated, comprehensive evaluation.
5. Work with ADAPT and other community-based programs to promote activities and ensure coordination of strategies designed to decrease underage and binge drinking, including planning for additional compliance efforts.
6. BPS, through dedicated funding, will provide the BPD with \$6,000 to be utilized in overtime alcohol enforcement between October 1, 2020 - September 5, 2021. Invoices will be submitted to BPS after each compliance check, with final invoices for work completed submitted no later than September 5, 2021.

\_\_\_\_\_  
 Authorized Signature for  
 Branson Police Department

Mayer

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Authorized Signature for Branson Public Schools

\_\_\_\_\_  
 Assistant Superintendent

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 October 7<sup>th</sup>, 2020

APPROVED AS TO FORM:

CLH #518) 10/15/20

\_\_\_\_\_  
 City Attorney



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF BRANSON AND THE TANEY COUNTY AIRPORT AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** ADMINISTRATION

**FIRST READING:** NOVEMBER 10, 2020      **FINAL READING:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- The original Taney County Airport Reimbursement Agreement was for a term of five years passed by Ordinance No. 2006-075.
- In 2010 a second agreement was signed for an additional five years of reimbursements not to exceed \$10,000 per year for a total not to exceed \$50,000 during the term of the agreement.
- In 2015 a third agreement was signed for an additional five years of reimbursements not to exceed \$10,000 per year for a total not to exceed \$50,000 during the term of the agreement.
- This bill will approve an additional five years of reimbursements not to exceed \$10,000 per year for a total of \$50,000 during the term of the agreement.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** Branson will build a strong community by encouraging the formation of a centralized, collaborative organization to help children, families and neighborhoods.

**ATTACHED EXHIBITS:**

BILL NO. 5923

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

**AN ORDINANCE APPROVING THE REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF BRANSON AND THE TANEY COUNTY AIRPORT AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS** in 2006 an agreement was approved by Ordinance No. 2006-075 authorizing reimbursements for qualified expenses to the airport; and

**WHEREAS**, the term of the previous agreement has expired, and the Board wishes to enter into another reimbursement agreement for a term of five years;

**WHEREAS**, the Board of Aldermen desires to approve the agreement.

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

Section 1: The Board of Aldermen hereby approves a reimbursement agreement with the Taney County Airport in the amount of \$10,000 per year for a total amount not to exceed \$50,000 and authorizes the Mayor to execute the agreement 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.

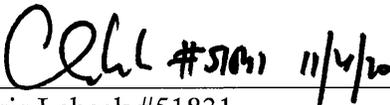
Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

ATTEST:

APPROVED AS TO FORM:

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

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

**INTERGOVERNMENTAL AGREEMENT RELATED TO REIMBURSEMENT  
PAYMENTS FOR CERTAIN QUALIFIED EXPENSES FOR THE TANEY COUNTY  
GENERAL AVIATION AIRPORT**

**THIS CONTRACT**, entered into by and between TANEY COUNTY, MISSOURI, a body politic and corporate, (hereinafter referred to as "County, or County Commission,") and THE CITY OF BRANSON, MISSOURI, a fourth class city in Taney County, State of Missouri, (hereinafter referred to as "Branson").

**WITNESSETH:**

**WHEREAS**, on May 8, 2006 the Branson Board of Aldermen approved a five year agreement showing their support for the continued operation of the M. Graham Clark Airport, a general aviation airport, owned and operated by Taney County and in 2010 approved another five year continuation of that contract and in 2015 approved another five year contract; and

**WHEREAS**, the Branson Board of Aldermen desires to continue their agreement with Taney County.

**NOW THEREFORE**, in consideration of the above premises and the mutual covenants and promises of the parties hereto, the parties do hereby agree as follows:

1. **QUALIFIED EXPENSES.** This contract authorizes payment of certain expenses incurred by the Taney County Airport. Qualified expenses suitable for reimbursement under the terms of this agreement are as follows:

Acquisition or improvement of a fixed asset with a useful life of five (5) years or greater.

2. **REIMBURSEMENT PROCEDURE.** Qualified Expenses for which Airport wishes to be reimbursed must be submitted to the Office of the Branson City Administrator. A reimbursable submission shall include documentation in the form of bills, invoices, or other documents demonstrating that the expenses submitted by the Airport are Qualified Expenses. As expenses are submitted for consideration those which are approved as a Qualified Expense will be reimbursed to the Airport within thirty (30) days of all conditions herein stated being met.

3. **TOTAL AMOUNT AVAILABLE FOR REIMBURSEMENT.** Branson shall reimburse the Airport for Qualified Expenses up to, but not to exceed \$10,000.00 per year for a period up to, but not to exceed 5 years. It is agreed and understood by the parties hereto that in no event will Branson reimburse more than a total of \$50,000.00 of Qualified Expenses during the term of this Agreement. The reimbursement of Qualified Expenses is subject to the annual appropriations of the City of Branson and the availability of such funds for reimbursement hereunder.

4. **RELATIONSHIP OF THE PARTIES.** This agreement does not create a joint venture, partnership or any other relationship between the parties. It is the express purpose of this

agreement to memorialize a limited payment from Branson for services provided to the Airport for costs subject to the terms and conditions hereof.

5. INDEMNITY. The County Commission agrees to fully indemnify and hold harmless Branson for any claims, suits, legal actions or other liability arising from the performance of this agreement by Branson, including, but not limited to, the payment of any settlements, judgments, attorney fees and costs.

6. 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.

7. SEVERABILITY. If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8. CONSENT. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

9. TERM. This Agreement will be for five (5), one-year funding periods. Each funding period will be based on a calendar year starting January 1<sup>st</sup> of each year. The first funding period will begin January 1, 2021 and payment will be in arrears in accordance with the REIMBURSEMENT PROCEDURES as outlined in this agreement. In no way will the term of this agreement exceed the TOTAL AMOUNT AVAILABLE FOR REIMBURSEMENT as outlined in this agreement. In the event that the County Commission ceases to own or operate the Airport, this Agreement shall automatically terminate.

10. NOTICE. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

CITY:  
CITY OF BRANSON  
Attn: Contract Management  
110 W. Maddux St. Ste. 205  
Branson, MO 65616

COUNTY COMMISSION:  
TANEY COUNTY  
Attn: Taney County Commission  
PO Box 1086  
Forsyth, MO 65653

13. VENUE. The parties agree that venue of any claims, disputes, causes of action, and suits concerning or arising out of the terms, conditions, provisions, obligations, requirements or duties of either party under this Agreement shall be the Circuit Court of Taney County, Missouri.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year written below.

Executed by the City of Branson this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Executed by Taney County this 28 day of September, 2020.

THE CITY OF BRANSON, MISSOURI

THE COUNTY OF TANEY

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

\_\_\_\_\_  
Date

Mike Scofield  
Mike Scofield  
Presiding Commissioner

09/28/2020  
Date

ATTEST:

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

\_\_\_\_\_  
Date

Sheila Wyatt  
Sheila Wyatt  
Eastern District Commissioner

9/28/2020  
Date

APPROVED AS TO FORM

Brandon Williams  
Brandon Williams  
Western District Commissioner

9-28-2020  
Date

Chris Lebeck #51831  
Chris Lebeck #51831  
City Attorney

8/24/20  
Date

ATTEST:

Donna Neeley  
Donna Neeley  
Taney County Clerk

9/30/2020  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Taney County Counselor

\_\_\_\_\_  
Date



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL ACCEPTING THE PROPOSAL OF UNIFIRST CORPORATION PERTAINING TO THE RENTAL OF UNIFORMS AND SHOP TOWELS FOR THE CITY AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

**INITIATED BY:** PUBLIC WORKS/ENGINEERING

**FIRST READING:** NOVEMBER 10, 2020      **FINAL READING:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- Four bids were received on October 18, 2020 for the rental of uniforms and shop towels for the Utilities, Parks, Public Works and Engineering departments.
- AmeriPride and CINTAS cannot provide all items and after thorough review and estimation of amount of uniforms needed for each employee, the lowest overall bid for this service was submitted by UniFirst Corporation.

Unifirst	AmeriPride	Clean Uniform	CINTAS
\$ 17,681.76	\$ 18,965.84	\$ 21,500.89	\$ 32,116.32

- Staff recommends the Services Contract with Unifirst Corporation for the rental of uniforms and shop towels for the departments aforementioned for FY2021 in the not to exceed amount of \$21,000.
- The bid included an option to renew two additional times. Review and approval by the Board of Aldermen is required prior to entering into a renewal of the contract.
- Funds are available in the projected FY2021 Utilities, Parks, Public Works and Engineering departmental budgets to cover this expense.

**FINANCIAL IMPACT:**

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

**COMMUNITY PLAN 2030:** Governance

**ATTACHED EXHIBITS:**

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

BILL NO. 5924

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

**AN ORDINANCE ACCEPTING THE PROPOSAL OF UNIFIRST CORPORATION PERTAINING TO THE RENTAL OF UNIFORMS AND SHOP TOWELS FOR THE CITY AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the City of Branson accepted the proposal of UniFirst Corporation for the rental of uniforms and shop towels for the City’s Public Works, Engineering, Parks and Utilities Departments; and

**WHEREAS**, of the proposals received, Unifirst Corporation has been recommended for approval by staff; and

**WHEREAS**, the Board of Alderman desires to award the contract.

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

Section 1: The Board of Aldermen hereby accepts the proposal of UniFirst Corporation for the rental of uniforms and shop towels for the Utilities, Parks, Public Works and Engineering Departments for a total amount not to exceed \$21,000.00 attached hereto as Exhibit “1” and authorizes the Mayor to execute the contract.

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

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

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

### SERVICES CONTRACT

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

WITNESSETH:

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

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

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

1. **Scope Of Work.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities hereinafter set forth in **Exhibit A**.

2. **Addition to Work.** The City and the Service Provider may amend the scope of work set forth in **Exhibit A**, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 7B of this contract. Any amendments shall be in written form and prepared and approved by the appointed City Officials and countersigned by the Service Provider.

3. **Exchange of Data.** All information, data, and reports as are existing, available and necessary for the carrying out of the work, shall be furnished to the requesting party without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of work.

4. **Payment for Labor and Materials.** The Service Provider agrees and binds itself to secure and pay for all personnel, labor, materials and supplies required to perform the services called for under this contract by Service Provider. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Service Provider. All of the work required hereunder will be performed by the Service Provider or under Service Provider's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such work. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.

5. **Term.** The work of the Service Provider shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract. **The term of the contract will be from a date beginning on January 1, 2021 to a date ending December 31, 2021, with the option to renew the contract for up to two (2) additional successive one-year terms unless Service Provider has notified the City at least ninety (90) days prior to the end of the then contract term or extensions thereto that Service Provider will not renew the contract. Each additional year will require a contract and Board of Aldermen approval. The contract shall not bind,**

nor purport to bind, the City for any contract term beyond the original term of the contract.

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 One Thousand Dollars (\$21,000.00)**, all of which is dependent upon budget appropriations.

8. **Termination of Contract.**

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

B. Right to terminate in the absence of breach. Either party may terminate this contract for any reason, by serving notice of intent to terminate upon the other party by the means specified in paragraph A of this section. Such notice shall specify the date of termination, but in no event shall either party terminate the contract under this provision upon less than thirty (30)

days' notice to the other party; provided, that the parties may mutually agree to waive the thirty (30) day requirement and to shorten the time for notice of termination, in the event of termination in the absence of breach.

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

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

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

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

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

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

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

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

A. In no event shall the City be liable to the Service Provider for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid by the City under this contract. All of the provisions in the agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.

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

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

16. **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:**

**CITY OF BRANSON, MISSOURI**

By: [Signature] 10/27/20  
(Signature) Date

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

Name: Steven Balocca  
(Printed Name)

ATTEST:

Title: General Manager.  
Company Name: UniFirst Corporation.

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

Address: 2244 N. Bolivar Rd.  
Springfield, Mo 65803.

Phone: 417-865-1629  
E-Mail: Steven-balocca@unifirst.com.

APPROVED AS TO FORM:  
[Signature] #5181 10/27/20  
Chris Lebeck #51831 Date  
City Attorney

Tax ID: 04-2103460

UniFirst Corporation  
2244 N. Bolivar Rd  
Springfield, MO 65803

## SCOPE OF WORK

1. Purpose: UniFirst Corporation agrees to provide uniform clothing rental services and shop towels for fiscal year 2021 in accordance with the terms and conditions of this contract.
  
2. General Requirements:
  - 2.1 UniFirst Corporation shall furnish, launder, and maintain rental uniforms as specified herein. Uniforms are defined to include short and/or long sleeved shirts, Dickey®, blue jean or carpenter style long pants, and jackets or vests or combination of one each. Women's clothing in women's sizes must be available and quoted. Size availability must include x-long and x-tall.
  - 2.2 The City cannot guarantee the number of employees, which may require uniforms. However, the City estimates 15 supervisors, 80 full time, plus 6 seasonal employees. Seasonal employees work approximately six (6) months during the year.
  - 2.3 UniFirst Corporation explicitly understands and agrees that the City shall have the right to increase or decrease the number of uniforms required as deemed necessary throughout the effective period of the contract due to termination or hiring of employees. Newly hired or seasonal employee contracts will not go into effect until their first delivery of properly fitted clothing; retroactive charges will not be accepted.
  - 2.4 UniFirst Corporation must secure all necessary licenses, permits, etc., and maintain compliance with all applicable federal, state, and local laws, rules and regulations related to the performance of the contract.
  
3. Specific Requirements:
  - 3.1 UniFirst Corporation must provide each employee with eleven (11) shirts, eleven (11) pair of pants, and two (2) jackets or vests or combination of one each, as set forth below. Upper level supervisors shall be provided eleven (11) pairs of pants, (blue jeans, Dickey® or carpenter) along with eleven (11) oxford dress type or polo style pocket shirts which may be of a different style and which may be of different color(s).
  - 3.2 Shirts: must be a button type (no metal parts) with long tuck-in tail. Employees shall have the option of selecting long sleeves, short sleeves, or a combination of

both. Employees shall also have the option of selecting a 65% polyester 35% cotton blend or 100% cotton shirt. All shirts shall be available in a variety of different colors. Departments may be separated by different colors of uniform shirts.

The Parks Department requires polo type shirts in a 50% polyester 50% cotton blend with moisture wicking ability and also having the option of selecting long sleeves, short sleeves, or a combination of both, with no name emblem.

Utility and Public Works Supervisors shall have the option of the cotton/poly oxford type shirts or cotton, cotton/poly, or polyester polo type shirt long sleeved, short sleeved or a combination of both, with no logo or name emblems.

3.2.1 Fire resistant shirts that meet ASTM F1506 standards must be available with a lease or purchase option. Enhanced visibility Long/Shirt sleeve shirts must be available with a lease or purchase option.

3.3 Emblems: Uniform costs must include the initial application of name/city emblems for any employee. If a status change is made (transfer to a different dept.) or a new hire (hired after the initial start of the contract) the cost to affix a name/city emblem, per piece, should be indicated on the pricing page. (Ref. 002)

3.3.1 Option to have City logo with department identification embroidered on oxford and polo shirts. The cost for logo setup and per piece embroidery should be indicated on pricing page.

3.4 Pants: employees shall also have the option of selecting a 7 oz. 65% polyester/35% cotton blend, 11 oz. 100% cotton pant, 11.75 oz. 100% cotton carpenter pant or 14.75 oz. 100% cotton carpenter pant.

3.4.1 Fire resistant pants that meet ASTM F1506 standards must be available with a lease or purchase option. Enhanced visibility Long/Shirt sleeve shirts must be available with a lease or purchase option.

3.5 UniFirst Corporation must accurately measure each employee requiring uniforms at a time and location acceptable to the City, and not ask for the size the individual wants. Women's sizes in women's clothing must be available. UniFirst Corporation must have all sizes (up to 6XL) available in men's and women's sizes for employees to try on the day the measurements are taken, failure to comply with this requirement shall be construed as a breach and may result in termination of the contract.

3.6 UniFirst Corporation shall maintain all uniforms in a manner acceptable to the City. Repairs must be neatly done with the thread and/or material of the same matching color as the item being repaired. Replacement shall be new and not used either by another company or employee. All repairs must be completed by

the next delivery date so that all employee uniform items in the possession of UniFirst Corporation are returned to the employee each week.

- 3.7 UniFirst Corporation shall, as a matter of routine, replace uniforms, which are worn out or otherwise unsuitable for wear with new uniforms at no additional cost to the City. UniFirst Corporation shall also replace, at no additional cost to the City, any uniform item, which does not fit due to shrinkage.
- 3.8 Unfirst Corporation must exchange uniform items, which become ill fitted due to weight loss or gain, one time per year per employee, at no additional cost. The City will pay for exchanges in excess of one time per year per employee.
- 3.9 UniFirst Corporation must have adequate quality control to ensure that all broken buttons, broken zippers, open seams, or torn garments are repaired. Stained, worn out or unserviceable uniforms are repaired or replaced prior to the delivery to the individual employee. A lack of adequate quality control on the part of UniFirst Corporation shall be construed as a breach and may result in termination of the contract.
- 3.10 UniFirst Corporation must provide uniform delivery services on a weekly basis. Soiled uniforms must be picked up and replaced with clean uniforms each week on a consistent day of the week, as agreed upon by the City and UniFirst Corporation, with variance for holidays as necessary. Deliveries shall be made between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, excluding City recognized holidays. UniFirst Corporation is required to make deliveries at nine (9) work site locations as follows:

Water Distribution/Sewer Collection Cooper Creek (Fall Creek Road)

Public Works Street Department (Compton Drive)

Compton Wastewater Treatment Plant (Compton Drive)

Branson City Hall (Maddux Street)

Public Works Vehicle Maintenance/Building Maintenance (Stockstill Lane)

Cooper Creek Wastewater Treatment Plant (Fall Creek Road)

Meadows Water Treatment Plant (Fall Creek Road)

Parks and Recreation (Branson Hills Parkway)

Cliff Drive Water Plant (Cliff Drive)

Utilities Administration./Pacific Street Water Tower (Pacific St.)

- 3.11 UniFirst Corporation must provide an itemized delivery and pickup ticket for each delivery to the Public Works/Engineering Administration office located at 110 W. Maddux Street, Suite 310 and the Utilities office located at 616 West Pacific. The

ticket must specify the number of items delivered and picked up to each location for each employee of that work site. UniFirst Corporation shall not deliver or pick up any items without the delivery and pickup tickets being signed by an authorized representative of the Public Works and/or Utilities department. The City will provide UniFirst Corporation with an itemized pickup ticket listing the items at the time of pick up if no discrepancies are noted at that time the pickup ticket will be deemed accurate by both parties.

- 3.12 Material Safety Data Sheets (MSDS) must be supplied to the City of Branson for all chemicals used in the laundering process.
- 3.13 UniFirst Corporation must take necessary measurements and provide new, clean (laundered) uniforms to new employees (hired after initial start of this contract) within fifteen (15) working days following notification by the City.
- 3.14 UniFirst Corporation will be notified of employees no longer employed with the City within one work week. Employees will be required to return all uniforms to their supervisor, and the supervisor will be responsible for returning the uniforms to the service provider within fourteen (14) days after the end of service with the City.
- 3.15 UniFirst Corporation will be paid for services actually provided in accordance with applicable contract prices.
- 3.16 UniFirst Corporation will be paid the replacement value as specified in the contract for uniform items not returned by former employees.
- 3.17 The City will be responsible for payment to UniFirst Corporation for any uniform item destroyed or lost, but not due to normal wear and tear, per the itemized pickup ticket (ref. paragraph 2.11). Such payment shall be equal to the uniform item replacement value stated in the contract. UniFirst Corporation understands and agrees that no payment or reimbursement other than that specifically provided for in the contract shall be made. All items shall be deemed standard with no "Buy Back" or other fees. If garment insurance is offered and accepted, there will be no charges for replacements.
- 3.18 UniFirst Corporation must state the replacement value of each uniform item for each potential contract year. Each year must show annual depreciation proportionally, so that at the end of 3<sup>rd</sup> year of contract replacement value is not greater than 25%

	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Men's/Women's 65/35 poly-cotton work shirt:	\$ 8.75	\$ 4.38	\$ 2.18
Men's/Women's 100% cotton work shirt:	\$ 13.75	\$ 6.53	\$ 3.25
Men's/Women's 50/50 poly-cotton moisture wicking polo shirt:	\$ 20.00	\$ 15.00	\$ 5.00

Men's/Women's 100% cotton polo shirt	\$ 16.00	\$ 10.00	\$ 5.00
Mens'/Women's poly-cotton oxford shirt	\$ 40.00	\$ 26.70	\$ 10.00
Men's/Women's polyester polo shirt	\$ 12.15	\$ 6.07	\$ 3.03
Men's/Women's Fire Resistant work shirt	\$ 44.15	\$ 22.07	\$ 11.03
Men's/Women's polycotton pant: 7 oz 65/35 polycotton	\$ 14.05	\$ 7.02	\$ 3.51
Men's/Women's polycotton cargo pant: 7 oz 65/35 polycotton	\$ 18.00	\$ 9.00	\$ 4.50
Men's/Women's 100% cotton pant jean cut: 11 oz	\$ 20.35	\$ 10.17	\$ 5.08
Men's/Women's Fire Resistant pant: 14.75 oz carpenter style	\$ 37.50	\$ 28.12	\$ 9.36
9 oz pant	\$ 41.30	\$ 30.97	\$ 10.32
Men's/Women's 100% cotton carpenter pant: 11.75 oz	\$ 15.85	\$ 7.92	\$ 3.96
Men's/Women's 100% cotton cargo pant:	\$ 24.67	\$ 15.92	\$ 6.16
Men's/Women's industrial jacket:	\$ 25.70	\$ 19.33	\$ 6.42
Men's/Women's industrial vest:	\$ 23.00	\$ 16.65	\$ 5.75
Option to Purchase:			
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Class 2 High Visibility Mesh Vest	\$5.59	\$5.59	\$5.59
Weekly laundering of vest	\$ 0	\$ 0	\$ 0
107-0215-Class 2 Hi-Vis with pocket/Wicking	\$ 9.88	\$ 9.88	\$ 9.88
Ansi Type R or P Class 2 Hi Vis Bomber Jackets	\$ 35.00	\$ 35.00	\$ 35.00

3.19 Option to the rental agreement: Employees will be held accountable for observing the prescribed procedures for the reasonable use and care of uniforms in their possession. Uniforms obtained under the provisions of this contract will remain the property of the supplier and must be returned upon the termination of employment. However, employees may elect to launder and maintain their own uniforms not requiring the commercial cleaning, for this option the service provider must provide each employee with seven (7) shirts, seven (7) pair of pants, and one (1) jacket or vest. In the event of this option being selected the City requests a reduced weekly rate (see pricing page).

3.20 UniFirst Corporation shall, as a matter of routine, replace uniforms, which are worn out or otherwise unsuitable for wear with new uniforms at no additional cost to the City. UniFirst Corporation shall also replace, at no additional cost to the City, any uniform item, which does not fit due to shrinkage. UniFirst Corporation must exchange uniform items, which become ill fitted due to weight loss or gain,

one time per year per employee, at no additional cost. The City will pay for exchanges in excess of one time per year per employee.

4. Invoicing: The City agrees to pay the UniFirst Corporation 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 the service provider and subject to the approval of the department supervisor that UniFirst Corporation fully performed the work satisfactorily. In no case shall the charge exceed the bid price times the number of items. All costs must be included in the price of the uniform rental; surcharges and extra costs will not be acceptable. Invoicing may be submitted to the City on a weekly or monthly basis. Invoices must include the Purchase Order number, Invoice number, the building name, the street address, date of delivery, quantity delivered, unit price (per the contract), and the total due. Charges must match the unit cost on the contract. Other costs such as fuel surcharges, emergency delivery fees, etc. are not allowed. Invoices with non-contract charges or incorrect pricing will be returned to UniFirst Corporation for correction prior to payment.

In addition to the individual invoices, a statement must be submitted listing the invoice number, total due from each invoice, and total due for the month. Separate statements must be provided for each department requesting service.

5. Subcontracting: UniFirst Corporation must function as the single point of responsibility for the City, regardless of any subservice provider arrangements for all services provided. UniFirst Corporation must submit a list of subservice providers to the Purchasing Department for approval within thirty (30) days from the beginning of this contract and in each renewal year. This shall include assuming responsibilities and liabilities for all problems relating to all material, and services provided. Subservice providers will be required to furnish the same insurance as the general service provider. None of the work or services covered by the contract shall be subcontracted without the prior written approval of the City.

PRICING PAGE

UniFirst Corporation provided pricing information as specified below to provide services in accordance with the terms and conditions of this contract.

**Option 1 (Renewable One Year contract)**

001. The bidder must state a firm, fixed price per employee, per 5-day workweek to provide uniform clothing rental services as specified herein. Costs must be all inclusive, no separate charges i.e. for environmental and/or fuel surcharges will be acceptable. No weekly cleaning charge for jackets or vests.

Firm, fixed price per employee, per 5-day work week:	Per Piece	11 Pcs.	7 Pcs.
Men's/Women's 65/35 poly-cotton work shirt:	\$ .12	\$ 1.32	\$ .84
Men's/Women's 100% cotton work shirt:	\$ .17	\$ 1.87	\$ 1.19
Men's/Women's 50/50 poly-cotton moisture wicking polo shirt:	\$ .22	\$ 2.42	\$ 1.54
Men's/Women's 100% cotton polo shirt	\$ .20	\$ 2.20	\$ 1.40
Mens'/Women's poly-cotton oxford shirt	\$ .18	\$ 1.98	\$ 1.26
Men's/Women's polyester polo shirt	\$ .13	\$ 1.43	\$ 1.26
Men's/Women's Fire Resistant work shirt	\$ .27	\$ 2.97	\$ .91
Men's/Women's poly-cotton pant:	\$ .19	\$ 2.09	\$ 1.33
7 oz 65/35 poly-cotton			
Men's/Women's poly-cotton cargo pant	\$ .24	\$ 2.69	\$ 1.71
7 oz 65/35 poly-cotton			
Men's/Women's 100% cotton pant jean cut:	\$ .25	\$ 2.75	\$ 1.75
11 oz			
Men's/Women's Fire Resistant pant			
14.75 oz carpenter style	\$ .54	\$ 5.94	\$ 3.78
9 oz pant	\$ .33	\$ 3.63	\$ 2.31
Men's/Women's 100% cotton carpenter pant:	\$ .25	\$ 2.75	\$ 1.75
11.75 oz			
Men's/Women's 100% cotton cargo pant:	\$ .30	\$ 3.30	\$ 2.10
Men's/Women's industrial jacket:	\$ .01	\$ .02	\$ .01
Men's/Women's industrial vest:	\$ .10	\$ .20	\$ .10
001a. Option; section 3.19 Deduct for no laundry	\$ 0 ea.		
001b. Garment Insurance, per garment per week	\$ .03		

002. The bidder must state a firm, fixed price per emblem to supply and/or affix required emblems to uniform shirts and jackets or vests after initial start of the contract (new employees or transfers).

Firm, fixed price per printed City emblem per shirt or jacket \$ 1.25

Firm, fixed price per printed name emblem per shirt or jacket	\$ .35
Firm fixed price per embroidered City emblem per shirt	\$ .50
Firm fixed price per embroidered Department identification per shirt	\$ 2.00
Embroidery set up charge: City Emblem \$ 0 Department Name \$ 0	

002a. Emblem Insurance, per garment per week \$ .02 ea.

003. Shop Towels: Delivered Quantity pricing Red \$ .05 White \$ .06 Replacement \$ .25

Option to Purchase:

004a. Class 2 High Visibility Mesh Vest	\$ 5.59	\$ 5.59	\$5.59
004b. Weekly Laundering service on vest	\$ 0	\$ 0	\$0
004c. With pocket/Wicking	\$ 9.88	\$ 9.88	\$9.88
004d. Ansi Type R or P Class 2 Hi Vis Bomber Jackets	\$ 35.00	\$ 35.00	\$35.00



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL AMENDING THE ADOPTED 2020 BUDGET FOR THE CITY OF BRANSON TO ADJUST MONIES FOR THE TOURISM FUND FOR THE BRANSON, MISSOURI REGIONAL AIRPORT TDD.

**INITIATED BY:** FINANCE/ADMINISTRATION

**FIRST READING:** NOVEMBER 10, 2020      **FINAL READING:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- The terms of payment by the City under the Pay for Performance (PFP) agreement with the Branson Airport have been discussed at great length in the past. This follows the Board’s past practice related to this agreement and it should be noted that since July 16, 2010, \$3,227,721.71 has been paid for all billings to date. All funds have come from the Tourism Fund including the approved budget transfer in 2013 to cover the past payments.
- The City has the most recent billing for \$6,583.76 which covers the period of time from January 1, 2020 to June 30, 2020.
- If the Board of Aldermen elects to appropriate these funds, staff recommends that the entire payment be made out of the Tourism Fund.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** Strives to provide private and commercial air access to the Branson area.

**ATTACHED EXHIBITS:**

BILL NO. 5925

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

**AN ORDINANCE AMENDING THE ADOPTED 2020 BUDGET FOR THE CITY OF BRANSON TO ADJUST MONIES FOR THE TOURISM FUND FOR THE BRANSON, MISSOURI REGIONAL AIRPORT TDD.**

---

**WHEREAS**, Section 2-307 of the Branson Municipal Code states that any increase in appropriation within a budgeted fund shall require the approval of the Board of Aldermen; and

**WHEREAS**, it is necessary to adjust monies for the Tourism Fund in the 2020 budget; and

**WHEREAS**, the Board of Aldermen desires to authorize the total payment of \$6,583.76 to the Branson, Missouri Regional Airport TDD for services from January 1, 2020 through June 30, 2020.

**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 Tourism Fund.

<u>Account Number</u>	<u>Amount</u>
240-1095-510.20-99 (Tourism Fund– Branson Airport)	\$6,584
Fund Balance (Tourism Fund)	(\$6,584)

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*CELL #51831 11/4/20*  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney



# STAFF REPORT

**ITEM/SUBJECT:** A RESOLUTION FOR THE APPOINTMENT OF A REPRESENTATIVE AND ALTERNATE TO THE TRI-LAKES BIOSOLIDS JOINT MUNICIPAL UTILITY COMMISSION.

**INITIATED BY:** UTILITIES DEPARTMENT

**DATE:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- The current Tri-Lakes Regional Biosolids Coalition made up of the Missouri cities of Branson, Hollister, Forsyth, Rockaway Beach, Kimberling City, Reeds Spring, Galena, and Sparta have recently worked with legal counsel to form the proposed Tri-Lakes Biosolids Joint Municipal Utility Commission. In January 2021, this Commission will formally assume ownership and responsibility of operations of all County owned biosolids dewatering and drying facilities located at the Branson and Hollister wastewater plants.
- In accordance with the cooperative member agreement recently signed by the Commission member Cities, each member shall appoint, by resolution or ordinance, one primary representative and one alternate, who shall serve on the Commission Board of Directors.
- Each member city representative shall serve on the Board of Directors for the purpose of decision making necessary for operations, maintenance, repair, and future improvements of the biosolids drying facilities. Each Member City shall have one vote in matters concerning decisions made by the Board of Directors.
- Each primary representative and alternate shall continue in office until their successor is appointed by the Member City and qualified by the Commission.
- If approved the attached resolution will serve as the City of Branson’s appointment of John Manning, Assistant City Administrator, as primary Board Member and Mike Ray, Utilities Director, will be appointed as an Alternate.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** E1-3

**ATTACHED EXHIBITS:**

**A RESOLUTION FOR THE APPOINTMENT OF A REPRESENTATIVE AND ALTERNATE TO THE TRI-LAKES BIOSOLIDS JOINT MUNICIPAL UTILITY COMMISSION.**

---

**WHEREAS**, the City of Branson deems it necessary to participate in the Tri-Lakes Biosolids Joint Municipal Utility Commission; and

**WHEREAS**, John Manning, Assistant City Administrator and Michael Ray, Utilities Director are qualified for and capable of representing the City of Branson as Commission board members, and

**WHEREAS**, the Board of Aldermen now deems it timely and important to make this appointment.

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

Section 1: John Manning, Assistant City Administrator, is hereby appointed to represent the City of Branson as the primary member on the Tri-Lakes Biosolids Joint Municipal Utility Commission.

Section 2: Mike Ray, Utilities Director, is hereby appointed as the alternate to represent the City of Branson when the appointed representative is absent or cannot perform duties.

Section 3: This resolution shall be in effect from and after its passage and approval.

**ADOPTED** by the Board of Aldermen of the City of Branson, Missouri on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

ATTEST:

APPROVED AS TO FORM:

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

*CLL #51831 11/19/20*  
\_\_\_\_\_  
Chris Lebeck, #51831  
City Attorney



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL ACCEPTING THE TERMS OF AN AGREEMENT BETWEEN THE CITY OF BRANSON AND THE TRI-LAKES BIOSOLIDS JOINT MUNICIPAL UTILITY COMMISSION FOR BRANSON TO PROVIDE CONTRACT OPERATION OF THE BIOSOLIDS DEWATERING AND DRYING FACILITIES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** UTILITIES DEPARTMENT

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- The current Tri-Lakes Regional Biosolids Coalition made up of the Missouri cities of Branson, Hollister, Forsyth, Rockaway Beach, Kimberling City, Reeds Spring, Galena, and Sparta have recently worked with legal counsel to form the proposed Tri-Lakes Biosolids Joint Municipal Utility Commission. In January 2021 this Commission will formally assume ownership of all biosolids dewatering and drying facilities that are currently owned by Taney County. The facility ownership history and transition are more fully outlined in the detailed analysis section.
- This new Operations Agreement between the Commission and the City of Branson will replace an existing operations agreement between the City of Branson and the Tri-Lakes Biosolids Coalition.
- Under this agreement, the City of Branson will provide continued management and administrative functions, financial functions and record-keeping, and maintenance and operations of the biosolids facilities located at the Branson Cooper Creek and Compton Drive wastewater plants. Branson will also transport liquid biosolids by tank truck from the other member city facilities and coordinate disbursement of the final Class A treated biosolids material. The City of Hollister will have a similar agreement with the Commission for operation of dewatering equipment located at the Hollister wastewater plant.
- Similar to the Coalition agreement being replaced, under this agreement the Commission will pay Branson for all personnel costs, including salary and benefits, necessary to manage and operate the biosolids facilities and for the cost of any City equipment used for the operation of said facilities. Specific duties are outlined in the proposed operations agreement.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the 2021 fiscal budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** EI-3

**ATTACHED EXHIBITS:**

**ITEM/SUBJECT: READING OF A BILL ACCEPTING THE TERMS OF AN AGREEMENT BETWEEN THE CITY OF BRANSON AND THE TRI-LAKES BIOSOLIDS JOINT MUNICIPAL UTILITY COMMISSION FOR BRANSON TO PROVIDE CONTRACT OPERATION OF THE BIOSOLIDS DEWATERING AND DRYING FACILITIES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

---

**DETAILED ANALYSIS:**

In 2015 construction of a regional biosolids drying facility was completed and placed in service. These facilities are located at the City Branson and City of Hollister wastewater treatment plants.

The regional biosolids facilities are currently utilized by a coalition of Missouri cities including Branson, Hollister, Forsyth, Rockaway Beach, Kimberling City, Reeds Spring, Galena, and Sparta.

The biosolids facilities are currently owned by Taney County as this was a requirement for the receipt of an initial \$3,000,000 grant through MDNR to construct the facility. The County contributed \$3,000,000 in matching funds and an additional \$750,000 to construct a storage silo all from the half-cent County sewer sales tax. The County was required to own the facilities for at least the first five years of operation.

The City of Branson donated an existing building at the Cooper Creek wastewater for the main drying facility and contributed \$250,000 to install exterior block on an addition to the building to match all other existing facilities. The County entered a lease agreement with the City of Branson for the City property on which the completed biosolids dryer building is located.

In 2015 the County assigned the responsibility of facility operation to the Coalition of cities. The Coalition formed a Board of Directors and entered a contract with the cities of Branson and Hollister to operate the biosolids dewatering and drying equipment located at their respective wastewater plants.

During 2020 the Coalition and County began work to transition ownership of the facilities to the member cities. In order for the member cities to own and manage the facilities, it was necessary to establish a Joint Municipality Utility Commission. This required all member cities to sign a cooperative agreement. This process has been completed and the Commission will assume the facilities in January 2021.

The final steps in this process are to form agreements between the Commission and cities of Branson and Hollister for continued operations of the facilities, terminate the County's property lease at the Cooper Creek site and implement a similar lease between the City of Branson and the Commission and each City will need to appoint a representative and an alternate to the Commission Board of Directors.

BILL NO. 5926

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

**AN ORDINANCE ACCEPTING THE TERMS OF AN AGREEMENT BETWEEN THE CITY OF BRANSON AND THE TRI-LAKES BIOSOLIDS JOINT MUNICIPAL UTILITY COMMISSION FOR BRANSON TO PROVIDE CONTRACT OPERATION OF THE BIOSOLIDS DEWATERING AND DRYING FACILITIES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the Tri-Lakes Joint Municipal Utility Commission is responsible for operations of biosolids dewatering and drying facilities located at the City of Branson Compton Drive and Cooper Creek wastewater plants; and

**WHEREAS**, the Tri-Lakes Biosolids Joint Municipal Utility Commission will contract the operations and maintenance of these facilities to the City of Branson; and

**WHEREAS**, the Board of Aldermen desires to award the agreement for the City of Branson to contract operate the Tri-Lakes Biosolids Joint Municipal Utility Commission facilities located at the Branson sites.

**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 operations agreement with Tri-Lakes Biosolids Joint Municipal Utility Commission and authorizes the Mayor to execute the contract in the form attached as Exhibit "1".

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*Chris Lebeck* #51831 11/19/20  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

OPERATIONS AGREEMENT FOR TRI-LAKES BIOSOLIDS REGIONAL DEWATERING AND  
DRYING FACILITY

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Tri-Lakes Biosolids Joint Municipal Utility Commission, hereinafter referred to as "Commission", and the City of Branson, Missouri, hereinafter referred to as "City", collectively referred to herein as "Parties".

WITNESSETH:

WHEREAS, the Missouri public entities of Branson, Hollister, Forsyth, Kimberling City, Reeds Spring, Rockaway Beach, Galena and Sparta, hereinafter referred to as "Members", have formed the Commission and have entered into an intergovernmental agreement known as the "Tri-Lakes Biosolids Joint Municipal Utility Commission Contract", attached hereto as reference and hereinafter referred to as the "JMUC Agreement" for the purpose of collectively treating to class A standards, biosolids generated from Member wastewater treatment facilities; and,

WHEREAS, under the JMUC Agreement, the Commission will own and operate a biosolids dewatering and drying facilities located at the City of Branson's Cooper Creek and Compton Drive wastewater treatment plants (exclusive of the land), to be known as the Tri-Lakes Biosolids Dewatering and Drying Facility, hereinafter referred to as "The Facilities"; and,

WHEREAS, the Commission desires to engage the City to provide management, administrative, financial, operations and maintenance services, as more particularly described in Exhibit "A", Scope of Work, attached hereto and incorporated herein by reference, for The Facilities; and,

WHEREAS, the City desires to provide such services, subject to the terms and conditions contained herein; and,

WHEREAS, the Commission and City have the authority under the laws of the State of Missouri to enter into an agreement for management, administrative, financial, operation and maintenance services of The Facilities;

NOW, THEREFORE, it is contracted and agreed by and between the parties as follows:

1. Scope of Work: The Commission agrees to engage the City and the City agrees to perform the services set forth in Exhibit "A", Scope of Work.

2. Addition or Deletion to Scope of Work. Any addition or deletion to the Scope of Work shall be in writing and shall become effective only upon approval of the Commission and the City's Board of Aldermen.
3. Exchange of Data. All information, data, and reports as are existing, available and necessary for carrying out of the Scope of Work shall be furnished to the requesting Party without charge, and the Parties shall timely cooperate with each other in facilitating the Scope of Work.
4. Payment for Labor and Materials. The City shall pay its employees for its labor costs associated with its performance as set out in this Agreement. The Commission shall reimburse the City for all costs of labor on a monthly basis for City's management, administrative, financial, maintenance and operation services of The Facilities. All work required hereunder will be performed by City personnel who are fully qualified and authorized under state and local law to perform such work. The Commission shall also make funds available to cover all costs for parts, equipment replacements, materials, chemicals, fuel, electricity, water, natural gas and supplies for necessary operations and upkeep of The Facilities.
5. Term. The work of the City shall commence after the execution of this Agreement and shall be undertaken and on-going as written, or as modified in accordance with the terms of this Agreement, until terminated by either party to the Agreement in accordance with Paragraph 8B below.
6. Work and Financial Management. The City shall maintain a record of the hours and type of work performed to operate The Facilities under this Agreement, which shall be open to all Commission members for review during normal business hours.
7. Payment. The Commission agrees to pay the City on a monthly basis for services performed within fifteen (15) days following receipt of City's invoice. The Commission agrees to pay the City for actual personnel and labor costs based on each working employee's salary and benefit package while an assigned employee is performing work for the Commission. The City shall provide an estimate for all personnel and labor costs for each fiscal year at least sixty (60) days prior to the beginning of each fiscal year to allow the Commission the ability to set each fiscal year budget. This amount shall be amended annually.
8. Termination of Contract:
  - A. Termination for breach. Failure of the City to fulfill its obligations under this Agreement in a satisfactory manner and in accordance with the Scope of Work shall constitute a breach of contract and the Commission shall have the right to terminate the Agreement after giving City thirty (30) days written notice of any breach in City's

fulfillment of the Scope of Work. In the event that the deficiency complained of has not been cured within the said thirty (30) day period, this Agreement shall be terminated unless additional time is mutually agreed upon, in writing, to cure said breach. In the event of termination for lack of curing a breach, all finished or unfinished documents, data and reports or other materials prepared by the City under this Agreement shall, at the option of the Commission, become its property, and the City shall be entitled to receive just and equitable compensation for all satisfactory work completed prior to termination and other materials; provided, that the City shall not be relieved of liability to the Commission for damages sustained by the Commission by virtue of any such uncured breach of contract by the City.

- B. Right to terminate in the absence of breach. Either Party may terminate this Agreement, or any particular service being provided within the Agreement, after providing no less than one hundred eighty (180) days written notice to the other Party, provided qualified operational, administrative or financial professionals can be obtained and a contract entered into for an amount equivalent to or less than costs being charged by the City. The Commission shall pay all invoices due and payable to the City for final work performed within thirty (30) days following termination of this Agreement or particular service.
9. Discrimination. The City agrees, in the performance of this Agreement, not to discriminate on the ground of, or because of, race, creed, color, national origin or ancestry, sex, religion, handicap, age or political opinion or affiliation, against any employee of the City or applicant for employment.
10. General Independent Service Provider Clause. This Agreement does not create an employee/employer relationship between the Parties. It is the Parties' intention that the City will be an independent service provider and not the Commission's employee for any purpose, 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 City will retain sole and absolute discretion in the judgement of the manner and means of carrying out the City's activities and responsibilities hereunder. The City and the Commission agree that this Agreement shall not be construed as creating any joint employment relationship between the City and the Commission and the Commission will not be liable for any obligation incurred by the City apart from the obligations set forth in this Agreement.
11. Benefits. The City shall not be covered by any Worker's Compensation Program of the Commission, if existing.
12. Liability and Indemnity. The Parties mutually agree to the following:

- A. Each Party to the Agreement shall be responsible for all personal injury and property damage attributable to the negligent acts or omissions of that Party and the officers, employees, agents and independent contractors thereof.
  - B. To the extent permitted by law, each Party to this Agreement and each Member of the Commission shall indemnify, save and hold harmless the other Party and all its respective officers, agents, employees and independent contractors from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgements of every nature and description whatsoever, including claims for property damage and claims for injury to or death of persons, recovered in a court of law, against the other Party (or Member of the Commission) to this Agreement by reason of any act or omission of the responsible Party, its representative officers, agents, subcontractors or employees, in the execution of the work related to this Agreement.
  - C. The Parties further agree that nothing contained herein shall be construed or interpreted as denying to any Party any remedy of any defense available to such Party under the laws of the State of Missouri, nor a waiver of sovereign immunity.
  - D. Each Party (and Commission Member) shall provide, where applicable, necessary workers compensation coverage and unemployment compensation for its employees.
13. Insurance. The City shall maintain, at the City's expense, adequate liability insurance to meet the upper limits of the statutory requirements, of sections 537.610.2 and 537.610.5 of the Revised Statutes of Missouri to protect the Commission against any loss, damage and/or expense related to the City's gross negligence in performance of work under this contract.
- A. Written evidence of the required insurance coverage must be submitted by the City no less than ten days prior to the commencement of the Scope of Work.
  - B. Notwithstanding any other provision of the contract to the contrary, no insurance procured by the City shall be construed to constitute a waiver of any sovereign immunity as set forth in the section 537.600 through 537.650 of the Revised Statutes of Missouri, or any other governmental or official immunity, which is barred under said doctrines of sovereign, governmental or official immunity available to the City, nor constitute a waiver of any available defense. The City shall cause all policies of insurance related to this contract to be indorsed in accordance with this subparagraph.
  - C. The City shall further provide, maintain and furnish 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 sections 537.610.2 and 537.610.5 of the Revised Statutes of Missouri, as amended from time to time.

- D. Insurance Certificates. It shall be the sole responsibility of the City to provide the Commission with the most up-to-date insurance certificates and to keep them current throughout the term of the contract. Any failure to maintain insurance coverage shall not relieve City of any contractual responsibility, obligation or liability under the contract documents. Insurance certificates shall be faxed or mailed to the address provided by the Commission.
14. Notices. All notices required or permitted herein under and required to be in writing may be given by electronic facsimile or by first class mail to the addresses hereinafter set forth. 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 electronic facsimile transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 4:30 pm 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.
15. 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.
16. Entire Agreement. This Agreement contains the entire agreement of the Parties. No modification, amendment, assignment or waiver of any of the provisions of this Agreement shall be effective unless in writing, specifically referring to the provision herein to be modified, and signed by both Parties.
17. Compliance with Laws. The Parties agree to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision and acceptance of services hereunder.
18. Contact Information:
- |                                |                                |
|--------------------------------|--------------------------------|
| City of Branson                | Tri-Lakes Biosolids Commission |
| Attn: Contract Management      | Attn: Commission Chair         |
| 110 West Maddux St., Suite 205 | P.O. Box 6975                  |
| Branson, MO 65616              | Branson, MO 65615              |
| 417-337-8522                   | 417-243-2740                   |
| Fax: 417-335-4354              | Fax: 417-335-9518              |

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by its authorized representatives on the day and year set opposite the signatures of said representatives.



Exhibit "A"  
SCOPE OF WORK

The Commission engages the City as an independent service provider to perform management, administration, financial, operation and maintenance services of The Facilities under the terms of this Agreement.

The City shall perform all services necessary for the proper and satisfactory operation of The Facilities in full compliance with all regulatory and legal requirements. The City shall use acceptable operating and maintenance procedures pertaining to all facility equipment in accordance with the equipment manufacturer's recommendations. The City shall regularly report to the Commission members and officers regarding operations, current regulatory requirements, costs and expenditures, invoicing and fee collection, biosolids analysis and tracking, reports, equipment repairs and maintenance of The Facilities.

The City shall not be responsible for treatment beyond the capabilities of the facility equipment nor shall the City be responsible for non-compliance of regulatory standards due to and resulting from abnormal, unacceptable, hazardous or toxic materials delivered from and contained within the liquid sludge or dewatered biosolids received from any Member city treatment facility.

The City shall provide personnel adequate to manage, operate and maintain The Facilities in a manner to meet the Missouri Department of Natural Resources and the U.S. Environmental Protection Agency standards for Class A Biosolids processes.

The City shall charge the Commission, and the Commission agrees to pay, for reimbursement of the City's actual personnel and labor cost, on a monthly basis, for City personnel performing work as outlined herein and related to management, administration, financial, operations and maintenance services, including actual costs to the City for regular wages, overtime and benefits of said personnel for the amount of time an individual employee performs work pertaining to The Facilities.

1. The City shall provide personnel skilled in the following categories
  - 1.1 Management/Supervision
  - 1.2 Administration
  - 1.3 Finance
  - 1.4 Operations and Maintenance
2. Under this Agreement City personnel shall perform labor for the following functions:
  - 2.1 Management/Supervisory shall:
    - a. Oversee, manage and supervise daily operations.
    - b. Schedule personnel for the operation, maintenance and repair of designated facility

- equipment.
- c. Coordinate and schedule for the transportation of liquid wastewater sludge and cake biosolids, as necessary, that are generated from Member treatment plants.
  - e. Procure bids and seek competitive pricing for the Commission in all purchases of parts, equipment, equipment repair if necessary, chemicals, materials and supplies in accordance with requirements of State laws and guidelines for public entities.
  - f. Coordinate disposal of final product whether by use of Commission equipment, City equipment or through contract haulers such as property owners that may receive the final product.
  - g. Review all final reports, provide information and make presentations to the Commission Board and Members regarding operations, maintenance and future planning for The Facilities.
  - h. Prepare and submit for consideration and approval to the Commission an annual operating budget at least sixty (60) days prior to the end of the operations year, including costs for management, supervision, administration, financial, operations and maintenance services, utilities to include water, sewer, natural gas and electricity and costs for chemicals, parts, equipment maintenance, repair, upgrades and replacements, supplies and contractual services and maintenance of necessary reserves.
  - i. Institute and update a comprehensive preventative maintenance program for all equipment and infrastructure assigned to the City for operation through this Agreement. Maintenance records maintained by the City for the equipment and Facilities shall include a history of maintenance for each item of equipment, spare parts inventory, and schedule of program maintenance.

## 2.2 Administrative personnel shall:

- a. Maintain filing systems for all operational activities, repairs, equipment maintenance, preventative maintenance, sampling, process control, use and disposal of final product biosolids, agency reports, purchases and expenditures, asset management, and inspections.
- b. Prepare all background information for invoices and charges to Member cities.
- c. Prepare meeting agendas and post in compliance with Missouri Sunshine Law. Maintain record of meeting minutes in compliance with States laws.
- d. Provide a monthly report to the Commission regarding operations, maintenance/repair activities and related costs.
- e. Generate and provide a monthly report to the Commission of dry tons of biosolids processed from each Member treatment facility.
- f. Prepare and submit, where required, all regulatory reports pertaining to monitoring of biosolids and provide this information to the appropriate agency.

## 2.3 Finance personnel shall:

- a. Establish and maintain an accounting system to track and indicate revenues and expenditures.

- b. Establish and maintain an accounting system for deposits, collected revenues and charges and payment of invoices pertaining to all purchasing and payments for utilities, parts, equipment, chemicals, fuel, materials, supplies, labor and all other expenses pertaining to operation of The Facilities.
- c. Establish and maintain an accounting system to track capital reserve/equipment replacement funds.
- d. Invoice each member city on a monthly basis for drying services for the monthly dry tons of biosolids processed for each Member. The invoice shall indicate unit pricing, total amount in dry tons of biosolids dried for the individual Member city. Invoices shall be mailed to each member during the second week of each month and shall be due the 10<sup>th</sup> of the following month.
- e. Pay all invoices, on behalf of the Commission, associated with costs for operations and maintenance of The Facilities, utilizing Commission funds budgeted, collected and designated for said operations and maintenance of The Facilities.

2.4 Operations and Maintenance Personnel shall:

- a. Record and log on a daily basis all dewatering and drying operational activities, hours for labor and hours of operation of equipment.
- b. Record and log total amounts of liquid sludge and dewatered biosolids received, amount of biosolids dried, amounts and pickup times of individuals or contract haulers receiving dried biosolids, amount of dried biosolids received by or returned to member cities, amounts and locations where biosolids may, if necessary, be land applied by the Commission.
- c. Monitor operations of all facility components by physical means and by link to the City's computer SCADA monitoring system.
- d. Operate, in accordance with manufacturers recommendations two fixed centrifuge units, sludge feed and polymer injection pumps and other associated dewatering process equipment, dewatered biosolids receiving station, bin and associated conveyance components, biosolids dryer and related equipment, and all electrical and manual controls of equipment.
- e. Operate a liquid tanker and dump truck, either owned by the Commission or the City for the purpose of transporting liquid wastewater sludge and dewatered biosolids from Member treatment facilities.
- f. Schedule and coordinate with individual Members for pumping of liquid sludge from individual Member treatment plants.
- g. Sample all sludges, dewatered and dried biosolids as necessary to meet regulatory and process control requirements.
- h. Perform solids analysis on said sludge and biosolids samples to determine the percentage of solids and dry tons.
- i. Perform preventative maintenance and repair of equipment, buildings and all related components of The Facilities in accordance with manufacturers' recommendations.
- j. Perform general maintenance and cleaning of the facilities and equipment

- and upkeep of facility grounds.
- k. Troubleshoot and diagnose mechanical and electrical component problems and make adjustments, calibrations and repairs as necessary.
3. If a City owned tanker truck, dump or spreader truck is utilized for the transportation of liquid, dewatered or dried biosolids, the City shall charge the Commission for the actual operations, maintenance, repair, replacement, fuel and insurance coverage costs of the City vehicle based on the percentage of use for the biosolids project. Replacement costs shall be based on a ten year life use of the vehicle.
  4. Third Party Services
    - 4.1 All necessary laboratory analysis for metals and nutrients contained in the dewatered or dried biosolids shall be subcontracted to a qualified third party laboratory. The laboratory shall be selected through a bid and qualification process with final selection to be approved by the Commission. The City shall coordinate the sampling and testing schedules with the third party laboratory.
    - 4.2 Any electrical or mechanical repairs that may require special skills beyond the capabilities of existing City staff, special tools or equipment which may not be obtainable or practical for purchase as determined by the Commission, shall be contracted where necessary to a third party contractor and, where applicable, shall follow the same bid and best pricing process as described in 4.1 above.
  5. Disposal of end product dried biosolids.
    - 5.1 The City shall track total amounts of dried biosolids generated from the drying facility and separate the total by any amounts received from the individual Member cities.
    - 5.2 The City shall schedule pickup of processed biosolids with any individual or contract customers hauling these materials from The Facilities.
    - 5.3 The City shall coordinate and perform the following on behalf of the Commission:
      - a. Sell any amount of processed biosolids specified by the Commission to a contract customer.
      - b. Allow each Member city to purchase for their own use the amount of biosolids that Member city has delivered to The Facilities which could have been sold to a contract customer.
      - c. Allow each Member city to utilize, for their own use, any remaining amount of biosolids which that Member city has delivered to The Facilities and which is

not sold to a contract customer.

- d. Allow any member city to also utilize any unwanted portion of biosolids from another Member city which is not sold to a contract customer.
- e. Allow each Member city to pick up and haul said amount of biosolids which that city wishes to utilize, with that Member city's truck, or the Member city may request said amount of biosolids be delivered to the Member city's designated location via a Commission or City truck.
- f. Provide, at the Commission's discretion, at no charge, to the general public, any remaining portion of biosolids not sold to a contract customer or utilized by a Member city.
- g. Dispose of, by means of dry spread land application, utilizing a Commission or City truck, any remaining biosolids received at The Facilities that is not sold to a contract customer, utilized by the Member cities or taken by the general public.
- h. Factor all costs to the Commission for delivering dried biosolids to a location designated by a Member city or for dry spread land application into the per dry ton cost for processing.
- i. Apply any revenue received from the sale of biosolids by the Commission toward the cost of operation and maintenance of The Facilities.

## 6. Emergency Response Plan and Safety Program

The City shall implement, follow and train personnel regarding applicable safety standards and emergency response plans necessary for operation of The Facilities equipment, transportation and handling of liquid sludge and processed biosolids.

## 7. Training

City personnel performing work in The Facilities shall attend necessary training (at the discretion of the Commission) for proper operation of the dewatering and drying equipment and to allow for proper understanding of regulatory standards. Costs for class registrations, class time attended, travel time, meals and associated expenses by personnel in training shall be reimbursed to the City by the Commission.

## 8. Inventory

The City shall prepare and provide to the Commission an annual inventory of equipment, tools, materials on hand, supplies and spare parts. Any purchase of equipment, tools, materials, supplies and spare parts specifically for use in The Facilities shall, upon purchase, become the property of the Commission. The

Commission shall reimburse the City as outlined in this Agreement for the cost of these items.

9. The Commission:

- a. Under terms of the JMUC Agreement the Commission may assign its operation and management responsibilities to a Contract Operator.
- b. In accordance with the terms and provisions of this Agreement the Commission is contracting with the City for the Management, Administration, Financial, Operation, Maintenance & Replacement responsibilities necessary for The Facilities located at the City's Compton Drive and Cooper Creek wastewater treatment facilities.
- c. The Commission hereby contracts with the City to file and submit all reports, maintain all records, collect all fees from Commission Members utilizing The Facilities and to pay all invoices and billings from said collections for all operations of The Facilities.
- d. The Commission contracts and agrees to pay the City for the services as described in this Agreement.





# STAFF REPORT

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

**INITIATED BY:** UTILITIES DEPARTMENT

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- Following requirements outlined in Branson Municipal Code Sec 90-35, area septic haulers are allowed to deliver domestic waste pumped from individual septic tanks, small wastewater treatment plants and various holding tanks from locations within Stone and Taney Counties, to the Branson wastewater treatment facilities for processing. Anticipated volume of waste to be delivered to our facilities from January 1, 2021 to December 31, 2021 is approximately one million gallons, producing an anticipated revenue of approximately \$17,000 for this period.
- Branson has provided this service to area septic haulers since 2002. Treatment of this waste has had no adverse effect on our systems and has been a benefit to the environment and local community.
- The 2021 fee structure of \$10.11/1000 gallons for holding tank waste and \$21.37/1000 gallons for septic waste will produce adequate revenues to offset the cost of treatment.
- The proposed contract and established fee structure was presented to and reviewed by the Budget and Finance Committee on October 22, 2020. The Committee recommended the contract be submitted to the Board of Aldermen for approval.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the 2021 budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
  - Not Recommended
  - Neutral/None
- 

**COMMUNITY PLAN 2030:** E1-3

**ATTACHED EXHIBITS:**

BILL NO. 5927

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

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

---

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

**WHEREAS**, accepting waste delivered by S & S Pumping, Inc. has been recommended for approval by staff; and

**WHEREAS**, the Board of Aldermen desires to approve the contract.

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

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

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

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

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

---

E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

---

Lisa K Westfall  
City Clerk

*Chris Lebeck #51831 11/19/20*  
Chris Lebeck #51831  
City Attorney

## CONTRACTUAL AGREEMENT

This agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between THE CITY OF BRANSON, a Fourth Class City in the State of Missouri, hereinafter referred to as "City" and S & S PUMPING, INC. hereinafter referred to as "Septic Hauler".

WITNESSETH:

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

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

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

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

1. The term of this agreement will be from **January 1, 2021 to December 31, 2021**.
2. Septic Hauler agrees to only transport untreated domestic wastewater originating from holding tanks or special waste (defined as septic tank pumpage or waste sludge from package treatment systems) from within Stone and Taney Counties of Missouri and transport to a location in the City's sewer collection system. The exact location to be utilized is to be designated by the City's Utilities Director. Septic Hauler agrees to provide any and all manpower, labor, equipment, and appurtenances necessary to discharge the wastewater into the City's sewer system.
3. Due to loading capacity at the wastewater plants, the City will only accept up to a maximum of 30,000 gallons per day of holding tank waste and up to a maximum of 30,000 gallons per day of septic tank/waste sludge. These wastes will be accepted on a first come first served basis from various septic haulers. Once the maximum gallons per day amount is received, no additional waste will be accepted unless approved by the Utilities Director and only in the event of an environmental emergency.
4. The City agrees to accept holding tank waste and special waste for treatment provided the waste strength is no more than 10,000 mg/1 in Biochemical Oxygen Demand (BOD). However, the City may reject any load or loads or suspend the service at any time. Any waste with greater strength than 10,000 mg/1 is hereby rejected.

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

- a) **\$10.11/1000 gallons for holding tank wastes with BOD strength of 0 - 600 mg/l.**
- b) **\$21.37/1000 gallons for special waste (Septic tank waste or waste sludge from package treatment plant) with BOD strength of 600 - 10,000 mg/l.**

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

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

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

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

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

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

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

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

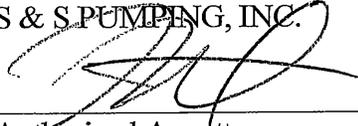
FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 4:30 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving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

13. 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.

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

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

S & S PUMPING, INC.

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

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

Address: 107 Summit Pt.

Saddlebrook, mo 65630

Phone: 417 546 2390

Fax: N/A

Tax ID or SSN: 46-0496912

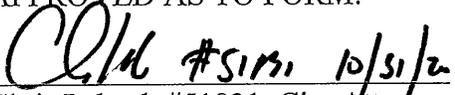
CITY OF BRANSON

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

ATTEST:

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

APPROVED AS TO FORM:

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

Mail: City of Branson  
Attn: Lisa Westfall  
110 W Maddux St. Ste 205  
Branson, MO 65616  
Phone: 417-337-8522



# STAFF REPORT

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

**INITIATED BY:** ADMINISTRATION

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- The City each year has budgeted to contract for services for temporary public assistance. Bids were solicited and agencies submitting bids were reviewed by the Outside Program Assistance Committee.
- The committee met on November 5, 2020 to review bids and make recommendations for money to be awarded to those who responded to the RFP.
- The contracts listed on the detailed analysis page are based on the committee's recommendations and services are for the 2021 fiscal year with a total award amount of \$32,000.
- Once the contracts are approved and executed, agencies will be allowed to turn receipts in for reimbursement from January 1, 2021 until December 31, 2021.
- The Committee recommended the City send out a second RFP to use the remaining budgeted funds. This RFP was issued on November 10, 2020 and the due date is December 1, 2020. The Outside Program Assistance Committee will be reconvened to review the RFP's submitted and their recommendations will be brought back to the Board at a later date.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

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

**ATTACHED EXHIBITS:** Exhibit 1 – Outside Program Assistance Committee Minutes

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

---

---

**DETAILED ANALYSIS:**

- The Branson Regional Arts Council awarded \$3,000 – will use the City grant funds to provide funding for youth scholarship opportunities for the underprivileged or gifted students in the visual arts and theater arts for Branson youth residents and funding for educational youth symphony experience.

This Staff Report includes information for the next 4 agenda items:

- Elevate Branson awarded \$7,000 - will use the City grant funds to provide transportation for Branson residents to get to essential medical appointments and health and mental health services, and to obtain necessary documents to gain employment (i.e.; social security cards and birth certificates).
- The Faith Community Health Center, Inc. awarded \$12,000 - will use the City grant funds to assist Branson residents when the patient is unable to obtain a prescribed medication for an urgent dental or medical need when the patient would otherwise go untreated.
- The Taneyhills Community Library awarded \$5,000 - will use the City grant funds to provide funding to purchase children's and young adult books.
- The Women's Crisis Center of Taney County, Inc. awarded \$5,000 - will use the City grant funds to assist with prescription assistance, food, personal hygiene supplies, clothing, diaper and basic necessities for women and their children staying in the women's shelter.

# MINUTES

MEETING OF THE OUTSIDE PROGRAM ASSISTANCE COMMITTEE  
CITY OF BRANSON, MISSOURI  
November 5, 2020

## INTRODUCTORY

The Outside Program Assistance Committee of the City of Branson, Missouri met for a committee meeting in the Municipal Courtroom of Branson City Hall, Branson, Missouri, on November 5, 2020, at 8:30 a.m. The following members were present:

Ted Martin presiding, Larry Milton, Jeff Matthews, Melody Pettit, Cris Bohinc and Howard Boyd.  
Absent: Edd Akers.

## AGENDA

Discussion of selection process by the Committee.

Larry Milton moved to proceed with review of the five applications received and assign funding amounts, seconded by Melody Pettit. The motion passed unanimously.

Review of agencies requests for proposals and make recommendation for consideration of the Board of Aldermen.

Cris Bohinc moved to recommend the amounts be awarded as follows:

Branson Regional Arts Council - \$3,000

- To provide funding for youth scholarship opportunities for underprivileged or gifted students in the visual arts and theater arts for Branson youth residents and funding for educational youth symphony experience.

Elevate Branson - \$7,000

- To provide transportation for Branson residents to get to essential medical appointments, health & mental health services, and to obtain necessary documents to gain employment (ie; social security cards and birth certificates)

Faith Community Health - \$12,000

- To assist Branson residents when the patient is unable to obtain a prescribed medication for an urgent dental or medical need when the patient would otherwise go untreated.

Taneyhills Library - \$5,000

- To provide funding to purchase Children's and Young Adult books.

The Crisis Center - \$5,000

- To assist with prescription assistance, food, personal hygiene supplies, clothing, diapers and basic necessities for women and their children staying in the women's shelter.

---

Total amount awarded - \$32,000

Seconded by Howard Boyd. The motion passed unanimously.

Larry Milton moved to recommend the City send out a second RFP to use remaining budgeted funds for the Outside Assistance Program, seconded by Melody Pettit. No discussion. The motion passed unanimously.

## **ADJOURN**

Cris Bohinc moved to adjourn, seconded by Larry Milton. The motion passed unanimously. The meeting adjourned at 10:20 a.m.

BILL NO. 5929

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

**AN ORDINANCE ACCEPTING THE PROPOSAL OF BRANSON REGIONAL ARTS COUNCIL PERTAINING TO THE PROVISION OF SERVICES TO PROVIDE TEMPORARY PUBLIC ASSISTANCE AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the City of Branson desires to provide the opportunity to experience the arts and cultural enrichment programs on a local basis at minimal cost, particularly activities made available to school age children to help round their cultural experiences; and

**WHEREAS**, the Board of Aldermen desires to execute a contract with the Branson Regional Arts Council for temporary public assistance.

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

Section 1: The Board of Aldermen hereby accepts the proposal of Branson Regional Arts Council pertaining to the provision of services to provide temporary public assistance in the 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 upon and after its passage and approval.

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*CL* #51831 11/19/20  
\_\_\_\_\_  
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 **Branson Regional Arts Council** ("Service Provider").

WITNESSETH:

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

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

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

1. **Scope Of Work.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities hereinafter set forth in **Exhibit A**.
2. **Addition to Work.** The City and the Service Provider may amend the scope of work set forth in **Exhibit A**, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 7B of this contract. Any amendments shall be in written form and prepared and approved by the appointed City Officials and countersigned by the Service Provider.
3. **Exchange of Data.** All information, data, and reports as are existing, available and necessary for the carrying out of the work, shall be furnished to the requesting party without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of work.
4. **Payment for Labor and Materials.** The Service Provider agrees and binds itself to secure and pay for all personnel, labor, materials and supplies required to perform the services called for under this contract by Service Provider. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Service Provider. All of the work required hereunder will be performed by the Service Provider or under Service Provider's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such work. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.
5. **Term.** The work of the Service Provider shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract. **The funding period will be from a date beginning on January 1, 2021 to a date ending December 31, 2021. If execution of the contract occurs after January 1, 2021, then the funding period will begin on the execution date to a date ending December 31, 2021.**
6. **Costs not to Exceed.** The City is limited by law with respect to the amount of money it can pay. Therefore, the City has established a fixed sum for this contract which cannot be exceeded unless this contract is amended. The Service Provider providing work hereunder

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

## 7. **Payment.**

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

B. **Total compensation not to exceed.** It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Service Provider under the terms of this contract exceed the sum of **Three Thousand Dollars (\$3,000.00)**, all of which is **dependent upon budget appropriations**.

## 8. **Termination of Contract.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SERVICE PROVIDER:**

**CITY OF BRANSON, MISSOURI**

By:  11-17-20  
(Signature) Date

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

Name: Jim Barber  
(Printed Name)

Title: Executive Director

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

Company Name: Branson Regional Arts Council

Address: P.O. Box 2004

Branson, MO 65615

Phone: 417-335-1503

APPROVED AS TO FORM:  
 #51831 11/12/20  
Chris Lebeck #51831 Date  
City Attorney

E-Mail: info@bransonarts.org

Tax ID: 43-1606888

Branson Regional Arts Council  
PO Box 2004  
Branson, MO 65615

### **Scope of Services**

Branson Regional Arts Council will use the City grant funds to provide funding for youth scholarship opportunities for the underprivileged or gifted students in the visual arts and theater arts for Branson youth residents and funding for educational youth symphony experience in the amount not to exceed \$3,000.00. These dollars need to be used for residents of Branson. No funds will be used for staff or other overhead costs. Funds will not be used to promote religious beliefs or convey a religious agenda to the public, and they will not be passed through to another agency.

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



# STAFF REPORT

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

**INITIATED BY:** ADMINISTRATION

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- See previous Staff Report for Branson Regional Arts Council.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

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

**ATTACHED EXHIBITS:**

BILL NO. 5930

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

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

---

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

**WHEREAS**, the Board of Aldermen desires to execute a contract with Elevate Branson for temporary public assistance.

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

Section 1: The Board of Aldermen hereby accepts the proposal of Elevate Branson pertaining to the provision of services to provide temporary public assistance in the amount of \$7,000.00 and authorizes the Mayor to execute the contract attached hereto as Exhibit "1".

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*CLL* #51831 11/19/20  
\_\_\_\_\_  
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 **Elevate Branson** ("Service Provider").

WITNESSETH:

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

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

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

1. **Scope Of Work.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities hereinafter set forth in **Exhibit A**.

2. **Addition to Work.** The City and the Service Provider may amend the scope of work set forth in **Exhibit A**, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 7B of this contract. Any amendments shall be in written form and prepared and approved by the appointed City Officials and countersigned by the Service Provider.

3. **Exchange of Data.** All information, data, and reports as are existing, available and necessary for the carrying out of the work, shall be furnished to the requesting party without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of work.

4. **Payment for Labor and Materials.** The Service Provider agrees and binds itself to secure and pay for all personnel, labor, materials and supplies required to perform the services called for under this contract by Service Provider. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Service Provider. All of the work required hereunder will be performed by the Service Provider or under Service Provider's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such work. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.

5. **Term.** The work of the Service Provider shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract. **The funding period will be from a date beginning on January 1, 2021 to a date ending December 31, 2021. If execution of the contract occurs after January 1, 2021, then the funding period will begin on the execution date to a date ending December 31, 2021.**

6. **Costs not to Exceed.** The City is limited by law with respect to the amount of money it can pay. Therefore, the City has established a fixed sum for this contract which cannot be exceeded unless this contract is amended. The Service Provider providing work hereunder

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

## 7. Payment.

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

B. **Total compensation not to exceed.** It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Service Provider under the terms of this contract exceed the sum of **Seven Thousand Dollars (\$7,000.00)**, all of which is dependent upon budget appropriations.

## 8. Termination of Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SERVICE PROVIDER:**

**CITY OF BRANSON, MISSOURI**

By:  11-17-20  
(Signature) Date

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

Name: Bryan Stallings  
(Printed Name)

Title: Executive Director

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

Company Name: Elevate Branson

Address: 310 Gretna Road  
Branson, MO 65616

Phone: 417.294.1300

APPROVED AS TO FORM:  
 11/17/20  
Chris Lebeck #51831 Date  
City Attorney

E-Mail: bryan.stallings@elevatebranson.org

Tax ID: 26-472548

Elevate Branson  
310 Gretna Rd.  
Branson, MO 65616

### **Scope of Services**

Elevate Branson will use the City grant funds to provide transportation for Branson residents to get to essential medical appointments and health and mental health services, and to obtain necessary documents to gain employment (i.e.; social security cards and birth certificates) in an amount not to exceed \$7,000.00. These dollars need to be used for residents of Branson. No funds will be used for staff or other overhead costs. Funds will not be used to promote religious beliefs or convey a religious agenda to the public, and they will not be passed through to another agency.

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



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL ACCEPTING THE PROPOSAL OF FAITH COMMUNITY HEALTH CENTER, INC. PERTAINING TO THE PROVISION OF SERVICES TO PROVIDE TEMPORARY PUBLIC ASSISTANCE AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** ADMINISTRATION

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- See previous Staff Report for Branson Regional Arts Council.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

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

SA

**ATTACHED EXHIBITS:**

BILL NO. 5931

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

**AN ORDINANCE ACCEPTING THE PROPOSAL OF FAITH COMMUNITY HEALTH CENTER, INC. PERTAINING TO THE PROVISION OF SERVICES TO PROVIDE TEMPORARY PUBLIC ASSISTANCE AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

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

**WHEREAS**, the Board of Aldermen desires to execute a contract with the Faith Community Health Center, Inc. for temporary public assistance.

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

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

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*Chris Lebeck* #51831 11/19/20  
\_\_\_\_\_  
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 **Faith Community Health Center, 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. **The funding period will be from a date beginning on January 1, 2021 to a date ending December 31, 2021. If execution of the contract occurs after January 1, 2021, then the funding period will begin on the execution date to a date ending December 31, 2021.**

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

Faith Community Health Center, Inc.

Page 1 of 6

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

## 7. **Payment.**

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

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

## 8. **Termination of Contract.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SERVICE PROVIDER:**

**CITY OF BRANSON, MISSOURI**

By:  11/18/20  
(Signature) Date

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

Name: Kean Titus  
(Printed Name)

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

Title: Executive Director

Company Name: Faith Community Health

Address: 610 S. 6th St  
Branson, MO 65616

Phone: 417-336-9355

APPROVED AS TO FORM:  
 #51831 11/14/20  
Chris Lebeck #51831 Date  
City Attorney

E-Mail: kean@faithcommunityhealth.org

Tax ID: 94-3467834

Faith Community Health  
610 S. Sixth Street  
Branson, MO 65616

### **Scope of Services**

Faith Community Health will use the City grant funds to assist Branson residents when the patient is unable to obtain a prescribed medication for an urgent dental or medical need when the patient would otherwise go untreated in an amount not to exceed \$12,000.00. These dollars need to be used for residents of Branson. No funds will be used for staff or other overhead costs. Funds will not be used to promote religious beliefs or convey a religious agenda to the public, and they will not be passed through to another agency.

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



# STAFF REPORT

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

**INITIATED BY:** ADMINISTRATION

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- See previous Staff Report for Branson Regional Arts Council.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

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

**ATTACHED EXHIBITS:**



BILL NO. 5932

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

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

---

**WHEREAS**, the City of Branson desires to provide the opportunity to experience the arts and cultural enrichment programs on a local basis at minimal cost, particularly activities made available to school age children to help round their cultural experiences; and

**WHEREAS**, the Board of Aldermen desires to execute a contract with the Taneyhills Community Library for temporary public assistance.

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

Section 1: The Board of Aldermen hereby accepts the proposal of Taneyhills Community Library pertaining to the provision of services to provide temporary public assistance in the amount of \$5,000.00 and authorizes the Mayor to execute the contract attached hereto as Exhibit "1".

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*Cliff #51831 11/19/20*  
\_\_\_\_\_  
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 **Taneyhills Library** ("Service Provider").

WITNESSETH:

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

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

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

1. **Scope Of Work.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities hereinafter set forth in **Exhibit A**.

2. **Addition to Work.** The City and the Service Provider may amend the scope of work set forth in **Exhibit A**, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 7B of this contract. Any amendments shall be in written form and prepared and approved by the appointed City Officials and countersigned by the Service Provider.

3. **Exchange of Data.** All information, data, and reports as are existing, available and necessary for the carrying out of the work, shall be furnished to the requesting party without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of work.

4. **Payment for Labor and Materials.** The Service Provider agrees and binds itself to secure and pay for all personnel, labor, materials and supplies required to perform the services called for under this contract by Service Provider. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Service Provider. All of the work required hereunder will be performed by the Service Provider or under Service Provider's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such work. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.

5. **Term.** The work of the Service Provider shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract. **The funding period will be from a date beginning on January 1, 2021 to a date ending December 31, 2021. If execution of the contract occurs after January 1, 2021, then the funding period will begin on the execution date to a date ending December 31, 2021.**

6. **Costs not to Exceed.** The City is limited by law with respect to the amount of money it can pay. Therefore, the City has established a fixed sum for this contract which cannot be exceeded unless this contract is amended. The Service Provider providing work hereunder

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

## 7. **Payment.**

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

B. **Total compensation not to exceed.** It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Service Provider under the terms of this contract exceed the sum of **Five Thousand Dollars (\$5,000.00), all of which is dependent upon budget appropriations.**

## 8. **Termination of Contract.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SERVICE PROVIDER:**

**CITY OF BRANSON, MISSOURI**

By: M Schemper Carlock 11/16/2020  
(Signature) Date

Name: Marcia Schemper Carlock  
(Printed Name)

Title: Library Director

Company Name: Taneyhills Library

Address: 200 S. 4th Street  
Branson, MO 65616

Phone: 417-334-1418

E-Mail: tanlib100@gmail.com

Tax ID: 51-0161765

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

CLL #51831 11/16/20  
Chris Lebeck #51831 Date  
City Attorney

Taneyhills Library  
200 S. Fourth St.  
Branson, MO 65616

### **Scope of Services**

Taneyhills Library will use the City grant funds to provide funding to purchase children's and young adult books in an amount not to exceed \$5,000.00. No funds will be used for staff or other overhead costs. Funds will not be used to promote religious beliefs or convey a religious agenda to the public, and they will not be passed through to another agency.

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



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL ACCEPTING THE PROPOSAL OF WOMEN'S CRISIS CENTER OF TANEY COUNTY, INC. PERTAINING TO THE PROVISION OF SERVICES TO PROVIDE TEMPORARY PUBLIC ASSISTANCE AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** ADMINISTRATION

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- See previous Staff Report for Branson Regional Arts Council.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

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

**ATTACHED EXHIBITS:**

BILL NO. 5933

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

**AN ORDINANCE ACCEPTING THE PROPOSAL OF WOMEN’S CRISIS CENTER OF TANEY COUNTY, INC. PERTAINING TO THE PROVISION OF SERVICES TO PROVIDE TEMPORARY PUBLIC ASSISTANCE AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

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

**WHEREAS**, the Board of Aldermen desires to execute a contract with Women’s Crisis Center of Taney County, Inc. for temporary public assistance.

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

Section 1: The Board of Aldermen hereby accepts the proposal of Women’s Crisis Center of Taney County, Inc. pertaining to the provision of services to provide temporary public assistance in the amount of \$5,000.00 and authorizes the Mayor to execute the contract attached hereto as Exhibit “1”.

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*Chris Lebeck* #51831 11/19/20  
\_\_\_\_\_  
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 **The Women's Crisis Center of Taney County, 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. **The funding period will be from a date beginning on January 1, 2021 to a date ending December 31, 2021. If execution of the contract occurs after January 1, 2021, then the funding period will begin on the execution date to a date ending December 31, 2021.**
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

The Women's Crisis Center of Taney County, Inc.

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

## 7. **Payment.**

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

B. **Total compensation not to exceed.** It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Service Provider under the terms of this contract exceed the sum of **Five Thousand Dollars (\$5,000.00), all of which is dependent upon budget appropriations.**

## 8. **Termination of Contract.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

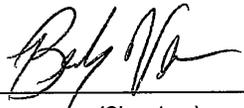
21. **Safety.** Contractor and subcontractors performing service for the City are required and shall comply with all applicable Occupational Safety and Health Administration (OSHA). All contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions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

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

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

**SERVICE PROVIDER:**

**CITY OF BRANSON, MISSOURI**

By:  11/17/20  
(Signature) Date

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

Name: Becky Vermeire  
(Printed Name)

Title: Executive Director

**ATTEST:**

Company Name: Women's Crisis Center

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

Address: P.O. Box 282  
Branson Mo 65615

Phone: 417-581-9105

**APPROVED AS TO FORM:**

E-Mail: Becky.Vermeire@gmail.com

 11/24/20  
Chris Lebeck #51831 Date  
City Attorney

Tax ID: 43-1562094

The Crisis Center  
PO Box 282  
Branson, MO 65615

### **Scope of Services**

The Crisis Center will use the City grant funds to assist with prescription assistance, food, personal hygiene supplies, clothing, diaper and basic necessities for women and their children staying in the women's shelter in an amount not to exceed \$5,000.00. These dollars need to be used for residents of Branson. No funds will be used for staff or other overhead costs. Funds will not be used to promote religious beliefs or convey a religious agenda to the public, and they will not be passed through to another agency.

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



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE CONTRACT WITH THE BRANSON/ LAKES AREA CHAMBER OF COMMERCE & CONVENTION AND VISITORS BUREAU PERTAINING TO TOURISM AND MARKETING SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** LEGAL DEPARTMENT

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- In 2014, the City advertised proposals for tourism marketing. The contract was given to the Branson/Lakes Area Chamber of Commerce & Convention and Visitors Bureau (“CVB”) for a term of January 1, 2015 through December 31, 2019. Contracts were to be approved annually.
- As the current contract was set to expire the City put out an RFP for these services going forward and the CVB scored highest and was selected from the following bidders based off their qualifications as well as past compliance to the pricing structure:
  - Branson Lakes Area Chamber & CVB
  - Elasticity
  - ELMNTL
  - Hoffman York
  - Paradise Advertising
  - Zimmerman Agency
- The proposed contract from January 1, 2021 thru March 31, 2022 to align the contract and renewal periods with the Branson/Lakes Area Tourism Community Enhancement District (“TCED”). The proposed contract has the opportunity for two annual renewal periods.
- The proposed contract has a budgeted amount of \$1,500,000 with an opportunity to revisit that amount mid-year 2021 if City economic conditions improve.
- Staff Recommends Approval of the Contract.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
  - Not Recommended
  - Neutral/None
- 

**COMMUNITY PLAN 2030:** Allocating marketing funds to attract the highest growth potential visitor segments.

**ATTACHED EXHIBITS:**

**ITEM/SUBJECT: READING OF A BILL APPROVING THE CONTRACT WITH THE BRANSON/ LAKES AREA CHAMBER OF COMMERCE & CONVENTION AND VISITORS BUREAU PERTAINING TO TOURISM AND MARKETING SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

---

**DETAILED ANALYSIS:**

The proposed contract includes several substantive changes from previous contracts with the CVB including the following highlights:

- Expansion of the four marketing objectives in the scope of services to include live shows and entertainment since their success is critical to the success of the City.
- Requiring the use of the Marketing Oversight Committee to approve the annual marketing plan and marketing efforts.
- Defining a Contract Administrator for the City that has final approval rights related to the administration and implementation of the scope of services in the contract.
- Requiring the presentation of a draft marketing plan and final marketing plan to the MOC with final approval by the Board of Aldermen.
- Clarification that GAAP accounting methods be used and right to audit expanded.
- Clarification that the City is to be reimbursed with any monies reimbursed by subcontractors to the CVB after payment has been remitted by the City.
- Providing that the City has reproduction rights related to all media and marketing materials prepared.
- Providing that all marketing material must carry the City of Branson logo.
- Providing that the City can terminate contact within sole discretion in thirty (30) days with a thirty (30) day right to cure.

BILL NO. 5934

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

**AN ORDINANCE APPROVING THE CONTRACT WITH THE BRANSON/LAKES AREA CHAMBER OF COMMERCE & CONVENTION AND VISITORS BUREAU PERTAINING TO TOURISM AND MARKETING SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

**WHEREAS**, the City of Branson (“City”) currently contracts the Branson Lakes Area Chamber of Commerce/Convention & Visitors Bureau (“CVB”) for tourism and marketing services for the City of Branson; and

**WHEREAS**, the City put out an RFP for these services going forward as the current contract with the CVB expires on December 31, 2020; and

**WHEREAS**, the CVB was selected from the bidders based off their qualifications as well as past compliance to the pricing structure; and

**WHEREAS**, the Board of Aldermen desires to enter into a contract with the CVB for promotional and tourism marketing services on behalf of the City.

**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 Branson Lakes Area Chamber of Commerce & Convention & Visitors Bureau for tourism and marketing services in the amount not to exceed \$1,500,000 for the period January 1, 2021 through March 31, 2022 and authorizes the Mayor to execute the contract in the form attached as Exhibit “1”.

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*Chris Lebeck* #51831 11/19/20  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

**CONTRACT FOR TOURISM AND MARKETING SERVICES**

**THIS CONTRACT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by and between the City of Branson, Missouri ("City") and the Branson/Lakes Area Chamber of Commerce and Convention and Visitors Bureau, Inc. ("Contractor"), a Missouri Corporation.

**WITNESSETH:**

**WHEREAS**, the City is required by Sec. 94.800, et. seq., RSMo, 1994 as amended (the "Act") to use twenty-five percent (25%) of the collections of City's Tourism Tax (the "Tourism Tax") by the City for tourism marketing and promotional purposes; and

**WHEREAS**, the Contractor represents that it has specialized experience in marketing and promotion of tourism for the area and seeks to promote tourism in the City; and

**WHEREAS**, the City, having considered proposals received desires to retain the services of the Contractor to market and promote tourism in accordance with the Act for the City to conduct and administer City tourism and marketing functions such as advertising, public relations, internet advertising and web promotion, group meetings, reunions, travel and trade sales, direct marketing and fulfillment, tourism development that drives both incremental and reoccurring visits, corporate partnerships/sponsorships and promotions, and research on behalf of the City to enhance tourism to the City; and

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. **TERM.** The initial term of this contract shall be from January 1, 2021 to March 31, 2022 with the option to renew the contract for up to two (2) additional successive one-year terms subject to annual budgetary appropriation and any changes to which both the Board of Aldermen and the Contractor consent to in writing. The contract shall not bind, nor purport to bind, the City for any contract term beyond the initial term.
2. **TOTAL COMPENSATION.** It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Contractor under the terms of this contact exceed the sum of \$1,500,000 all of which is dependent upon budget appropriation by the City. However, the contract will be revisited mid-year and adjusted up accordingly upon budget appropriation by the City if numbers, projections, and rollover amount support.
3. **DISTRIBUTION.** The following is the process for the distribution of the tourism tax to the Contractor per this contract.

City Tourism Tax Collections:

100%	City' s Tourism Tax collections
<u>-2%</u>	City administrative fees deducted
98%	

Of this 98%, 75% is deposited in a City infrastructure account and 25% is deposited in a Tourism Promotion Account.

Tourism Promotion Account Distribution:

*City Marketing Fund* shall be an amount not more than \$500,000 from the Tourism Promotion Account. The exact amount the City will have in this fund is subject to appropriation by the City and will be established through the City's annual budget process and the Contractor will be informed of the amount being withheld for the City Marketing Fund each year.

*Revenue Shortfall Reserve* shall be an amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00). Per the City's Reserve Policy: "The City will also maintain a \$125,000.00 Revenue Shortfall Reserve in the Tourism Marketing Fund. This amount provides a reasonable level of assurance that the City can continue to reimburse the amount budgeted for marketing expenditures under the current contractual obligation if revenues are insufficient to cover these expenditures during times of revenue shortfalls." The Revenue Shortfall Reserve has to be fully funded by the end of the City's fiscal year. Upon approval of the Finance Director, the funds can be used to assist in the Contractor's cash flow prior to the Tourism Tax revenues becoming available.

The Tourism Promotion Account shall have the City Marketing Fund and the Revenue Shortfall Reserve deducted from it annually. The remainder shall be considered the Tourism Marketing Fund and shall be available for the Contractor's use in accordance with this contract. The final availability of any excess funds will be made after the City's annual audit is completed. The City will notify the Contractor of this amount at that time. The City is required to maintain the Revenue Shortfall Reserve and this shall not be considered excess funds.

4. SCOPE OF SERVICES. The City engages the services of the Contractor to direct and carry out a destination marketing program for the City. The Contractor will manage and direct the expenditure of a part of the tax revenue generated through the City's Tourism Tax. All Tourism Marketing Funds shall be used for marketing outside a radius of 30 miles from Branson City limits. Additionally, the Contractor agrees to support the Historic Downtown, Veteran's programs, live shows and live entertainment as included in Contractor's annual budget in a manner designed to ensure their increased success. The objectives of monies channeled through the Tourism Promotion Account are fourfold: attract overnight visitors to Branson; increase tourism and City tax revenue; increase demand in Branson for hotel/motel, resort and campground inventory for the purpose of increasing occupancy; and to increase the demand for all other local attractions including live shows and entertainment located in Branson by visitors of all ages. Throughout the term of this contract, the Contractor shall:
  - 4.1 Develop and execute an integrated destination marketing plan using various media that promotes Branson locally, regionally and nationally;
  - 4.2 Document and demonstrate a broad understanding of and significant experience in the tourism industry, including strategies and tactics that reach all target market segments necessary to attract visitors to Branson including leisure and business travelers, travel agents, convention delegates, and motor coach operators and travelers;

- 4.3 Address all destination marketing disciplines including advertising, public relations, group/travel trade sales, corporate partnerships and promotions, direct marketing and fulfillment, and tourism development;
- 4.4 Utilize the Marketing Oversight Committee (hereinafter "MOC") in the planning and decision-making process throughout the term of this contract and shall obtain prior MOC and City approval before implementing each annual marketing plan, creative and budget. The Contractor shall perform all of its services under this contract through staff under the direction of its designated representative, as provided in the Section titled "CONTRACT ADMINISTRATION" below, who shall be responsible for the management, scheduling, planning and coordination of services, and for communications between the Contractor and the City, to complete the overall fulfillment of all obligations of the Contractor under this contract.
- 4.5 Include both strategies and tactics and must demonstrate the following criteria:
  - 4.5.1 Both qualitative and quantitative research to support strategies and tactics of proposed plans and document successful marketing.
  - 4.5.2 A list of measurement criteria to judge the success of the campaign.
  - 4.5.3 Address strategies and tactics to develop and promote new programs, new marketing segments, and the extension and expansion of the tourist season.
  - 4.5.4 Documentation of all data and information derived from studies, research, investigation, surveys, test marketing, analysis, experiences, and observation.
- 4.6 Address a destination marketing program, including fulfillment of visitor inquiries, considering this constraint;
- 4.7 Present a marketing plan that will assure the maximization of the City's investment of Tourism Tax dollars. Marketing efforts shall be aimed at community-wide exposure;
- 4.8 Meet all requirements set forth by the City and shall demonstrate the ability to prepay expenses in anticipation of repayment from Tourism Tax revenues and to provide complete support documentation for all expenditures. Payment of funds is conditioned on sufficient monies being collected through the City's Tourism Tax and separately, payment is subject to annual appropriation by the Board of Aldermen.

## 5. MARKETING PLAN.

- 5.1 The Contractor shall deliver to the MOC at the August board meeting of each year, a Draft Marketing Plan. Receipt and approval of the Final Marketing Plan at the November MOC board meeting by MOC recommendation shall be a condition precedent to the City's obligation to fund any payments required under this contract. The Contractor shall then submit to the City a document outlining the Contractor's proposed marketing, advertising, promotion and fulfillment plan for the ensuing year, which demonstrates to the satisfaction of the City that substantially all of the Tourism Promotion Account

dollars will be productively used to market, advertise and promote the City and the four objectives outlined in the Section titled "SCOPE OF SERVICES."

- 5.2 After the delivery of this contract, the Marketing Plan shall then be finalized, within Ninety (90) days of said contract delivery, including the budgetary data, and shall have input from the City and MOC. The Contractor shall agree and understand that the City and/or MOC shall have the right to require changes, additions or additional elaboration to the written plan in order to ensure the objectives laid out in Section titled "SCOPE OF SERVICES" are met. The Contractor shall not proceed until approval by the Board of Alderman of the plan, including all projects or activities, is obtained. The City approved marketing plan shall then be executed by the Contractor for the ensuing year. In addition, the marketing plan, with a prior positive MOC recommendation and Board of Alderman approval, can be amended from time to time to accommodate changing conditions and/or necessary modifications.
6. **MARKETING RESPONSIBILITIES.** The Contractor agrees to commence destination marketing and promotion activity for the purpose of developing and promoting the City as a tourism destination upon execution hereof. Throughout the term of this contract, that Contractor shall:
- 6.1 Market the City in accordance with the Contractor's marketing plan, as approved by the City, on terms which provide, overall, the most favorable combination of terms and the most economical price for the City;
  - 6.2 Target visitors to the City and shall include, but not be limited to:
    - 6.2.1 Advertising (broadcast, print and digital);
    - 6.2.2 Public relations;
    - 6.2.3 Direct marketing and fulfillment publications;
    - 6.2.4 Groups, conventions, meetings, reunions; and
    - 6.2.5 Groups, conventions, meetings, reunions, tour and travel sales.
  - 6.3 In the scope of the marketing and promotion arrangements, not market or promote the City as a tourism destination in any manner which is intended or likely to produce a direct benefit to the Contractor or any affiliate, subcontractor or private person or business over and above that gained by the City as a whole;
  - 6.4 Properly and timely submit to the City all marketing and other reports required under this contract, describing activities it has performed and the data it has collected in fulfillment of its obligations under this contract;
  - 6.5 Keep all records pertaining to this contract, provide all information and complete all information forms requested by the City;
  - 6.6 Provide to any business in the City which collects and remits the City of Branson Tourism Tax the collaborative opportunity to participate in any marketing communications effort which is fully or partially funded by the City, unless such participation is for illegal or immoral purposes. These opportunities include, but are not limited to, all publications,

website and web promotions, direct mail and print advertising, newsletters or other communications; and

- 6.7 Any print advertising and promotion materials paid for using Tourism Promotion Account funds shall include the logo of the City of Branson.
- 6.8 Work in collaboration with subcommittees established by the MOC to provide direction, input and oversight for key marketing initiatives which may include, but not be limited to, publicity, creative content, group sales, publications, digital marketing, research and stakeholder communication efforts.

## 7. REPORTS

- 7.1 QUARTERLY MARKETING REPORTS. The Contractor shall submit to the City a quarterly marketing report using a standardized format and components developed in collaboration with the MOC and approved by the City. Said marketing report shall describe significant marketing activities undertaken during the previous quarter, including research, media placement, creative development and on-line activity on behalf of the City. Measurable results for activity during the reporting period will also be presented to the City for review including room demand, convention and conference economic impact (change), tax revenues, inquiry from advertising, intercept study research, visitation from markets advertised in, and visitor demographics. This quarterly report shall also include significant upcoming marketing efforts and any adjustments to those for the remainder of the year on behalf of the City and a comparison to the other areas of the Branson/Lakes Area Tourism Community Enhancement District of the measurable results outlined above.
- 7.2 OTHER REPORTS. The Contractor shall submit to the City such other reports in such formats as may be requested or which the City deems necessary to information the City of issues which may require City action.

## 8. BUDGET

- 8.1 The Contractor shall, prior to any requests for disbursement of any funds, prepare a budget for tourism development and promotion for the ensuing fiscal year. The budget shall detail how funds expended will meet the needs of each of the four objectives laid out in the Section titled "SCOPE OF SERVICES" above. The budget shall show the anticipated revenue to be received from the Tourism Tax for deposit into the Tourism Marketing Fund of the City and shall show estimated expenditures to be paid from the Tourism Marketing Fund for marketing and promoting the City.
- 8.2 The Contractor shall submit a proposed budget to the City Administrator. The City Administrator will review, and if necessary, revise the proposed budget to meet the objectives of the City and to ensure that expenditure requests conform to the availability of anticipated revenues. The City Administrator will submit the proposed budget to the Board of Aldermen for their consideration and approval. Upon approval by the Board of Aldermen, the budget will establish expenditure authority for Tourism Tax dollars for the term of the contract. Anticipated Tourism Tax revenues, identified as the revenue source for authorized expenditures, will be determined by the City Administrator and provided

to the Contractor. Amendments to the budget that do not change the total expenditure authority as approved by the Board of Aldermen may be made and approved by the City Administrator. Any budget adjustments requiring an increase in expenditures beyond the Board approved budget will require Board of Aldermen approval.

It is expressly understood that in no event shall the total reimbursement under the terms of this contract exceed the amount in the Tourism Marketing Fund.

It is understood and agreed by all parties that the City shall in no event incur indebtedness or act as a guarantor or endorser of the credit of the Contractor, nor shall any City revenue be pledged or encumbered for the benefit of the Contractor except as consideration for services rendered under this contract.

The City also recognizes that the Budget will change from time to time by necessity. Changes within categories do not need approval by the City, only notification.

9. PAYMENT AND REIMBURSEMENT REQUIREMENTS. Tourism Taxes collected prior to the effective date of this contract are available for appropriation under the terms of this contract. However, any payment by the City is contingent upon approval of a budget submitted by the Contractor annually based on the City's fiscal year, receipt of proper requisitions under that budget and the provision of other documentation required by this contract. At the date the budget is approved, and on a monthly basis thereafter, the Contractor may obtain from the City the current amount available for requisition. Payments from the City to the Contractor for services under this contract will be made as follows:
- a. Requisitions for reimbursement of expenditures included in the City's annual budget will be paid through the City's accounts payable system. Requisition forms received per the City's processing schedule will be processed, and checks will be written and mailed to the Contractor to reimburse it for such expenditures.
  - b. Each requisition must be signed by the Contractor's designated representative verifying the services covered are for work actually performed, items purchased or services rendered by third parties to the Contractor for matters covered under this contract. Requisitions must not have been or will not be submitted for reimbursement to/by another entity or source and will be accompanied by paid invoice(s) for such work, items or services, as well as copies of checks, and either a copy of the advertising material purchased, or a concise summary description of sufficient particularity to identify the purchase as an out of market marketing or promotional service. If a requisition is made without including the invoice, the Contractor shall attach to the requisition a statement setting forth the reason an invoice is not included, and the City will then determine if payment can be made. The City will reimburse the Contractor for actual costs incurred in the performance of this contract as stipulated in the City's approved budget.
  - c. Notwithstanding any other provision of this contract, in no event shall the City

make payments in excess of the Tourism Marketing Fund. Nor shall the City make any payment unless there are enough collected unencumbered funds, not otherwise appropriated, on deposit in the Tourism Marketing Fund.

- d. Invoices for reimbursement may be submitted as often as desired, however all invoices for reimbursement must be submitted no later than sixty (60) days from the date from which the cost of goods or services were expensed.
  - e. Invoices submitted by the Contractor for payment shall include a copy of the check indicating that payment has been made to the subcontractor/vendor and a copy of the invoice showing the actual net cost from the subcontractor/vendor. These documents shall be attached to the invoice from the Contractor summarizing subcontractors/vendors by date, name, amount requested and check number.
  - f. Any refunds to the Contractor from any subcontractor/vendor under any requisition for reimbursement submitted to the City shall be returned to the City.
10. SPECIAL CONDITIONS IN HANDLING OF FUNDS. Neither the person(s) or legal entity(its) that receive, funds, nor any of their subsidiaries, owners or related parties, may use the funds to pay administrative or overhead expenses, including without limitation, rent, the cost to acquire real estate, salaries, payroll taxes, employee benefits, or the costs of furniture or office equipment.

Neither the person(s) or legal entity(its) that receive funds, nor any of their subsidiaries, subcontractors, owners or related parties, may profit from receipt or expenditure of the funds, nor are kickbacks from any downstream vendor permitted.

#### 11. RECORDS AND AUDIT.

11.1 CONTRACTOR'S BOOKS AND RECORDS. The Contractor will keep a full and separate accounting of all expenditures of Tourism Marketing Fund dollars and will keep accurate reports detailing all expenditures and claims submitted by the Contractor for reimbursement from the Tourism Marketing Fund. All books, records and supporting documentation pertaining to this contract shall be maintained and retained in accordance with generally accepted accounting principles and standards, as well as any other requirements specified in this contract. The Contractor shall keep accurate reports and other records showing in full detail the expenditures for which the Contractor claims reimbursement from the Tourism Marketing Fund. The City and/or a designee of the City may examine, at any time during regular business hours, such reports and other records at the Contractor's office, and the Contractor agrees that it will produce such records whenever required by the City.

11.2 RIGHT TO AUDIT. In addition to any other audits the City deems appropriate, the City shall have the right to conduct an annual audit of the Contractor's books and records or to review the results of any audits that have been performed on the Contractor's books and records to determine if the expenditures of the Contract were made in accordance

with the budget approved by the Board of Aldermen. Any expense incurred by the Contractor to prepare the records for the audit will be at the expense of the Contractor.

11.3 SUBCONTRACTOR'S BOOK AND RECORDS. The Contractor agrees to include the substance of this Section in all subcontracts to be performed, giving the City the right to audit the books and records pertaining to any such subcontract.

12. FURNISHING INFORMATION. All information, data, and reports such as City maps, reports or total sales tax collections and census demographics as are existing, available, allowed by law, and necessary for the carrying out of the work shall be furnished to the Contractor by the City, and the City shall cooperate with the Contractor in carrying out the services.
13. APPROVAL RIGHTS. The parties agree that the City through the Contract Administrator, in its sole discretion, shall review and have final approval of all marketing budgets, creative and media plans, promotion, public relations, publicity, and marketing presentations and research as required by this contract. The MOC will serve as the review committee for marketing, creative agencies, public relations firms, digital agencies and media buyers. Contractor shall participate in regular MOC meetings to discuss and develop marketing strategy, implementation plans, resource allocation, budgets and creative efforts.
14. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor with respect to all services performed hereunder, and nothing contained herein shall constitute or designate the Contractor or any of its agents or employees as agents or employees of the City. The Contractor and its agents, employees, and subcontractors 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 for the City.
15. CONFLICT OF INTEREST. All provisions of Sec. 105.450, RSMo et. seq, shall be complied with by Contractor. The Contractor agrees to incorporate this Section in all subcontracts to be performed for the Contractor on behalf of the City.
16. TERMINATION. If, through any cause, the Contractor shall fail to fulfill in timely and proper manner its obligations under this contract, or if the Contractor shall violate any of the covenants, section or stipulations of this contract, the City shall have the right to terminate this contract by giving written notice to the Contractor of such termination within thirty (30) days of the City's discovery of said failure or violation unless the failure or violation is corrected within said thirty (30) day period.
17. DISCRIMINATION. The Contractor agrees, in the performance of this contract, not to discriminate on the grounds or because of race, creed, color, national origin or ancestry, sex, religion, age, handicap, or political opinion or affiliation, against any employee of the Contractor or application for employee not of the Contractor, and shall include a similar provision in all subcontracts to be performed for the Contractor on behalf of the City.
18. INDEMNIFICATION AND LIABILITY. The parties mutually agree to the following:

- a. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, whether or not caused by or resulting from the City's negligence, arising out of or in any way connected with a breach of this contract.
  - b. The Contractor shall defend, indemnify, and hold the City harmless from and against any and all claims, losses and causes of action arising out of any claims or causes of action, including but not limited to personal injuries, death, or damage to property which are incurred by the Contractor, or any third party arising out of or in any way connected with the services performed by the Contractor pursuant to this contract.
  - c. The Contractor assumes full responsibility for relationships with subcontractors, and shall defend, indemnify and hold harmless the City from and against any and all liability, suits, claims, damages, costs ( including attorney' s fees), losses, outlays, and expenses in any manner caused by, arising out of or connected with this contract, notwithstanding any possible negligence whether sole, concurrent or otherwise) on the part of the City, its agents, or employees.
  - d. The Contractor shall defend, indemnify and hold the City harmless from any and all claims or causes of action, including attorney' s fees and legal expenses, arising out of or based upon any alleged infringement of any copyright, or any alleged invasion or infringement of any right of any third party in connection with the Contractor' s performance of work hereunder.
19. INSURANCE. The Contractor must have and maintain, at the Contractors expense, adequate liability insurance to satisfy statutory 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 Contractor'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.
- 19.1 General Liability Insurance with a company authorized to do business in the State of Missouri with limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injuries (including death) and property damage, and Two Million Dollars (\$2,000,000.00) aggregate. The City of Branson must be named as an additional insured.
  - 19.2 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.
  - 19.3 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 Contractor and Subcontractor.
  - 19.4 The Contractor will require all Subcontractors to provide and maintain like insurance as set forth above unless the Contractor's policies extend to claims made against or growing out of operations of the Subcontractors.

- 19.5 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.
- 19.6 Contractor understands and agrees that the insurance required under the terms of the contract in no way precludes the Contractor from carrying such other insurance as may be deemed necessary by the Service Provider for the operation of the Contractor's business or for the benefit of the Contractor's employees.
- 19.7 Notwithstanding any other provision of the contract to the contrary, no insurance procured by the Contractor shall be construed to constitute a waiver of any sovereign immunity as set forth in Sec. 537.600 through 537.650, RSMo, 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.
- 19.8 Insurance Certificates. It is the sole responsibility of the Contractor 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.
20. COMPLIANCE. The Contractor agrees to comply with all laws, regulations and ordinances of the United States of America, the State of Missouri and the City which are applicable to work being performed by the Contractor under this contract.

21. NOTICES.

- 21.1 For a notice or other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by first class mail with all fees prepaid, or (3) by registered or certified mail, return receipt requested and postage prepaid.
- 21.2 A valid notice or other communication under this agreement will be effective when received by the party to which it is addressed. It will be deemed to have been received if it is delivered by hand, first class mail, or registered or certified mail:

to the City:                      City of Branson, Missouri  
                                            Contract Management  
                                            110 West Maddux, Suite 205  
                                            Branson, MO 65616

to the Contractor:              Branson Lakes Area Chamber & CVB  
                                            4100 N. Gretna Road  
                                            Branson, MO 65616

The date of delivery of any notice shall be the date falling on the second full day after the day of its mailing.

22. CONTRACT ADMINISTRATION.

22.1 The City designates its City Administrator (or designated alternative(s)) as its representative(s) to whom all communications, notices contracts and administration of the work to be performed under this contract shall be directed by the Contractor.

22.2 The Contractor designates its President (or designated alternative) as its representative to whom all communications, notices, contracts and administration of the work to be performed under this contract shall be directed by the City.

22.3 The representative of the City, with Board of Aldermen approval, and the representative of the Contractor shall have primary responsibility and authority on behalf of their respective parties to administer the contract and to agree upon procedures for coordinating the efforts of both parties under this contract.

23. REFUNDS. At the termination of this contract, the Contractor shall pay to the City any refunds received by the Contractor from vendors or subcontractors for services performed or purchases made under the contract and for which the Contractor has been reimbursed hereunder.

24. PROPERTY.

24.1 Throughout the duration of this contract, any and all non-expendable equipment, supplies or other items purchased by the Contractor for which the Contractor is reimbursed by the City under the terms hereof shall be the property of the City and it is expressly understood that Contractor is using said property only under and in performance of this contract. Upon termination of this contract said property shall be tendered to the City.

24.2 All reports, documentation, and material developed or acquired by the Contractor for which the Contractor is reimbursed by the City under the terms hereof shall be the property of the City. The Contractor shall agree and understand that all discussions with the Contractor and all information, material, and reports prepared and obtained by the Contractor as a result of the Contractor's performance under this contract shall be confidential and not released to the public without the prior consent of the City. Any request for materials or information that may be subject to public access under Sec 610.010, RSMo. et. seq or similar laws shall be immediately forwarded to the City.

25. REPRODUCTION. The City shall have the right to reproduce and/or use any products derived from the Contractor's work under this contract only in the original form without any payment for royalties, fees or other compensation except for those fees, royalties or other compensation charged by a subcontractor provided that: (a) the relevant subcontract requires the payment of such royalties, fees or other compensation; and (b) the City agrees to pay those royalties, fees or other compensation for continuous use of the product prior to performance by the subcontractor or use of the subcontractor's property.

26. MISSOURI IMMIGRATION LAW AFFIDAVIT. The Contractor understands that Sec. 285.530.2, RSMo 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 Contractor will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract nor will employ unauthorized aliens in connection with work performed under this Contract.

27. ANTI-DISCRIMINATION AGAINST ISRAEL. The Contractor shall provide a certification if requested by the City of Branson in accordance with Sec. 34.600, RSMo. that they have not engaged in a boycott of: Goods or services from the State of Israel; Companies doing business in, or with, Israel; Companies authorized by, licensed by, or organized under, the laws of the State of Israel; or Persons or entities doing business in the State of Israel.
28. MODIFICATION. Any modification to this contract must be in writing and signed by both parties hereto.
29. ASSIGNMENT. The Contractor shall not transfer any interest in this contract, whether by assignment or otherwise, without the prior written consent of the City.
30. SEVERABILITY. The parties acknowledge that if a dispute between the parties arises out of this contract, they want the court to interpret this agreement as follows:
  - 30.1 with respect to any provision that it holds as unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision;
  - 30.2 if an unenforceable provision is modified or disregarded in accordance with this section, the rest of the contract will remain in effect as written;
  - 30.3 by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and
  - 30.4 if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this contract, by holding the entire contract unenforceable.
31. JURISDICTION. The parties mutually agree that jurisdictions and venue for the purposes of any action arising from this contract from this contract by the parties shall be in Taney County, Missouri.
32. GOVERNING LAW. Missouri law governs all adversarial proceedings brought by one party against the other party arising out of this contract.
33. APPLICABLE LAWS. The Contractor agrees to comply with all laws of the United States of America, the State of Missouri, and the City which are applicable to work being performed by the Contractor under this contract.
34. ENTIRE AGREEMENT. This contract constitutes the entire understanding between the parties with respect to the subject matter of this contract and supersedes all other contracts, whether written or oral, between the parties.

APPROVED BY THE CITY OF BRANSON, MISSOURI ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.





# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL ACCEPTING THE PROPOSAL OF SUDDENLINK PERTAINING TO DATA COMMUNICATIONS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** IT DEPARTMENT

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- The City utilizes a combination of metro ethernet, dedicated internet, and cable internet via VPN data connectivity to transport network communications between various locations throughout the city.
- Metro ethernet and dedicated internet service is commercial grade via fiber optics for increased speed, stability, and performance.
- The City’s existing 3-year agreement with Suddenlink to provide these services is due to expire. Proposals to provide Metro Ethernet (2575-25) and Dedicated Internet (2576-25) were accepted to continue providing these necessary data connectivity services. The proposal specifications requested pricing for multiple speed options to establish the best value for the City
- After reviewing all proposals and service offerings, staff negotiated site, speed, and connectivity type details and requested a best and final offer from Suddenlink.
- Staff was able to negotiate with Suddenlink to bundle the various services for all sites into a single agreement. The total monthly cost for services will be \$9,376.56 with no installation fees.
- The contract is for a three-year term and includes two optional one-year renewals. The annual not-to-exceed amount is \$112,518.72. Funds for this contract are included in the 2021 budget appropriations.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** W3.1

**ATTACHED EXHIBITS:**

**ITEM/SUBJECT: READING OF A BILL ACCEPTING THE PROPOSAL OF SUDDENLINK PERTAINING TO DATA COMMUNICATIONS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

---

**DETAILED ANALYSIS:**

The following is a summary of the Dedicated Internet monthly pricing for 1Gbps service with the City Hall only option selected:

<b>Item</b>	<b>Arcadia IT Partners</b>	<b>Granite</b>	<b>Suddenlink</b>
1 Gbps DIA (Monthly)	\$1,779.75	\$1,205.00	\$1,850
One Non-Recurring Charges	\$14,545	N/A	N/A

The following is a summary of the Metro Ethernet monthly pricing for 1Gbps service:

<b>Item</b>	<b>Arcadia IT Partners</b>	<b>Suddenlink</b>
1 Gbps Metro Ethernet (Per Site Monthly)	\$2,195.00	\$550.00
Non-Recurring Charges	TBD	N/A

\*Pricing is monthly prior to best and final

After reviewing the many options included in all proposals, staff was able to bundle various coax, Internet, and Metro Ethernet services with Suddenlink. The Internet and Metro Ethernet services will be delivered to the City via a fiber optic cabling infrastructure. Staff has evaluated the network infrastructure to determine the type of network connectivity necessary on a site by site basis to reduce cost. The City’s Internet circuit will be 1Gbps fiber service. The speed and method of delivery for Metro Ethernet service to each site will vary depending on the network bandwidth needs and service delivery cost.

Based on the methodology described above, staff was able to negotiate with Suddenlink to bundle the various services for all sites into a single agreement. The total monthly cost for services will be \$9,376.56 with no installation fees.

BILL NO. 5935

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

**AN ORDINANCE ACCEPTING THE PROPOSAL OF SUDDENLINK PERTAINING TO DATA COMMUNICATIONS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the City of Branson is approving a contract with Suddenlink pertaining to Data Communications for the City; and

**WHEREAS**, entering into a three year contract with Suddenlink allows the City to receive a lower rate and locks the price for all three years; and

**WHEREAS**, of the proposals received, Suddenlink has been recommended for approval by staff.

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

Section 1: The Board of Aldermen hereby accepts the proposal of Suddenlink pertaining to data communications for an annual amount not to exceed \$112,518.72 and authorizes the Mayor to execute the contract attached hereto as Exhibit "1".

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*CLM #51831 11/19/20*  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney



		Recurring Charge	Quantity	Recurring Charge	
9	Optical Ethernet 1G Intra 1Gb	\$550.00	1	\$550.00	\$0.00

Order Type: Renewal Service Location Type: LIT 'A' Location: 616 W W PACIFIC ST, BRANSON, MO 65616 Demarc:	Account #: 7308373011 Service Location Type: LIT 'Z' Location: 110 W Maddux St, Branson, MO 65616 Demarc: Type II: <input type="checkbox"/>
---------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------

		Individual Monthly Recurring Charge	Quantity	Total Monthly Recurring Charge	Non Recurring Charge
10	Optical Ethernet 1G Intra 1Gb	\$550.00	1	\$550.00	\$0.00

Order Type: Renewal Service Location Type: LIT 'A' Location: 1500 BRANSON HILLS PKWY, BRANSON, MO 65616 Demarc:	Account #: 7308373011 Service Location Type: LIT 'Z' Location: 110 W Maddux St, Branson, MO 65616 Demarc: Type II: <input type="checkbox"/>
--------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------

		Individual Monthly Recurring Charge	Quantity	Total Monthly Recurring Charge	Non Recurring Charge
11	Optical Ethernet 1G Intra 1Gb	\$550.00	1	\$550.00	\$0.00

Order Type: Renewal Service Location Type: LIT 'A' Location: 2855 FALL CREEK RD, BRANSON, MO 65616 Demarc:	Account #: 7308373011 Service Location Type: LIT 'Z' Location: 110 W Maddux St, Branson, MO 65616 Demarc: Type II: <input type="checkbox"/>
---------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------

		Individual Monthly Recurring Charge	Quantity	Total Monthly Recurring Charge	Non Recurring Charge
12	Optical Ethernet 1G Intra 1Gb	\$550.00	1	\$550.00	\$0.00

Order Type: Renewal Service Location Type: LIT 'A' Location: 3718 FALL CRBEK RD, BRANSON, MO 65616 Demarc:	Account #: 7308373011 Service Location Type: LIT 'Z' Location: 110 W Maddux St, Branson, MO 65616 Demarc: Type II: <input type="checkbox"/>
---------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------

		Individual Monthly Recurring Charge	Quantity	Total Monthly Recurring Charge	Non Recurring Charge
13	Optical Ethernet 1G Intra 1Gb	\$550.00	1	\$550.00	\$0.00

Order Type: Renewal Service Location Type: LIT 'A' Location: 521 CLIFF DR, BRANSON, MO 65616 Demarc:	Account #: 7308373011 Service Location Type: LIT 'Z' Location: 110 W Maddux St, Branson, MO 65616 Demarc: Type II: <input type="checkbox"/>
---------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------

		Individual Monthly Recurring Charge	Quantity	Total Monthly Recurring Charge	Non Recurring Charge
14	Optical Ethernet 1G Intra 1Gb	\$550.00	1	\$550.00	\$0.00

Order Type: Renewal Service Location Type: LIT 'A' Location: 601 COMPTON DR, BRANSON, MO 65616 Demarc:	Account #: 7308373011 Service Location Type: LIT 'Z' Location: 110 W Maddux St, Branson, MO 65616 Demarc: Type II: <input type="checkbox"/>
-----------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------

		Individual Monthly Recurring Charge	Quantity	Total Monthly Recurring Charge	Non Recurring Charge
15	Optical Ethernet 1G Intra 1Gb	\$550.00	1	\$550.00	\$0.00

Order Type: Renewal Service Location Type: LIT 'A' Location: 296 Buena Vista Rd, Branson, MO 65616 Demarc:	Account #: 7308373011 Service Location Type: LIT 'Z' Location: 110 W Maddux St, Branson, MO 65616 Demarc: Type II: <input type="checkbox"/>
---------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------

		Individual Monthly Recurring Charge	Quantity	Total Monthly Recurring Charge	Non Recurring Charge

16	Optical Ethernet 1G Intra 1Gb	\$550.00	1	\$550.00	\$0.00
----	-------------------------------	----------	---	----------	--------

Order Type: Renewal Service Location Type: LIT 'A' Location: 300 S Boxcar Willie Dr, Branson, MO 65616 Demarc:		Account #: 7308373011 Service Location Type: 'Z' Location: Demarc: Type II: <input type="checkbox"/>			
		<i>Individual Monthly Recurring Charge</i>	<i>Quantity</i>	<i>Total Monthly Recurring Charge</i>	<i>Non Recurring Charge</i>
17	Optical Internet Access 100M 100Mb	\$550.00	1	\$550.00	\$0.00

Order Type: Renewal Service Location Type: 'A' Location: 1198 CANAL ST, BRANSON, MO 65616 Demarc:		Account #: 7308373011 Service Location Type: 'Z' Location: Demarc: Type II: <input type="checkbox"/>			
		<i>Individual Monthly Recurring Charge</i>	<i>Quantity</i>	<i>Total Monthly Recurring Charge</i>	<i>Non Recurring Charge</i>
18	Business Internet 300/30 300Mb	\$139.95	1	\$139.95	\$0.00
19	Suddenlink Business Secure Internet	\$9.95	1	\$9.95	\$0.00
20	Wired Modem Rental	\$11.99	1	\$11.99	\$0.00
21	Network Access Fee Surcharge	\$3.50	1	\$3.50	\$0.00

Order Type: Renewal Service Location Type: LIT 'A' Location: 300 S Boxcar Willie Dr, Branson, MO 65616 Demarc:		Account #: 7308373011 Service Location Type: 'Z' Location: Demarc: Type II: <input type="checkbox"/>			
		<i>Individual Monthly Recurring Charge</i>	<i>Quantity</i>	<i>Total Monthly Recurring Charge</i>	<i>Non Recurring Charge</i>
22	Business Internet 1Gb/50 1Gb	\$404.95	1	\$404.95	\$0.00
23	Wired Modem Rental	\$11.99	1	\$11.99	\$0.00
24	Network Access Fee Surcharge	\$3.50	1	\$3.50	\$0.00
25	Suddenlink Business Secure Internet	\$9.95	1	\$9.95	\$0.00

Order Type: Renewal Service Location Type: 'A' Location: 468 RIVER LN, BRANSON, MO 65616 Demarc:		Account #: 7308373011 Service Location Type: 'Z' Location: Demarc: Type II: <input type="checkbox"/>			
		<i>Individual Monthly Recurring Charge</i>	<i>Quantity</i>	<i>Total Monthly Recurring Charge</i>	<i>Non Recurring Charge</i>
26	Business Internet 300/30 300Mb	\$139.95	1	\$139.95	\$0.00
27	Wired Modem Rental	\$11.99	1	\$11.99	\$0.00
28	Network Access Fee Surcharge	\$3.50	1	\$3.50	\$0.00
29	Suddenlink Business Secure Internet	\$9.95	1	\$9.95	\$0.00

Service Term:	3 years	<i>For Internal Use Only</i>
Total Monthly Recurring Charge:	\$9,376.56	
Total Installation Charge:	\$0.00	

**Remarks**

City will be dropping Lakeside RV Park Optical Internet after network reconfiguration in early 2021

This agreement is for 3 years with two 1 year options for renewal

**Terms and Conditions**

Cequel Communications, LLC dba Suddenlink Communications ("Suddenlink" or "Altice Business") and Customer acknowledge and agree to be bound by the Terms and Conditions attached hereto. Customer will be responsible for the rates listed on the Service Agreement form and all applicable local, state and federal taxes, charges and assessments along with any other applicable charges. Customers purchasing Suddenlink Business Hosted Voice Service (on Fiber) are also subject to Business Hosted Additional T&C's for Fiber <https://www.suddenlink.com/terms-and-policies> and Exhibits attached hereto and made part of this Agreement

Notice Regarding 911 Services. While your Suddenlink Phone Service may be supported by a battery backup, it is electrically powered. In the event of a power outage or Suddenlink network failure, 911 services will not be available. You are prohibited from moving the phone modem from the address where it was installed. If you move the phone modem, the 911 service may not function properly and emergency operators will not be able to identify the caller's location.

By signing this Agreement; (i) you represent that you are the Customer or Customer's authorized agent; (ii) you agree that you have received a copy of and have been given an opportunity to review this Commercial Service Order and Agreement, (iii) you agree to the terms and conditions of the Commercial Service Agreement; (iv) you acknowledge that you have read and understood the Notice Regarding 911 Services above; This Agreement shall not be deemed effective until it has been executed by both parties.

Agreed by:

Customer

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Cequel Communications, LLC dba Suddenlink Communications

Authorized Signature: Michael Shaffer

Print Name: Michael Shaffer

Title: Director of Sales

Date: 11/10/2020

APPROVED AS TO FORM:

CLC #5171 11/4/20

City Attorney

## Commercial Service Agreement

Customer ("You" or "Customer") agrees to be bound by this Commercial Service Agreement (the "Agreement") with respect to all services ("Service(s)") provided by Suddenlink Communications and its affiliates and subsidiaries authorized to provide the services set forth herein (collectively, "Suddenlink"). The Agreement includes the general terms of service set forth below, as well as the additional commercial terms of service and terms of service applicable to the specific Services and features to which you subscribe or have access, including cable television service ("Video Service"), high speed data service ("High Speed Internet Service"), voice service ("Phone Service" or "Business Hosted Voice Service on FIBER"), support services and mobile apps, as are set forth below or at <https://www.suddenlink.com/terms-and-policies> and may be updated from time to time (collectively, the "Additional Terms of Service"), which are incorporated in this Agreement by reference. You further understand and agree that the Suddenlink Communications Privacy Policy ("Privacy Policy"), which governs the collection, use and disclosure of Customer personal information, is likewise incorporated herein by reference. THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT THAT AFFECTS CUSTOMER'S RIGHTS, INCLUDING THE WAIVER OF CLASS ACTIONS AND JURY TRIALS. THE AGREEMENT ALSO CONTAINS PROVISIONS FOR OPTING OUT OF ARBITRATION. PLEASE REVIEW IT CAREFULLY.

### GENERAL TERMS OF SERVICE APPLICABLE TO SERVICE(S):

- 1. Services.** Suddenlink shall use reasonable efforts to make the Services available by any requested service date. Suddenlink shall not be liable for any damages whatsoever resulting from delays in meeting any service dates due to delays resulting from construction or for reasons beyond its control. Suddenlink shall provide Customer with the Services and Equipment identified on the commercial service order presented to Customer at time of installation ("Service Order"); provided, however, if Suddenlink determines that Customer's location is not serviceable under Suddenlink's normal installation guidelines, Suddenlink may terminate this Agreement. Suddenlink shall have no responsibility for the maintenance or repair of networks, facilities and equipment not furnished by Suddenlink.
- 2. Payment of Charges.** The charges for one month of Services, including any deposits, activation, set-up, installation, construction and/or Equipment charges, are due upon installation of the Services or as otherwise set forth on the Service Order. Thereafter, Customer agrees to pay monthly recurring Service charges and Equipment charges (if any) in advance, including all applicable fees (such as restoration or experience fees), taxes, regulatory fees, franchise fees, surcharges (including sports and broadcast tv surcharges), or other government assessments no later than the date indicated on Customer's bill. Charges for non-recurring Services or Equipment charges will be reflected on Customer's subsequent bill at the then current applicable rates. All rates for Services, Equipment charges and other fees and surcharges are subject to change in accordance with applicable law. If Customer elects to pay by automatic recurring credit card, debit card or automatic clearing house payments, Customer authorizes Suddenlink to charge such accounts. If Customer elects to send a check as payment, Customer authorizes Suddenlink either to use information from Customer's check to make a one-time electronic funds transfer from Customer's bank account or to process the payment as a check transaction. Failure to receive a bill does not release Customer from Customer's obligation to pay. Failure to pay the total balance when due (including checks returned for insufficient funds) shall constitute a breach of this Agreement and may be grounds for termination of Service, removal of Equipment from Customer's premises and/or imposition of a late fee ("Late Fee") in accordance with applicable law. You can avoid incurring Late Fees by paying your monthly bill promptly. Any Late Fee Imposed on Customer is intended to be a reasonable advance estimate of costs of managing past due accounts. The Late Fee is not interest, a credit service charge or a finance charge. If the Customer has more than one account (Business and/or Residential) served by Suddenlink, all Suddenlink-provided Services at all locations may be subject to discontinuance of Service in the event any one account remains unpaid. In the event collection activities are required, an additional collection charge may be imposed.
- 3. Additional Fees.** In addition to Customer's monthly recurring charges and any Late Fee, additional fees may be imposed, including fees for returned checks, Payment Assistance Fees for paying by phone, receiving a paper bill, charge card chargeback, early termination, reconnection and service calls. Additional charges may also be imposed if collection activities are required to recover past due balances, including attorney fees. A list of applicable fees ("Schedule of Fees") is available at [www.suddenlink.com/pricing-packages](http://www.suddenlink.com/pricing-packages). Suddenlink reserves the right to amend or change the Schedule of Fees from time to time.
- 4. Third Party Provider Charges.** In connection with Customer's use of the Services and Equipment, Customer may be able to access, subscribe to, use and/or purchase products, services, software or applications that are provided to Customer by third parties ("Third Party Providers"). Customer acknowledges that Customer may incur charges in connection with the subscription to, purchase or use of these Third Party Provider products, services, software or applications. All such charges, including any additional fees and applicable taxes, shall be paid by Customer to the Third Party Provider and are not the responsibility of Suddenlink. Credits or billing adjustments for products, services, software or applications billed by a Third Party Provider shall be subject to the stated billing practices of that Third Party Provider. Termination of a service or subscription offered for a separate charge billed directly by a Third Party Provider shall be effected in accordance with the Terms of Service or similar agreement between the Customer and the Third Party Provider.
- 5. Taxes.** Customer agrees to pay any local, state or federal taxes imposed or levied on or with respect to the Services, the Equipment or installation or service charges incurred with respect to the same.
- 6. Term: Early Termination.** Your Service Term subscription begins either on the first day following your installation date and continues for the initial term set forth on your Service Order ("Initial Term"). If a Service Order does not specify an Initial Term, You have an automatically renewing monthly Term subscription ("Monthly Subscription").
  - a. Monthly Term.** If you have a Monthly Subscription, your subscription begins either on the first day following your installation date and automatically renews thereafter on a monthly basis beginning on the first day of the next billing period assigned to you until cancelled by you. The monthly service charge(s) will be billed at the beginning of your assigned billing period and each month thereafter unless and until you cancel your Service(s). PAYMENTS ARE NONREFUNDABLE AND THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED SUBSCRIPTION PERIOD(S). You may cancel Service(s) for a period up to the last day of the billing period prior to the service period that you wish to cancel, and the cancellation will be effective at the end of the then-current billing period. Any request for cancellation after the commencement of a service period will be effective at the end of the then-current service period. Access to the Services will, if possible, continue to be provided at the location ordered or, if you move, to your new location if in a Suddenlink-served area (subject to any installation charges).
  - b. Initial Term Subscription.** If you have an Initial Term, your subscription begins either on the first day following your installation date and continues for the duration of the applicable Initial Term. Upon the expiration of the Initial Term, Your subscription automatically renews thereafter on a monthly basis (each, a "Renewal Month") beginning on the first day of the next billing period assigned to you until cancelled by you. The monthly service charge(s) for each month during the Initial Term and any Renewal Months will be billed at the beginning of your assigned billing period and each month thereafter unless and until you cancel your Service(s). PAYMENTS ARE NONREFUNDABLE AND THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED SUBSCRIPTION PERIOD(S). You agree to pay Suddenlink early cancellation fees in an amount that includes: (i) all non-recurring charges reasonably expended by Suddenlink to establish service to Customer and not remunerated, (ii) any disconnection, early cancellation or termination charges reasonably incurred and paid by Suddenlink to third parties on behalf of Customer, and (iii) all monthly recurring charges for Services and Equipment for the remaining balance of the Initial Term. You agree that early cancellation fees or any other fees may automatically be charged to your account and your credit or debit card provided to Suddenlink and you agree to pay such fees.
- 7. Right to Make Credit Inquiries.** Customer acknowledges and agrees that Suddenlink may (a) verify Customer's credit standing, make inquiries and receive information about your credit experiences, including your credit report, from credit reporting agencies; (b) enter this information in your file, and disclose this information concerning you to appropriate third parties for reasonable business purposes; and (c) furnish information about you, your account(s) and your payment history to those credit reporting agencies.
- 8. Security Deposit.** Suddenlink may require a deposit or activation fee based on Customer's credit standing or past payment history with Suddenlink. A deposit or activation fee does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. Any security deposit given by Customer for the Equipment or Suddenlink's Service will be due and payable upon the first monthly billing. Such security deposits will be returned to Customer within sixty (60) days of termination of Suddenlink's Service so long as payment has been made for all amounts due on Customer's account and Customer has returned the Suddenlink Equipment undamaged. Security deposits paid by Customer for Equipment or Services may be used, to the extent permitted by law, to offset any unpaid balance or charges after termination of Service. Customer shall remain liable for any outstanding balances after the security deposit has been applied. Further terms and conditions of the security deposit may be contained in the deposit receipt given to Customer at the time the security deposit is collected.
- 9. Disputed Charges.** Customer agrees to pay all undisputed monthly charges and all applicable fees and taxes as itemized on the Suddenlink monthly bill and notify Suddenlink in writing of disputed items or requests for credit within thirty (30) days of Customer's receipt of the bill for which correction of an error or credit is sought, or longer as provided by applicable law. The date of the dispute shall be the date Suddenlink receives sufficient documentation to enable Suddenlink to investigate the dispute. The date of the resolution is the date Suddenlink completes its investigation and notifies the Customer of the disposition of the dispute.
- 10. Adjustments or Refunds.** Any adjustment or refund, given in each case in Suddenlink's sole discretion, will be accomplished by a credit on a subsequent bill for Service, unless otherwise required by applicable law. No credit allowance will be made for interruptions of Service that are: (a) due to the negligence of or noncompliance with the provisions of the Agreement by Customer or any person authorized by customer to use the Service; (b) due to the negligence of any person other than Suddenlink including, but not limited to, the other common carriers connected to the Suddenlink's facilities; (c) due to the failure or malfunction of Customer owned equipment or third party equipment; (d) during any period in which Suddenlink is not given full and free access to its facilities and Equipment for the purpose of investigating and correcting interruptions; (e) during a period in which Customer continues to use the Service on an impaired basis; (f) less than thirty (30) minutes' duration; (g) during any period when the interruption is due to implementation of a Customer order for a change in Service arrangements; or (h) due to circumstances or causes beyond the control of Suddenlink. Unless otherwise provided by applicable law, in the event any amounts owed by Suddenlink to Customer are not claimed by Customer within one year of the date on which the amount became payable to Customer, Customer shall forfeit all rights to the refund and all such amounts shall become the property of Suddenlink.
- 11. Equipment and Software.** "Distribution System" shall mean (1) all distribution plant, network facilities and associated electronics and all Equipment installed or provided by Suddenlink or its predecessors which is necessary to distribute Services throughout the premises, but specifically excluding Inside Wiring, and (2) all Equipment furnished by Suddenlink at the premises. Ownership of the Distribution System shall at all times be and remain in Suddenlink and shall be used exclusively by and in connection with Suddenlink operations. Upon termination of this Agreement and if Suddenlink is no longer providing Services to the premises, Suddenlink has the option to remove all or any portion of the Distribution System, provided that any damage to the premises caused by removal of the Distribution System will be repaired by Suddenlink to Customer's reasonable satisfaction. "Equipment" means all equipment, including but not limited to, any cables, wires, amplifiers, cable boxes, access cards, remotes, cable cards, battery backup units, modems, routers, gateways, Alice One and Alice One Mini units distributed to and/or installed for use in the Customer's service location but does not include Inside Wiring. "Inside Wiring" shall mean all wiring on the Customer's side of the demarcation point at Customer's service location, whether installed by Suddenlink or by Customer. The demarcation point shall mean a point at (or about) twelve (12) inches outside of where the cable wire enters the Customer's service location. Inside Wiring shall be Customer property and not Suddenlink Equipment, and repair and maintenance for such Inside Wiring is the responsibility of Customer unless otherwise agreed by Customer and Suddenlink. None of the Equipment shall become a fixture nor shall distribution, installation, and/or use of Equipment, including but not limited to cable boxes and/or set top boxes be deemed a lease of such Equipment. Unless otherwise stated in the Service Order, Customer will acquire no ownership or other interest in the Distribution System, Equipment, network facilities, and software by virtue of payments made pursuant to this Agreement or by the attachment of any portion of the Distribution System, Equipment or network facilities to Customer's premises.
  - a. Misuse of Equipment.** Suddenlink Equipment is intended to service and reside at the specific service location and is not to be removed from the service location where it was installed or used off premises without Suddenlink authorization. Customer agrees that neither Customer nor any other person (except Suddenlink's authorized personnel) will open, alter, misuse, tamper with, service, or make any alterations to any Equipment. Customer will not remove any markings or labels from the Equipment. Customer agrees to safeguard the Equipment from loss or damage of any kind, and (except for any self installation procedures approved by Suddenlink) will not permit

anyone other than a Suddenlink authorized representative to perform any work on the Equipment. Any misuse, alteration, tampering, or removal, or the use of Equipment which permits the receipt of Services without authorization or the receipt of Services to an unauthorized number of outlets, or to unauthorized locations constitutes theft of service and is prohibited.

- b. **Return of Equipment.** If Customer's Service is terminated or cancelled (for whatever reason), unless Suddenlink expresses otherwise in writing, Customer agrees that Customer no longer has the right to keep or use the Equipment and Customer must promptly return the Equipment. The Equipment must be returned to Suddenlink in the same condition as when received, ordinary wear and tear excepted. Absent other instructions, if Customer fails to return the Equipment, Customer will pay any expenses Suddenlink incurs in retrieving the Equipment. Failure of Suddenlink to remove the Equipment does not mean that Suddenlink has abandoned the Equipment. Suddenlink may impose a charge for unreturned Equipment to be determined in accordance with Suddenlink's then current schedule of charges for non-returned Equipment and/or continue to charge Customer a monthly Service fee every month until any remaining Equipment is returned, collected by Suddenlink or fully paid for by Customer. Any charge for unreturned Equipment shall be due immediately. Suddenlink retains ownership of all Equipment.
- c. **Damaged or Lost Equipment.** If the Equipment is damaged by Customer, destroyed, lost or stolen while in Customer's possession, Customer is responsible for the cost of repair or replacement of the Equipment.
- d. **Operation of Equipment.** Customer agrees to operate any Equipment in accordance with instructions of Suddenlink or Suddenlink's agent. Failure to do so will relieve the Suddenlink Parties of liability for Interruption of Service and may make the Customer responsible for damage to Equipment.
- e. **Tests and Inspections.** Upon reasonable notification to the Customer, and at a reasonable time, Suddenlink may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth herein.
- f. **Software.** Customer agrees to comply with the terms and conditions of any software license agreement applicable to the software provided or installed by Suddenlink ("Software"). The Software shall be used solely in connection with the Services and Customer will not modify, disassemble, translate or reverse engineer, the Software. All rights title and interest to the Software, including associated intellectual property rights, are and will remain with Suddenlink and Suddenlink's licensors. If Customer's Service is terminated, Customer will promptly return or destroy all Software provided by Suddenlink and any related written materials. Suddenlink will have the right to upgrade, modify and enhance the Equipment and Software from time to time. Customer acknowledges that the Software, and any related written materials, may be subject to applicable export control laws and regulations of the USA. Customer agrees not to export or re-export the Software, directly or indirectly, to any countries that are subject to USA export restrictions.
- g. **Repair.** Suddenlink will repair and/or replace defective Software or Equipment provided such damage was not caused by misuse, neglect or other fault of Customer. Suddenlink assumes no responsibility and shall have no responsibility for the operation, maintenance, condition or repair of any Customer-provided equipment and/or software, including, but not limited to, televisions, computer devices, remote controls or other consumer electronics, including any hardware or third party software, which may be connected to the Services ("Customer Equipment"), except that Suddenlink may automatically push required software or firmware updates directly to Customer Equipment when necessary for the provision of Suddenlink Service(s). Customer is responsible for the repair and maintenance of Customer Equipment. Suddenlink is not responsible or liable for any loss or impairment of Suddenlink's Service due in whole or in part to a malfunction, defect or otherwise caused by Customer Equipment. Suddenlink makes no warranties, with respect to Equipment or Service provided by Suddenlink or with respect to the Equipment's compatibility with any Customer Equipment.

12. **Prohibitions/Theft of Service.** Customer shall not intercept, receive or assist in the interception or receipt of, resale, distribute or duplicate any Services. In no event shall Customer use the Services and/or Equipment to engage in any illegal or prohibited activity.

13. **Customer Liability for Users.** Customer is responsible for any access, use or misuse of the Services and/or Equipment that may result from access or use by any other person who has access to Customer's premises, equipment or account. Customer is responsible for ensuring that all persons who use Customer's subscribed to Services ("Users") understand and comply with all terms and conditions applicable to the Services.

14. **Business Hosted Voice on Fiber:** Customers purchasing Business Hosted Voice on Fiber are also bound by the Additional Terms for Business Hosted Voice Service on Fiber found at [www.suddenlink.com/terms-and-policies](http://www.suddenlink.com/terms-and-policies) ("Terms of Service") and Exhibits A1 and A2 as set forth below.

a. **SOFTPHONES, OFF-SITE PHONES & WIFI CONNECTIVITY:** SUDDENLINK ALLOWS THE ABILITY TO ACCESS THE HOSTED VOICE SERVICE THROUGH SOFTPHONES, OFF-SITE PHONES AND WIFI CONNECTIVITY. IN NO EVENT SHALL SUDDENLINK BE RESPONSIBLE FOR, NOR DOES IT WARRANT THE PERFORMANCE OR INTEROPERABILITY OF THE SERVICE IN CONNECTION WITH ANY SOFTPHONES, OFF-SITE PHONES OR WIRELESS CONNECTIVITY. IT IS CUSTOMER'S SOLE RESPONSIBILITY TO SUPPORT AND TROUBLESHOOT ANY RELATED CONNECTIVITY ISSUES UNDER THIS SECTION. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THE HOSTED VOICE PRODUCT CHARACTERISTICS AS SET FORTH IN THE OFF-SITE REMOTE PHONE AND SOFTPHONE ACKNOWLEDGEMENT ATTACHED HERETO AS EXHIBIT A2. PHONES NOT PROVIDED BY SUDDENLINK UNDER THIS AGREEMENT ARE NOT PERMITTED NOR SUPPORTED AND USE OF SUCH PHONES WILL RESULT IN TERMINATION OF THIS AGREEMENT.

b. **Emergency Calling Services (E911 for Hosted Voice Service):** Customer is responsible for complying with all applicable emergency calling service laws. E911 procedures and restrictions are set forth in Emergency Calling Services Terms and Conditions attached hereto as Exhibit A1.

15. **SecureNet and SecureNet Services: Alice Business SecureNet Service / Alice Business SecureNet Plus Service:** Alice Business SecureNet Service/Alice Business SecureNet Plus Service purchased pursuant to this Agreement is a turnkey managed service solution that bundles Alice Business Internet Service (over fiber), Managed DDoS Protection Service, Managed Security Gateway Service, and for Alice Business SecureNet Plus Service, also includes Managed Security Gateway Service with Unified Thread Management, and is subject to the terms and conditions of this Agreement, including those for Managed DDoS Protection Service and Managed Security Gateway Service as set forth below.

16. **Managed DDoS Protection Service:** Managed DDoS (Distributed Denial of Service) Protection Service purchased pursuant to this Agreement and offered in conjunction with Alice Business Internet Service (over fiber) only, will monitor, detect and mitigate Alice Business Internet Service inbound traffic against DDoS attacks and provide cleansing up to thirty (30) times the contracted bandwidth. Managed DDoS Protection Service is provisioned over Alice Business Internet Service/traffic only.

17. **Service Level Agreement:** The Service Level Agreement ("SLA") attached hereto as Exhibit A sets forth Customer's sole remedy for any claim relating to the Service including any failure to meet any guarantee as set forth in the SLA.

18. **Access to Customer Premises:** Customer grants Suddenlink and its employees, agents, contractors, and representatives all necessary rights of access to enter and within Customer's premises, including access to space for cables, conduits and equipment, the wiring within Customer's premises and Customer's computer(s) and other devices, to install, deliver, connect, inspect, maintain, repair, replace, disconnect, remove or alter any and all facilities, check for signal leakage or install or deliver Equipment and Software provided by Suddenlink. Customer shall cooperate in providing such access upon request of Suddenlink. If Customer is not the owner of the premises, Customer warrants that Customer has obtained the legal authority of the owner to authorize Suddenlink personnel and/or its agents to enter the premises for the purposes described herein. Suddenlink's failure to remove its Equipment shall not be deemed an abandonment thereof. Customer shall provide a secured space with electrical power, climate control and protection against fire, vandalism, and other casualty for Suddenlink's equipment. Customer is responsible for ensuring that Customer's equipment is compatible for the Services selected and with the Suddenlink network.

19. **Violations of this Agreement.** It shall be a violation of this Agreement for Customer or any User (1) to engage in any conduct prohibited by this Agreement (or by any terms and conditions incorporated herein by reference); or (2) not to engage in conduct required by this Agreement, each case determined in Suddenlink's sole good faith discretion. In addition, whether or not the conduct set forth below is elsewhere prohibited by this Agreement, it shall be a violation of this Agreement if: (a) Customer or any User fails to abide by Suddenlink's rules and regulations or to pay the charges billed; (b) Customer or any User fails to provide and maintain accurate registration information or the information required in the registration process is or becomes incorrect, absent or incomplete; (c) Customer or any User engages in any illegal or prohibited activity in connection with their use of any Service; (d) Customer or any User harasses, threatens or otherwise abuses any Suddenlink employee or agent; (e) Customer or any User refuses to provide Suddenlink with reasonable access to the service location or refuses to allow Suddenlink to diagnose and/or troubleshoot a service issue when such access or customer interaction is necessary in order to provide the appropriate customer support; or (f) The amount of customer and/or technical support required to be provided to Customer or any User is excessive in the sole good faith discretion of Suddenlink.

20. **Termination.** Suddenlink may terminate this Agreement, disconnect or suspend any or all Services, and remove Equipment at any time, without prior notice, for any reason whatsoever or for no reason, including but not limited to if Customer or any User fails to fully comply with the terms of this Agreement and/or any Suddenlink or authorized Third Party Provider terms of service, agreements or policies incorporated herein by reference. If Suddenlink terminates Service due to a violation of this Agreement or Suddenlink's policies, Customer may be subject to additional fees and charges, including disconnect and termination fees and Suddenlink may also exercise other rights and remedies available under law or in equity.

21. **Effect of Termination by Suddenlink.** Customer agrees that in the event of termination by Suddenlink: (i) Suddenlink and any Third Party Providers of co-branded services offered as part of or through the high speed internet service shall have no liability to Customer or any User; and (ii) unless expressly prohibited by law, Suddenlink, in its sole good faith discretion, may decline or reject a new application for service or block access to or use of any component of the Services by Customer or any former User. Customer further agrees that upon termination of any Service, Customer will immediately cease use of the Equipment and any Software, and; Customer will pay in full the charges for Customer's use of the Service and the Equipment through the later of: (i) Customer's applicable Service month, or (ii) if applicable, the expiration of any promotional term, or, if applicable, (iii) the date when the associated Equipment or Software has been returned to Suddenlink. Failure of Suddenlink to remove Equipment shall not be deemed an abandonment thereof. Customer shall pay reasonable collection and/or attorney's fees to Suddenlink in the event that Customer shall find it necessary to enforce collection or to preserve and protect its rights under this Agreement.

22. **Content and Services.** All content, program services, program packages, number of channels, channel allocations, broadcast channels, interactive services, email, data offerings and other services are subject to change in accordance with applicable law.

23. **Disclaimer.** Suddenlink assumes no liability for any program, services, content or information distributed on or through the Services, Equipment or the cable system, unless locally provided by Suddenlink, and Suddenlink expressly disclaims any responsibility or liability for your use thereof. Further, Suddenlink shall not be responsible for any products, merchandise or prizes promoted or purchased through the use of the Services.

24. **Telephone Communications With You Regarding Your Account or Service.** You agree that Suddenlink and its agents may call or text you at any phone number (landline or wireless) that you provide to us, using an automated dialing system and/or a prerecorded message, for non-promotional service and/or account-related purposes, such as appointment confirmations, service alerts, billing and collection issues or account recovery concerns. You agree to notify us: (1) if any such phone number changes; (2) if no longer active; or (3) if ported from a landline to a wireless phone number. You can manage your contact preferences by logging into your account at <http://www.suddenlink.com>.

25. **No Waiver.** The failure of Suddenlink to enforce this Agreement and any of its **components**, for whatever reason, shall not constitute a waiver of any right of Suddenlink or the ability to assert or enforce such right at any time in the future.

26. **No Assignment.** This Agreement and the Services and/or Equipment supplied by Suddenlink are not assignable or otherwise transferable by Customer, without specific written authorization from Suddenlink. In Suddenlink's discretion, Suddenlink may assign, in whole or in part, this Agreement, and Service may be provided by one or more legally authorized Suddenlink affiliates.

27. **No Warranty; Limitation of Liability.** Customer expressly agrees that: (a) the Services provided are best efforts services and the Services, Software and Equipment are provided by Suddenlink on an "AS IS" and "AS AVAILABLE" basis without warranties of any kind, either express or implied; (b) Suddenlink, its officers, shareholders, directors, employees, affiliates, vendors, carrier partners, content providers and other persons or entities involved in providing the Services or Equipment (collectively, the "Suddenlink Parties") are not responsible or liable for any loss or impairment of service due in whole or in part to Customer owned- or provided-Equipment; and (c) all use of the Services, Software and Equipment, including that provided by Third Party Providers, as well as the purchase, download or use of any third party service, product, or application provided by or accessed through the Services or Equipment, are provided at Customer's sole risk and Customer assumes total responsibility for Customer's or any User's use of the Services. Without limiting the generality of the foregoing, the Suddenlink Parties make no warranty: (i) that the Services will be uninterrupted or error free or that the Equipment will work as intended; (ii) as to transmission or upstream or downstream speeds of the network; (iii) that the Services, Equipment or Software are compatible with any Customer owned- or provided-Equipment; or (iv) as to the security of Customer's communications via Suddenlink's facilities or Services, or that third parties will not gain unauthorized access to or monitor Customer's communications. Customer has the sole responsibility to secure Customer's communications and the Suddenlink Parties will not be liable for any loss associated with such unauthorized access. In addition,

neither the Suddenlink Parties nor any Third Party Provider of services or products makes any representations or warranties with respect to any product or services offered through the Services or Equipment, and Suddenlink shall not be party to nor responsible for monitoring any transaction between Customer and any Third Party Provider of products or services.

Except for a refund or credit as expressly provided in this Agreement, in no event (including negligence) will the Suddenlink Parties be held responsible or liable for any loss, damage, cost or expense including direct, indirect, incidental, special, treble, punitive, exemplary or consequential losses or damages including, but not limited to, loss of profits, earnings, business opportunities, loss of data, personal injury (including death), property damage or legal fees and expenses, sought by Customer or anyone else using Customer's Service account: (x) resulting directly or indirectly out of the use or inability to use the Services (including the inability to access emergency 911 or e911 services) and/or use of the Software, Equipment or provided third party services or otherwise arising in connection with the installation, maintenance, failure, removal or use of Services, Software and/or Equipment or Customer's reliance on the Services, Software and/or Equipment, including without limitation any mistakes, omissions, interruptions, failures or malfunction, deletion or corruption of files, work stoppage, errors, defects, delays in operation, delays in installation, failure to maintain proper standards or operation, failure to exercise reasonable supervision, delays in transmission, breach of warranty or failure of performance of the Services, Software and/or Equipment; or (y) resulting directly or indirectly out of, or otherwise arising in connection with, any allegation, claim, suit or other proceeding relating to Services, Software and/or Equipment, or the infringement of the copyright, patent, trademark, trade secret, confidentiality, privacy, or other intellectual property or contractual rights of any third party. Suddenlink's Maximum Liability to Customer arising under this Agreement shall be the lesser of \$5,000.00 or the amount actually paid by Customer for Services hereunder for the respective regular billing period.

**28. Indemnification.** Customer agrees to defend, indemnify, and hold harmless Suddenlink Parties from and against any and all claims and expenses, including reasonable attorneys' fees, arising out of or related in any way to the use of the Service and Equipment by Customer or otherwise arising out of or related in any way to the use of Customer's account or any equipment or facilities in connection therewith, or the use of any other products or services provided by Suddenlink to Customer. Customer agrees to indemnify and hold harmless the Suddenlink Parties against claims, losses or suits for injury to or death of any person, or damage to any property which arises from the use, placement or presence or removal of Suddenlink's Equipment, facilities and associated wiring on Customer's premises and further, Customer indemnifies and holds harmless the Suddenlink Parties against claims for libel, slander, or the infringement of copyright arising directly or indirectly from the material transmitted over the facilities of Suddenlink or the use thereof by Customer; against claims for infringement of patents arising from combining with or using in connection with, facilities furnished by Suddenlink, and apparatus, Equipment, and systems provided by Customer; and against all other claims arising out of any act or omission of Customer in connection with the Services or facilities provided by Suddenlink.

**29. Regulatory Authority.** This Agreement and the obligations of the parties shall be subject to modification to comply with all applicable laws, regulations, court rulings, and administrative orders, as amended.

**30. BINDING ARBITRATION.** Please read this section carefully. It affects your rights. Any and all disputes arising between You and Suddenlink, including its respective parents, subsidiaries, affiliates, officers, directors, employees, agents, predecessors, and successors, shall be resolved by binding arbitration on an individual basis in accordance with this arbitration provision. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to: claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; claims that arose before this or any prior Agreement, claims that may arise after the termination of this Agreement. Notwithstanding the foregoing, either You or Suddenlink may bring claims in small claims court in Your jurisdiction, if that court has jurisdiction over the parties and the action and the claim complies with the prohibitions on class, representative, and private attorney general proceedings and non-individualized relief discussed below. You may also bring issues to the attention of federal, state, and local executive or administrative agencies. Resolving Your dispute with Suddenlink through arbitration means You will have a fair hearing before a neutral arbitrator instead of in a court before a judge or jury. YOU AGREE THAT BY ENTERING INTO THIS AGREEMENT, YOU AND SUDDENLINK EACH WAIVE THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE IN A CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL ACTION.

a. **Opting Out of Arbitration.** If YOU HAVE BEEN AN EXISTING CUSTOMER FOR AT LEAST 30 DAYS BEFORE THE EFFECTIVE DATE OF THIS AGREEMENT AND HAVE PREVIOUSLY ENTERED INTO AN ARBITRATION AGREEMENT WITH SUDDENLINK OR A PREDECESSOR COMPANY, THIS OPT-OUT PROVISION DOES NOT APPLY TO YOU. IF YOU BECAME A CUSTOMER ON OR WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS AGREEMENT, AND DO NOT WISH TO BE BOUND BY THIS ARBITRATION PROVISION, YOU MUST NOTIFY SUDDENLINK IN WRITING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS AGREEMENT BY EMAILING US AT NOARBITRATION@ALTICEUSA.COM OR BY MAIL TO ALTICE SHARED SERVICES, 200 JERICHO QUADRANGLE, JERICHO, NY 11753 ATTN. ARBITRATION. YOUR WRITTEN NOTIFICATION TO SUDDENLINK MUST INCLUDE YOUR NAME, ADDRESS, AND SUDDENLINK ACCOUNT NUMBER AS WELL AS A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH SUDDENLINK THROUGH ARBITRATION. YOUR DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL HAVE NO ADVERSE EFFECT ON YOUR RELATIONSHIP WITH SUDDENLINK OR THE DELIVERY OF SUDDENLINK SERVICES TO YOU. OPTING OUT OF THIS ARBITRATION PROVISION HAS NO EFFECT ON ANY OTHER OR FUTURE ARBITRATION AGREEMENTS THAT YOU MAY HAVE WITH SUDDENLINK.

b. **Pre-Arbitration Process.** (i) Notice Of Dispute. Before commencing an action in arbitration, You must first notify us of Your dispute and allow us an opportunity to resolve it without the need for arbitration. You must write us a letter briefly explaining the dispute and stating the relief that You demand. Provide as much information as possible, including where applicable dates and specific amounts of money. Also include the account holder's name, the account number, the service address, and a telephone number at which You may be reached during business hours. For Your convenience, You may download a Notice of Dispute form from our website at <https://www.suddenlink.com/sites/default/files/Notice-Of-Dispute.pdf>. Once you have written the letter or filled out the Notice, send it to us by certified mail at Altice Shared Services, 200 Jericho Quadrangle, Jericho, NY 11753, Attn: Customer Disputes. (ii) 30 Day Wait Period. If Suddenlink has not been able to resolve your dispute to your satisfaction within 30 days from when we received your Notice of Dispute, you may start arbitration proceedings.

c. **Commencing an Arbitration.** To commence an arbitration, you must submit a written Demand for Arbitration to the American Arbitration Association ("AAA"), Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, with a copy to Suddenlink. A Demand for Arbitration form can be found on the AAA website at <https://www.adr.org/CommercialForms>.

d. **Arbitration Process.** The arbitration will be administered by the AAA under the AAA's Commercial Arbitration Rules, as modified by this arbitration provision. You may obtain copies of those rules from the AAA at [www.adr.org](http://www.adr.org). If the AAA will not enforce this arbitration provision as written, it cannot serve as the arbitration organization to resolve Your dispute. If this situation arises, or if the AAA for any reason cannot serve as the arbitration organization, the parties shall agree on a substitute arbitration organization or ad hoc arbitration, which will enforce this arbitration provision as to the dispute. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization or ad hoc arbitrator that will administer arbitration under this arbitration provision as written. If there is a conflict between this arbitration provision and the AAA rules, this arbitration provision shall govern. A single arbitrator will resolve the dispute between You and Suddenlink. Participation in arbitration may result in limited discovery. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect confidential or proprietary information, including customer personally identifiable information. All issues are for the arbitrator to decide, except that issues relating to arbitrability, the scope or enforceability of this arbitration provision, or the interpretation of its prohibitions of class, representative, and private attorney general proceedings and non-individualized relief shall be for a court of competent jurisdiction to decide. The Arbitrator is limited and bound by terms of this arbitration provision. Although the arbitrator shall be bound by rulings in prior arbitrations involving the same customer to the extent required by applicable law, the arbitrator shall not be bound by rulings in other arbitrations involving different customers. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties for purposes of enforcement. Unless the parties agree otherwise, any arbitration hearing will take place in the county (or parish) of Your service address. If the amount in dispute is less than \$50,000, Suddenlink agrees that You may choose whether the arbitration is conducted solely on the basis of documents submitted to the arbitrator, by a telephonic hearing, or by an in-person hearing as established by AAA rules. If the amount in dispute exceeds \$75,000 or the claim seeks any form of injunctive relief, either party may appeal the award to a three-arbitrator panel administered by AAA by a written notice of appeal within thirty (30) days from the date of entry of the written arbitration award. An award of injunctive relief shall be stayed during any such appeal. The members of the three-arbitrator panel will be selected according to AAA rules. The three-arbitrator panel will issue its decision within one hundred and twenty (120) days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel shall be final and binding, subject to any right of judicial review that exists under the FAA.

e. **Arbitration Fees.** Except as otherwise provided in this arbitration provision, Suddenlink will pay all arbitration filing, administrative, and arbitrator fees for any arbitration that Suddenlink commences or that You commence seeking damages of \$10,000 or less. If You commence an arbitration seeking greater than \$10,000 in damages, arbitration filing, administrative, and arbitrator fees shall be allocated in accordance with the AAA rules. If You cannot pay Your share of these fees, You may request a fee waiver from the AAA. In addition, Suddenlink will consider reimbursing Your share of these fees if You indicate You cannot afford them and, if appropriate, will pay directly all such fees upon Your written request prior to the commencement of the arbitration. You are responsible for all additional costs and expenses that You incur in the arbitration, including, but not limited to, attorneys' or expert witness fees and expenses, unless the arbitrator determines that applicable law requires Suddenlink to pay those costs and expenses. Notwithstanding the foregoing, if the arbitrator concludes that Your claim is frivolous or has been brought for an improper purpose (as measured by the standards of Federal Rule of Civil Procedure 11(b)), then the AAA rules shall govern the allocation of arbitration fees, and You agree to reimburse Suddenlink for any amounts Suddenlink may have paid on Your behalf.

f. **Governing Law.** Because the Service(s) provided to You involves interstate commerce, the Federal Arbitration Act ("FAA"), not state arbitration law, shall govern the arbitrability of all disputes under this arbitration provision. Any state statutes pertaining to arbitration shall not be applicable.

g. **Waiver of Class and Representative Actions.** YOU AGREE TO ARBITRATE YOUR DISPUTE AND TO DO SO ON AN INDIVIDUAL BASIS; CLASS, REPRESENTATIVE, AND PRIVATE ATTORNEY GENERAL ARBITRATIONS AND ACTIONS ARE NOT PERMITTED. You and Suddenlink agree that each party may bring claims against the other only in Your or its individual capacity and may not participate as a class member or serve as a named plaintiff in any purported class, representative, or private attorney general proceeding. This arbitration provision does not permit and explicitly prohibits the arbitration of consolidated, class, or representative disputes of any form. In addition, although the arbitrator may award any relief that a court could award that is individualized to the claimant and would not affect other Suddenlink account holders, neither You nor Suddenlink may seek, nor may the arbitrator award, non-individualized relief that would affect other account holders. Further, the arbitrator may not consolidate or join more than one person's claims unless all parties affirmatively agree in writing. If any of the prohibitions in the preceding paragraph is held to be unenforceable as to a particular claim, then that claim (and only that claim) must be severed from the arbitration and brought in court. In that instance, or any instance when a claim between You and Suddenlink proceeds to court rather than through arbitration, You and Suddenlink each waive the right to any trial by jury through this Agreement.

h. **Severability and Survival.** If any other portion of this arbitration provision is determined to be unenforceable, then the remainder of this arbitration provision shall be given full force and effect. The terms of the arbitration provision shall survive termination, amendment or expiration of this Agreement.

31. **Governing Law.** Subject to Section 26.f above, this Agreement shall be governed by the laws of the state of New York.

32. **Severability.** If any term or condition of this Agreement shall be adjudicated or determined as invalid or unenforceable by a court, tribunal or arbitrator with appropriate jurisdiction over the subject matter, the remainder of the Agreement with respect to such claim shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

33. **No Relationship.** Nothing in this Agreement will create any joint venture, joint employer, franchisee-franchisor, employer-employee or principal-agent relationship between Suddenlink and any content, backbone, network, circuit and other technology or communications providers, software and other licensors, hardware and equipment suppliers or other third party providers of elements of the High Speed Internet Service, nor impose upon any such companies any obligations for any losses, debts or other obligations incurred by the other.

34. **Survival.** All representations, warranties, indemnifications, dispute resolution provisions and limitations of liability contained in this Agreement shall survive the termination of this Agreement, as well as any other obligations of the parties hereunder which, by their terms, would be expected to survive such termination or which relate to the period prior to termination (including legal conditions, payment, and Suddenlink rights and the rights of others).

35. **Force Majeure.** Suddenlink Parties shall not be liable for any delay or failure of performance or Equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action or request of the United States government or of any other government including state and local governments having or claiming jurisdiction over Suddenlink, or of any department, agency, commission, bureau, corporation or other instrumentality of any one or more of these federal, state, or local governments or of any military authority; preemption of existing service in compliance with national emergencies, acts of terrorism, insurrections, riots, wars, unavailability of rights-of-way, material shortages, strikes, lockouts, or work stoppages.

36. **Entire Agreement.** This Agreement, including the applicable Additional Terms of Service, Privacy Policy and Acceptable Use Policy ("AUP"), the Service Order and the Schedule of Fees constitute the entire agreement between Suddenlink and Customer with respect to the Services. No undertaking, representation or warranty made by an agent or representative of Suddenlink in connection with the

sale, installation, maintenance or removal of Suddenlink's Services or Equipment shall be binding on Suddenlink except as expressly included herein.

37. **Amendment; Notice.** Suddenlink may, in its sole discretion, change, modify, add or remove portions of this Agreement at any time. Suddenlink may notify Customer of any such changes to this Agreement, or any other required or desired notice hereunder, by posting notice of such changes on Suddenlink's website ([www.suddenlink.com](http://www.suddenlink.com)), or by sending notice via email or postal mail to Customer's billing address, and/or by contacting the telephone number(s) on Customer's account (including mobile phones) by means such as but not limited to browser bulletins, walled garden (browser interruption), voice, SMS, MMS, and text messages, including by the use of by automatic telephone dialing systems. Customer agrees that any one of the foregoing will constitute sufficient notice. Because Suddenlink may from time to time notify Customer about important information regarding the Services, the Privacy Policy and this Agreement by such methods, Customer agrees to regularly check postal mail, e-mail and all postings on the Suddenlink web site ([www.suddenlink.com](http://www.suddenlink.com)) and Customer bears the risk of failing to do so. The Customer's continued use of the applicable Service(s) following notice of such change, modification or amendment shall be deemed to be the Customer's acceptance of any such revision. If Customer does not agree to any revision of this Agreement, Customer must immediately cease use of the all Service(s) and notify Suddenlink that Customer is cancelling this Agreement in accordance with the then-current policy.

**Exhibit A**  
**Service Level Agreement (Fiber Services Only) Not applicable to COAX**

This Service Level Agreement ("SLA") covers the local transport area to the Suddenlink demarcation point including Suddenlink equipment associated with the endpoints such as POE devices and routers. The provisions described below shall be Customer's sole and exclusive remedy in the event of Interruption.

**MEAN TIME TO REPAIR**

Suddenlink's objective is a four (4) hour mean-time-to-repair ("MTTR")

**SERVICE LEVEL GUARANTEE**

**Interruption/Outage ("Interruption"):** Defined as a total loss of Service.

**Service Level Guarantee:** If Customer detects an Interruption, Customer shall open a trouble ticket with Suddenlink Network Operation Center by calling 866-232-5455 (option 4) or via the customer portal at Suddenlink.com. An Interruption period begins when Customer reports a circuit/service failure, opens a valid trouble ticket and releases it for testing and repair. The controlling record for the purpose of determining the duration of the Interruption and calculating credits shall be the date/time stamp on the trouble reporting ticket as generated by Suddenlink's trouble reporting system. An Interruption period ends when the circuit/service is operative.

- a. If Customer reports a circuit/service to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted.
- b. If an Altice/ Suddenlink technician is dispatched for a reported failure and it is determined that such failure is not within Suddenlink's control, Customer will be subject to a truck roll fee for any subsequent dispatch/truck roll(s) requested.
- c. Customer may request a credit, in writing, and reference the date of the ticket. Requests for credit must be submitted to customercare@suddenlink.com within thirty (30) calendar days of the Interruption.
- d. For calculating credit allowances, every month is considered to have thirty (30) days.
- e. A credit allowance is applied on a pro rata basis against the monthly recurring charge for the affected circuit/service and is dependent upon the length of the Interruption.

Suddenlink shall credit Customer's monthly recurring charges for the circuit/service experiencing the Interruption as follows:

<b><u>Outage Duration</u></b>	<b><u>Credit of Monthly Charges</u></b>
Less than 30 minutes	none
30 minutes up to but not including 3 hrs	1/10 of a day
3 hrs up to but not including 6 hrs	1/5 of a day
6 hrs up to but not including 9 hrs	2/5 of a day
9 hrs up to but not including 12 hrs	3/5 of a day
12 hrs up to but not including 15 hrs	4/5 of a day
15 hrs up to and including 24 hrs	1 day
Over 24 hours	2 days for each full 24-hour period

**Limitations:** Total credits in a given month shall not exceed one hundred percent (100%) of the monthly recurring charge for the affected circuit/service in that month.

**No credit allowance will be made for:**

- a. Interruptions caused by the negligence of Customer or third parties outside of Suddenlink's control.
- b. Interruptions due to the failure of power, equipment, systems or connections not provided by Suddenlink under this Agreement.
- c. Interruptions during any period when Customer has released the circuit for maintenance or rearrangement purposes or for the implementation of a Customer order.
- d. Interruptions which continue because of Customer's failure to authorize replacement of any element of the Service.
- e. Interruptions due to force majeure events.
- f. No trouble found or where the fault of the trouble is undetermined.

### Site Details

Location	Speed	Monthly Cost
City Hall - 110 W Maddux St. Branson, MO 65616	1Gbps Optical Internet	\$1,850.00
City Hall - 110 W Maddux St. Branson, MO 65616	1Gbps Optial WAN	\$550.00
Fire Station #1 - 110 Crosby St, Branson, MO 65616	1Gbps Optial WAN	\$550.00
Fire Station #2 251 Branson Meadows Branson, MO 65616	1Gbps Optial WAN	\$550.00
Facilities Maintenance 625 Stockstill Lane	1Gbps Optial WAN	\$550.00
Pacific Tower 616 W Pacific	1Gbps Optial WAN	\$550.00
Recplex 1500 Branson Hills Pkwy	1Gbps Optial WAN	\$550.00
Cooper Creek Treatment Plant 2855 Fall Creek Branson, MO 65616	1Gbps Optial WAN	\$550.00
Meadows Treatment Plant 3718 Fall Creek Rd.	1Gbps Optial WAN	\$550.00
Cliff Drive Treatment Plant 521 Cliff Dr. Branson, MO 65616	1Gbps Optial WAN	\$550.00
Compton Drive Facilities 601 Compton Dr.	1Gbps Optial WAN	\$550.00
"The Mountain" 295 Buena Vista Rd Branson MO 65616	1Gbps Optial WAN	\$550.00
Lakeside RV Park - 300 Boxcar Willie Dr Branson, MO 65616	100Mbps Optical Internet	\$450.00
Lakeside RV Park - 300 Boxcar Willie Dr Branson, MO 65616	Coax 1Gbps/50Mbps Internet	\$430.39
Fire Station #3 3500 Keeter St, Branson, MO 65616	Coax 300Mbps/30Mpbs	\$165.39
Cliff Intake - 1198 Canal St, Branson, MO 65616 - Coax w/modem	Coax 300Mbps/30Mpbs	\$165.39
Meadows Intake - 468 River Ln, Branson MO 65616 - Coax w/modem	Coax 300Mbps/30Mpbs	\$165.39

\*Coax internet pricing package includes secure Internet fee and modem rental costs

\*\*City will be dropping Lakeside RV Park Optical Internet after network reconfiguration in early 2021.

#### Services Options Pricing Guarantee

Dedicated Optical Internet 1Gbps - \$1,850/Mo

Dedicated Optical Internet 2Gbps - \$2,299/Mo

Dedicated Optical Internet 3Gbps - \$3,000/Mo

Dedicated Optical WAN 1Gbps - \$550/Mo.

Dedicated Optical WAN 10Gbps - \$900/Mo.



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING A CONTRACT WITH THINKSPACE IT PERTAINING TO THE PURCHASE OF MICROSOFT SOFTWARE LICENSING AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** IT DEPARTMENT

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- The following agreement is with Thinkspace IT to enable the purchase of necessary Microsoft software licensing required by the IT Department to service the City’s various departments.
- The agreement allows the IT Department to purchase Microsoft Office 365 subscription services to be used by City staff for Microsoft Exchange Online.
- Licensing being purchased includes:
  - Qty: 1 - Azure Active Directory Premium
  - Qty: 10 - Office 365 Audio Conferencing
  - Qty: 315 - Office 365 GCC G1
  - Qty: 20 - Office 365 GCC G3
  - Qty: 1 - Office 365 GCC G5
- The contract enables the IT Department to utilize the Microsoft 365 online platform.
- City of Branson’s data will be hosted in Microsoft’s government cloud infrastructure for increased security provided exclusively to qualified government entities.
- Bids were accepted via bid 2020-02586 and Thinkspace IT was the lowest qualified bidder. (SHI International did not meet bid specs)
- The contract is for a one-year term and includes three optional one-year renewals.
- The total not-to-exceed amount on this agreement is up to \$35,000. This allows staff to add licensing as needed for employee fluctuations. Funds for this contract are included in the 2021 budget appropriations.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
  - Not Recommended
  - Neutral/None
- 

**COMMUNITY PLAN 2030:** W3.1

**ATTACHED EXHIBITS:**

**ITEM/SUBJECT: READING OF A BILL APPROVING A CONTRACT WITH THINKSPACE IT PERTAINING TO THE PURCHASE OF MICROSOFT SOFTWARE LICENSING AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

**DETAILED ANALYSIS:**

<b>Item</b>	<b>Dazzee</b>	<b>Exisor</b>	<b>Image Source</b>	<b>IT Parter</b>	<b>Newave Solutions</b>	<b>Saxon Global</b>
Azure Active Directory Premium P2 Government	\$103.00	\$96.12	\$82.92	\$92.70	\$99.79	\$95.26
Office 365 Audio Conferencing GCC	\$46.00	\$48.00	\$41.40	\$51.50	\$52.80	\$48.00
Office 365 GCC G1	\$92.00	\$85.44	\$82.92	\$82.40	\$88.70	\$84.67
Office 365 GCC G3	\$334.00	\$213.60	\$207.12	\$206.00	\$221.76	\$211.68
Office 365 GCC G5	\$403.00	\$373.80	\$362.52	\$360.50	\$388.08	\$370.40

<b>Item</b>	<b>SHI Option 1</b>	<b>SHI Option 2</b>	<b>Smarter Consulting</b>	<b>Tempus Noval</b>	<b>Thinkspace IT</b>
Azure Active Directory Premium P2 Government	\$96.39	\$84.80	\$100.00	\$102.60	\$91.63
Office 365 Audio Conferencing GCC	\$48.00	\$42.24	\$90.00	\$48.00	\$48.00
Office 365 GCC G1	\$85.68	\$80.39	\$90.00	\$91.20	\$81.45
Office 365 GCC G3	\$214.20	\$221.76	\$220.00	\$228.00	\$213.31
Office 365 GCC G5	\$374.72	\$388.08	\$100.00	\$399.00	\$356.33

\*Pricing is annual

\*\*SHI did not meet bid specs

BILL NO. 5936

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

**AN ORDINANCE APPROVING A CONTRACT WITH THINKSPACE IT PERTAINING TO THE PURCHASE OF MICROSOFT SOFTWARE LICENSING AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the City of Branson is approving a contract with Thinkspace IT pertaining to Microsoft Software Licensing; and

**WHEREAS**, Thinkspace IT 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, AS FOLLOWS:**

Section 1: The Board of Aldermen hereby approves the contract with Thinkspace IT pertaining to the purchase of Microsoft Software Licensing for an amount not to exceed \$35,000.00 and authorizes the Mayor to execute the contract in the form attached hereto as Exhibit "1".

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

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

*Chris Lebeck #51831 11/19/20*  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

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

## PURCHASE OF COMMODITIES CONTRACT

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

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

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

The City and the Seller agree as follows:

1. **Item(s) and dates of Purchase.** The City agrees to purchase and the Seller agrees to sell the following item(s): **software, from a date beginning on the execution date of this contract to a date ending one year from the execution date, with the option to renew the contract for up to three (3) additional successive one-year terms unless Seller has notified the City at least one hundred twenty (120) days prior to the end of the then contract term or extensions thereto that Seller will not renew the contract. Each additional year will require a contract and Board of Aldermen approval. The contract shall not bind, nor purport to bind, the City for any contract term beyond the original term of the contract.**
  
2. **Quantities to be Purchased and Purchase Price.**
  - a. The City agrees to purchase and the Seller agrees to sell the following quantities/amounts for the purchase price(s) listed: **See Exhibit B.**
  - b. The City assumes no obligations for articles or materials shipped in excess in the quantity ordered. Any unauthorized quantity is subject to the City's rejection and may be returned at the Seller's expense.
  - c. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Seller under the terms of this contract exceed the sum of **Thirty Five Thousand Dollars (\$35,000.00), all of which is dependent upon budget appropriations.**
  
3. **Delivery and Shipment.**
  - a. The Seller is responsible for the costs of shipment.
  - b. Time is of the essence with respect to each shipment.

- c. If deliveries are not made **upon delivery**, the City reserves the right to cancel this contract, purchase the commodities elsewhere, and hold the Seller liable for any re-procurement costs.
  - d. Deliveries are to be made to: **110 W. Maddux Street, Suite 311, Branson, Missouri 65616.**
- 4. Invoices.** An original and three copies of the invoice shall be submitted by the Seller to the City, showing the purchase order number or contract number and containing a full description of the commodities furnished.
- 5. Inspection and Acceptance.**
- a. No goods received by the City pursuant to this contract shall be deemed accepted until the City has had reasonable opportunity to inspect said goods.
  - b. All goods discovered to be defective (at any time) or which do not conform to any bid specifications or to any warranty of the Seller may be returned at the Seller's expense for full refund or replacement.
  - c. The City's right to return defective and/or non-conforming goods does not bar any other legal, equitable or contractual remedies the City may have against the Seller.
- 6. Warranty.**
- a. Seller expressly warrants that all articles, materials and work covered by this contract conform to each and every specification, drawing, sample or other description which is furnished to or is adopted by the City and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect.
  - b. Such warranty shall not be deemed waived either by reason of the City's acceptance of said material or goods or by payment for them.
  - c. Any implied warranties are not altered by this written contract.
  - d. Additional terms: N/A.
- 7. Patents.** Seller guarantees that the sale or use of the articles described herein will not infringe upon any U.S. or foreign patent and Seller covenants that he will, at his own expense, defend every suit which may be brought against the City, or those selling or using City's product for any alleged infringement of any patent by reason of the sale or use of such articles and Seller agrees that he will pay all costs, damages and profits recoverable in any such suit.
- 8. Bankruptcy or Insolvency.** In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of Seller, or in the event of breach of any of the terms hereof including in the warranties of the Seller, City may cancel this contract or affirm the contract and hold Seller responsible in damages.

- 9. Compliance with Applicable Laws.** The Seller warrants it has complied with all Applicable laws, rules and ordinances of the United States, or any state, municipality or any other governmental authority or agency in the manufacture or sale of the items covered by this contract, including but not limited to all provisions of the Fair Labor Standard Act of 1938, as amended.
- 10. Conflicts.** Any bidder or signee of this contract shall disclose any financial relationship (direct or indirect) to salaried officer, employee of the City or member of the City Board of Aldermen in writing at the time of the execution of this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Seller covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work to be performed under this contract. The Seller further covenants that in the performance of this contract no person having such interest shall be employed.
- 11. Interpretation of Contract and Assignments.** The contract shall be construed according to the laws of the State of Missouri. Seller hereunder may not assign the contract, or any rights, obligations or duties without City's written consent or any attempted assignment without such consent shall be void.
- 12. Termination of Contract.** The City reserves the right to terminate the contract at any Time if any of the provisions of the contract are violated by the Seller, in the sole judgment and discretion of The City.. In the event of such termination, the Seller shall be liable for any excess costs incurred by the City. If the contract is terminated, the City may purchase upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to the good identified in this contract; the Seller will be liable for any excess costs occasioned thereby.
- 13. Non-discrimination in Employment.** In connection with the furnishing of supplies or performances or work under this contract, the Seller agrees to comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable federal and state laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder. The Seller agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Seller or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- 14. Provisions by Law Deemed Inserted.** Each and every provision of the law and clauses required by law to be inserted in this contract will be deemed to be inserted herein and will be read and enforced as though it were included herein, and if through mistake, or otherwise any such provision is not inserted, then upon the application of either party the contract will be physically amended to make such insertion or correction.
- 15. Tax-Exempt.** The City of Branson is exempt from Sales Tax and Federal Excise Tax.
- 16. Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this

agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

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

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

**SELLER:**

**CITY OF BRANSON, MISSOURI**

By: Jessa Erickson 11.5.2020  
(Signature) Date

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

Name: Jessa Erickson  
(Printed Name)

Title: Owner

**ATTEST:**

Company Name: ThinkSpace IT

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

Address: 1108 8th St.  
Harlan, IA 51537

Phone: 844.576.2555

**APPROVED AS TO FORM:**

E-Mail: jessa.erickson@thinkspaceit.com

CALL #51831 11/4/20  
Chris Lebeck #51831 Date  
City Attorney

Tax ID: 20-8040638

ThinkSpace IT  
1108 8<sup>th</sup> St.  
Harlan, IA 51537

**SCOPE OF WORK**

1. Purpose: ThinkSpace IT agrees to provide Microsoft Office 365 to employees of the City, per the following general specifications. All specifications listed shall be considered as the minimum acceptable.
2. General Requirements:

The City has a requirement of selecting the appropriate Microsoft subscriptions for Office 365 plans based on each employees' needs. Pricing outlined below are general descriptions and bid respondents may provide alternate pricing plans to identify best pricing. All pricing should reflect annual cost. Best efforts have been made to estimate licensing needs. The seller must be an official Microsoft 365 CSP (cloud service provider) directly or indirectly who has the ability to directly manage the licenses.

Multiple Microsoft licensing agreement quote options may be submitted if desired. (Examples: Open, MPSA, Select Plus) The City will review all options and select the agreement that best meets our needs based on pricing and flexibility.

<u>Quantity</u>	<u>Description</u>
Up to 25	Azure Active Directory Premium P2 Government
Up to 50	Office 365 Audio Conferencing GCC
Up to 325	Office 365 GCC G1
Up to 325	Office 365 GCC G3
Up to 25	Office 365 GCC G5

**PRICING PAGE**

Thinkspace IT provided pricing information as specified below to provide Microsoft Office 365 as specified in accordance with the terms and conditions of this contract.

Item	Description	Price per User
001.	Azure Active Directory Premium P2 Government	\$ 91.63 / year
002.	Office 365 Audio Conferencing GCC	\$ 48.00 / year
003.	Office 365 GCC G1	\$ 81.45 / year
004.	Office 365 GCC G3	\$ 213.31 / year
005.	Office 365 GCC G5	\$ 356.33 / year



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL ACCEPTING THE PROPOSAL OF NEWMAN'S SIGNS, INC. PERTAINING TO THE PURCHASE OF SIGNAGE SUPPLIES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

**INITIATED BY:** PUBLIC WORKS DEPARTMENT

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- Nine bids were received on October 13, 2020 for the purchase of sign making supplies.
- The sign making supplies include preprinted signs, sign blanks for the city to add lettering as needed, sign posts, delineators, traffic cones, barricades, etc. Bids are compared line item by line item and reviewed for lowest bid. Contracts are written with each vendor for the line items having lowest bid and then approved by the Board of Alderman when the cumulative amount exceeds \$15,000.
- Staff recommends the bid with Newman Signs, Inc. for the purchase of the items in which they were low bidder for a total not to exceed amount of \$17,600.
- The bid items meet city specifications and are within budget. Funds to cover these expenses are included in the proposed 2021 transportation operational budget.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the proposed 2021 budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** TR/Governance

**ATTACHED EXHIBITS:**

BILL NO. 5937

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

**AN ORDINANCE ACCEPTING THE PROPOSAL OF NEWMAN’S SIGNS, INC. PERTAINING TO THE PURCHASE OF SIGNAGE SUPPLIES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the City of Branson advertised for proposals for bids for traffic signage supplies for the City of Branson; and

**WHEREAS**, Newman’s Signs, 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 Newman’s Signs, Inc. for the purchase of traffic signage supplies for the City of Branson for an amount not to exceed \$17,600.00 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:

APPROVED AS TO FORM:

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

*Chris Lebeck* #51831 11/19/20  
\_\_\_\_\_  
Chris Lebeck #51831  
City Attorney

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

## PURCHASE OF COMMODITIES CONTRACT

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Branson, Missouri (the "City") and **Newman's Signs Inc.** ("Seller").

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

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

The City and the Seller agree as follows:

1. **Item(s) and dates of Purchase.** The City agrees to purchase and the Seller agrees to sell the following item(s): **sign making supplies, from a date beginning on January 1, 2021 to a date ending December 31, 2021.**
2. **Quantities to be Purchased and Purchase Price.**
  - a. The City agrees to purchase and the Seller agrees to sell the following quantities/amounts for the purchase price(s) listed: **See Exhibit B.**
  - b. The City assumes no obligations for articles or materials shipped in excess in the quantity ordered. Any unauthorized quantity is subject to the City's rejection and may be returned at the Seller's expense.
  - c. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Seller under the terms of this contract exceed the sum of **Seventeen Thousand Six Hundred Dollars (\$17,600.00), all of which is dependent upon budget appropriations.**
3. **Delivery and Shipment.**
  - a. The Seller is responsible for the costs of shipment.
  - b. Time is of the essence with respect to each shipment.
  - c. If deliveries are not made **upon demand**, the City reserves the right to cancel this contract, purchase the commodities elsewhere, and hold the Seller liable for any re-procurement costs.
  - d. Deliveries are to be made to: **2855 Fall Creek Road, Branson, Missouri 65616.**

Newman's Signs Inc.  
Page 1 of 7

4. **Invoices.** An original and three copies of the invoice shall be submitted by the Seller to the City, showing the purchase order number or contract number and containing a full description of the commodities furnished.
5. **Inspection and Acceptance.**
  - a. No goods received by the City pursuant to this contract shall be deemed accepted until the City has had reasonable opportunity to inspect said goods.
  - b. All goods discovered to be defective (at any time) or which do not conform to any bid specifications or to any warranty of the Seller may be returned at the Seller's expense for full refund or replacement.
  - c. The City's right to return defective and/or non-conforming goods does not bar any other legal, equitable or contractual remedies the City may have against the Seller.
6. **Warranty.**
  - a. Seller expressly warrants that all articles, materials and work covered by this contract conform to each and every specification, drawing, sample or other description which is furnished to or is adopted by the City and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect.
  - b. Such warranty shall not be deemed waived either by reason of the City's acceptance of said material or goods or by payment for them.
  - c. Any implied warranties are not altered by this written contract.
  - d. Additional terms: N/A.
7. **Patents.** Seller guarantees that the sale or use of the articles described herein will not infringe upon any U.S. or foreign patent and Seller covenants that he will, at his own expense, defend every suit which may be brought against the City, or those selling or using City's product for any alleged infringement of any patent by reason of the sale or use of such articles and Seller agrees that he will pay all costs, damages and profits recoverable in any such suit.
8. **Bankruptcy or Insolvency.** In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of Seller, or in the event of breach of any of the terms hereof including in the warranties of the Seller, City may cancel this contract or affirm the contract and hold Seller responsible in damages.
9. **Compliance with Applicable Laws.** The Seller warrants it has complied with all Applicable laws, rules and ordinances of the United States, or any state, municipality or any other governmental authority or agency in the manufacture or sale of the items covered by this contract, including but not limited to all provisions of the Fair Labor Standard Act of 1938, as amended.

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

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

SELLER:

CITY OF BRANSON, MISSOURI

By: Marcia Johnson 10/30/20  
(Signature) Date

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

Name: Marcia Johnson  
(Printed Name)

Title: Sales Representative

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

Company Name: Newman Signs Inc.

Address: 1606 6th Ave SW  
Jamestown, ND 58402

Phone: 800-437-9770

APPROVED AS TO FORM:  
Chris Lebeck #51831 10/31/20  
Date  
Chris Lebeck #51831  
City Attorney

E-Mail: Sales8@newmans.com

Tax ID: 45-0276348

Newman Signs  
1606 6<sup>th</sup> Ave SW  
Jamestown, ND 58401

### SCOPE OF WORK

1. Purpose: Newman Signs agrees to provide sign making supplies for the period commencing January 1, 2021 through December 31, 2021.
2. General Requirements:
  - 2.1. All products must be of acceptable quality. The City will not accept off colors, splices in coating on sheeted blanks or fish eyes (bubbles) in the sheeted coating. **All signs must be of Diamond Prismatic material.**
  - 2.2. Newman Signs agrees to replace defective products within ten (10) days. If at any time Newman Signs fails to meet or correct problems involving the quality of the product or equipment the City retains the right to cancel the contract. In the event of cancellation, the City may purchase in such manner as the Purchasing Agent may deem appropriate from the next lowest bidder meeting specifications and Newman Signs will be liable for excess costs incurred.
  - 2.3. All pricing **must** include shipping cost delivered to the facilities located in Branson, MO.
  - 2.4. Newman Signs shall use recycled products where appropriate.
  - 2.5. The City will pay only for the actual quantities ordered and received. Prices shall be as specified on the Pricing Page regardless of actual quantities ordered.
3. Material Specifications & Estimated Quantities:
  - 3.1. Regulator Pre-made: Must meet MUTCD Standards; Diamond Prismatic Material; .080 aluminum thickness.
  - 3.2. Diamond Shape Blanks: Must meet MUTCD Standards; Diamond Prismatic Material; .080 aluminum thickness.
  - 3.3. Sign Blanks: Must meet MUTCD Standards; Diamond Prismatic Material; .080 aluminum thickness.
  - 3.4. Non-Coated Blanks: Must meet MUTCD Standards; .080 aluminum thickness.
  - 3.5. Warning Markers: Must meet MUTCD Standards; .080 aluminum thickness; Diamond Prismatic Material on the Object Markers and Chevron; Post Delineators need to be by NDM-Inc. to maintain style of our existing Post Delineators with

reflective bands.

- 3.6. Cones: Must meet MUTCD Standards; Diamond Prismatic Material bands; With Logo's BPW-SS and BPW-ST.
  - 3.7. Post: Must be 12 gauge for 2" and 2 ½" post; 12 gauge for 2 ¼ x 36 "stub; 14 gauge for 1 ¾ post and 2" x 36" Stub; 7 gauge for 3" x 36" stub.
  - 3.8. Sign Bracing: Must be 2 inches wide with holes on 1 inch increments.
  - 3.9. Roll-Up Reflective Signage: Must meet MUTCD Standards; Reflective Prismatic Material; Include ribs and a rubber weighted base.
  - 3.10. Sign Making Supplies: Must be the brand and series that is listed in the bid sheet.
  - 3.11. Sign Brackets: Must meet MUTCD and AASHTO crash worthiness Standards.
  - 3.12. Expanding Foam: Must meet MODOT standards and in a 2.5 lb. bag.
  - 3.13. Barricades must meet MUTCD, AASHTO and MoDOT Standards.
5. The City reserves the right to inspect the equipment prior to purchase.

PRICING PAGE

Newman Signs provided pricing information as specified below to provide sign making materials as specified in accordance with the terms and conditions of this contract.

Item	Product Description	Size	Estimated Quantity	Unit of Measure	Price
032.	POST DELINEATOR 36" YELLOW w/reflective collars & bolt base Made by NDM-Inc	36"- Part # DEL36YYRFL	200	EA	\$ 17.05
034.	Pins Only- Made by NDM-Inc for post above	Parts # DEL36YYRFL and DEL36WWRFL	100	EA	\$ 1.44
035.	Post Only Made by NDM-Inc	for Part# DEL36YYRFL and DEL36WWRFL	100	EA	\$20.28
038.	2" x 14' sq. breakaway post	12 ga.	100	EA	\$ 39.85
039.	2 1/2" x 14' sq. breakaway post	12 ga.	100	EA	\$ 38.33
040.	3" x 36" stub pipe for 2 1/2" sq. post	7 ga.	100	EA	\$ 26.42
041.	2 1/4" x 36" stub pipe for 2" sq. post	12 ga.	100	EA	\$ 8.84
045.	STOP w/ribs & base	36"	50	EA	\$ 141.76
046.	STOP w/ribs & base	48"	20	EA	\$ 189.68
048.	Yield signs w/ribs & base	48"	20	EA	\$ 153.59
052.	ORANGE W/BLK BORDER w/ribs & rubber weighted base (w/interchangeable message)	36" x 36"	50	EA	\$ 168.50
057.	3M HIP Reflective 3930 White	36" x 50 yd	500	YD	\$ 6.10
058.	3M HIP Reflective 3930 White	48" x 50 yd	500	YD	\$ 6.10
062.	3M HIP Reflective 3930 Yellow	36" x 50 yd	500	YD	\$ 6.10
063.	3M HIP Reflective 3930 Yellow	48" x 50 yd	500	YD	\$ 6.10
066.	3M HIP Reflective 3930 Orange	36" x 50 yd	500	YD	\$ 6.10
067.	3M HIP Reflective 3930 Orange	48" x 50 yd	500	YD	\$ 6.10
068.	3M Protective Overlay 1160 film	48" x 50 yd	500	YD	\$ 6.42



# STAFF REPORT

**ITEM/SUBJECT:** READING OF A BILL APPROVING THE SECOND RENEWAL OF THE SERVICES CONTRACT WITH TRADEBE ENVIRONMENTAL SERVICES, LLC PERTAINING TO THE TRANSPORTATION AND DISPOSAL OF HOUSEHOLD HAZARDOUS WASTE MATERIAL AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

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

**FIRST READING:** NOVEMBER 24, 2020      **FINAL READING:** DECEMBER 8, 2020

**EXECUTIVE SUMMARY:**

- One bid was received on October 17, 2018 for the household hazardous waste collection. The bid included an option to renew for up to three (3) additional successive one-year terms. Review and approval by the Board of Aldermen is required prior to entering into a renewal of the contract.
- A services contract was approved by the Board of Aldermen on January 8, 2019 for a not to exceed amount of \$22,837.41 for fiscal year 2019. The first renewal was approved by Board of Aldermen on November 12, 2019 in a not to exceed amount of \$12,000 for fiscal year 2020.
- This is the second of three optional renewals allowed in the original Request for Bid.
- Staff recommends the option for the second renewal with Tradebe Environmental Services, LLC for the transportation and disposal of household hazardous waste material in the not to exceed amount of \$12,000 for FY2021.

**FINANCIAL IMPACT:**

- No impact/Not applicable
- Budgeted in the projected 2021 budget
- Other (see additional explanation)

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** Governance

**ATTACHED EXHIBITS:**

**ITEM/SUBJECT: READING OF A BILL APPROVING THE SECOND RENEWAL OF THE SERVICES CONTRACT WITH TRADEBE ENVIRONMENTAL SERVICES, LLC PERTAINING TO THE TRANSPORTATION AND DISPOSAL OF HOUSEHOLD HAZARDOUS WASTE MATERIAL AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

---

**DETAILED ANALYSIS:**

Tradebe Environmental Services, has provided satisfactory transportation and disposal of household chemical waste since 2015.

Payment for the transportation and disposal of chemical waste from the household chemical collections facility is provided under an intergovernmental agreement specifying that Taney County pay 68%, Branson pays 18%, Hollister pays 9% and Forsyth pays 5% of total cost of disposal.

The other entities are billed for their portion of the disposal bill at least two times per year when invoice is received from Tradebe Environmental Services, LLC.

BILL NO. 5938

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

**AN ORDINANCE APPROVING THE SECOND RENEWAL OF THE SERVICES CONTRACT WITH TRADEBE ENVIRONMENTAL SERVICES, LLC PERTAINING TO THE TRANSPORTATION AND DISPOSAL OF HOUSEHOLD HAZARDOUS WASTE MATERIAL AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

---

**WHEREAS**, the City of Branson advertised for proposals for bids for the transportation and disposal of household hazardous waste material. One bid was received on October 17, 2018 for the household hazardous waste collection; and

**WHEREAS**, upon accepting the proposal, the contract was executed for a term of three years to be reviewed and approved annually by the Board of Aldermen; and

**WHEREAS**, the Board of Aldermen desires to renew the contract with Tradebe Environmental Services, LLC for the 2nd renewal period from January 1, 2021 through December 31, 2021.

**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 Tradebe Environmental Services, LLC for the transportation and disposal of household hazardous waste material in the amount not to exceed \$12,000.00 and authorizes the Mayor to execute the contract in the form attached as Exhibit "A".

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

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

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

---

E. Edd Akers  
Mayor

ATTEST:

APPROVED AS TO FORM:

---

Lisa K Westfall  
City Clerk

  
Chris Lebeck #51831  
City Attorney

Master Contract Number: C2019-0088

Sub-Contract Number: \_\_\_\_\_

**NOTICE OF CONTRACT RENEWAL  
SERVICES CONTRACT**

**THIS RENEWAL** made and entered into this 11th day of November, 2020, by and between the City of Branson, Missouri (the "City") and **Tradebe Environmental Services, LLC** ("Service Provider") for renewal period **Two** from **January 1, 2021** to **December 31, 2021**.

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

1. **Renewal.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities as referenced in the original contract attached as **Exhibit 1**.

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

3. **Bonds and Insurance.** The Service Provider shall procure and maintain all insurance and bonds (if applicable) to satisfy statutory bonding requirements, and to protect the City from any liability exposure resulting from the Service Provider's activities as outlined in the original contract and provide the City the most up-to-date insurance certificates and to keep them current.

4. **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.

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

**SERVICE PROVIDER:**

By: Derek C Duggan 11/12/2020  
(Signature) Date

Name: Derek C Duggan  
(Printed Name)

Title: Vice President

Company Name: Tradebe Environmental Services, LLC

Address: 1433 E 83rd Avenue - Suite 200, Merrillville IN 46410

Phone: 800 388 7242

E-Mail: usa.bids@Tradebe.com

**CITY OF BRANSON, MISSOURI**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

Clk #51831 11/4/20  
Chris Lebeck #51831 Date  
City Attorney

Master Contract Number: C2019-0088

### SERVICES CONTRACT

THIS CONTRACT made and entered into this 8<sup>th</sup> day of January, 2019, by and between the City of Branson, Missouri (the "City") and Tradebe Environmental Services, LLC ("Service Provider").

WITNESSETH:

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

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

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

1. **Scope Of Work.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities hereinafter set forth in **Exhibit A**.
2. **Addition to Work.** The City and the Service Provider may amend the scope of work set forth in **Exhibit A**, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 7B of this contract. Any amendments shall be in written form and prepared and approved by the appointed City Officials and countersigned by the Service Provider.
3. **Exchange of Data.** All information, data, and reports as are existing, available and necessary for the carrying out of the work, shall be furnished to the requesting party without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of work.
4. **Payment for Labor and Materials.** The Service Provider agrees and binds itself to secure and pay for all personnel, labor, materials and supplies required to perform the services called for under this contract by Service Provider. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Service Provider. All of the work required hereunder will be performed by the Service Provider or under Service Provider's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such work. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.
5. **Term.** The work of the Service Provider shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract. **The term of the contract will be from a date beginning on the execution date of this contract to a date ending December 31, 2019, with the option to renew the contract for up to three (3) additional successive one-year terms unless Service Provider has notified the City at least ninety (90) days prior to the end of the then contract term or extensions thereto that Service Provider will not renew the contract. Each additional year will require a contract and Board of Aldermen approval. The contract shall not bind, nor purport to bind, the City for any contract term beyond the**

original term of the contract. The pricing page should indicate cost difference for multiple renewal periods i.e., one (1), two (2) or three (3) contract year periods.

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 Two Thousand Eight Hundred Thirty Seven Dollars And Forty One Cents (\$22,837.41)**, all of which is dependent upon budget appropriations.

#### 8. **Termination of Contract.**

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

B. **Right to terminate in the absence of breach.** Either party may terminate this contract for any reason, by serving notice of intent to terminate upon the other party by the means specified in paragraph A of this section. Such notice shall specify the date of termination, but in no event shall either party terminate the contract under this provision upon less than thirty (30)

days' notice to the other party; provided, that the parties may mutually agree to waive the thirty (30) day requirement and to shorten the time for notice of termination, in the event of termination in the absence of breach.

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

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

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

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

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

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

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

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

A. In no event shall the City be liable to the Service Provider for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid by the City under this contract. All of the provisions in the agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.

B. The Service Provider shall defend, indemnify, and hold the City harmless from and against all claims, losses, actions, causes of action, demands and liabilities arising out of personal injuries, including death, and damage or impairment to property or any rights which are caused by the Service Provider arising out of or in any way connected with this contract. Service Provider further agrees to defend, indemnify and hold the City harmless from and against any claims, losses and liabilities arising out of the award of this contract to the Service Provider. Notwithstanding anything contained herein to the contrary, the obligation to indemnify shall not extend to claims for any indirect, special, incidental or consequential damages of any kind whatsoever.

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  
Fax: 417-335-4354 – Attn: Contract Management

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

**SERVICE PROVIDER:**

By: [Signature] \_\_\_\_\_  
(Signature) Date 11/26/18

Name: Robert O'Brien  
(Printed Name)

Title: EVF of Operations

Company Name: Tradebe Environmental Services, LLC

Address: 1433 E. 83rd Ave Ste. 200  
Newmillville, IN 46410

Phone: 800-388-7242

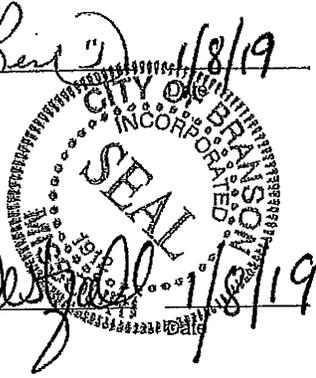
E-Mail: usa.bids@tradebe.com

Tax ID: 01-0757921

**CITY OF BRANSON, MISSOURI**

[Signature] 11/8/19  
Karen Best  
Mayor

ATTEST:  
[Signature] 11/8/19  
Lisa K Westfal  
City Clerk



APPROVED AS TO FORM:  
[Signature] 11/21/18  
Chris Lebeck #51831  
Associate City Attorney

[Signature] 11/27/18  
Tradebe Environmental Services, LLC  
Page 6 of 14

Tradebe Environmental Services, LLC  
1301 West 22<sup>nd</sup> Street, suite 500  
Oakbrook, IL 60523

**SERVICES CONTRACT  
SCOPE OF WORK  
FOR HOUSEHOLD HAZARDOUS WASTE COLLECTION**

1. **SCOPE OF WORK:** Tradebe agrees to provide all materials, labor, loading, transporting, permits, manifests, insurance, bonds, expert technical assistance and any other items necessary to accomplish the work specified herein except the City shall provide certain facilities and personnel as specified herein.

1.1 **Time:** Tradebe shall pick-up and transport materials to disposal/recycling facilities within fifteen (15) days of call for pickup by the City.

1.2 **Training, Planning and Assistance:** The City intends this training as part of the set-up of procedures with Tradebe under the contract. The number of participants will be approximately three (3). The City may desire, from time to time, to have this training as a "refresher" or for new employees.

1.2.1 Tradebe shall provide experienced and trained personnel to assist the City in the organization and training of City employees and volunteers relating to the operation of collection facilities, identification, and segregation, packaging, final disposal options/methods of waste and related subjects.

The City may require additional training from time to time.

1.2.2 Training shall be thorough and complete in the following areas; but not limited to these areas:

- Applicable Regulations
- General Safety Rules
- Chemical Hazards
- Physical Hazards
- Collection Facility Hazards covering
  - Acceptable/Unacceptable Materials
  - Hazard Class Definitions
  - Basic Segregation
  - Packaging
  - Labeling
  - Compatibility of Staged Materials
- Work Tasks
- Contamination Control
- Re-containerizing Leaking Containers/Overpacks
- Procedures
- Materials Required For and Testing of Unknowns
- Waste Flow: Cradle to Grave

- 1.2.3 **Service Provider Procedures:** Tradebe shall provide training on the Tradebe's procedures to City personnel in at least the following areas: Initial Staff Orientation Training, Hazardous Waste and Labpack Training, Chemical Identification Testing and Annual Refresher Training on Tradebe's Procedures as required.
- 1.3 **Mobilize/Demobilize:** Tradebe shall mobilize and demobilize all labor and equipment required for each individual shipment.
- 1.4 **Preparation, Loading, Transportation, Recycling and/or Disposal:** Tradebe shall check and verify final packaging, labeling, and inventory; load; transport; and recycle and/or dispose of generated waste. Tradebe will assume generator status for all wastes transported from Branson's Household Chemical Collection Center. Tradebe will also provide manifests and Certificates of Recycle/Disposal within 30 days of pickup.
- 1.5 **Supplies and Materials:** Tradebe shall supply all materials, equipment, safety equipment, drums, absorbent, packing materials, general consumables required for the Service Provider to accomplish this Scope of Work.
- 1.5.1 **Supplies and materials required, but not limited to:**
- Fiber Drums (5, 10, 17, & 30 gal as required) 55 fiber or poly
  - Open Top 55 gal Steel Drums
  - Closed Top 55 gal Steel Drums
  - 2-Overpack Salvage Drums, 80 gal
  - Vermiculite or comparable material
  - Drum Liners
  - All Manifests
  - All Placards for Transportation
  - Electronic Scale for Material Weighing
  - Labpack Inventory Sheets
  - Chemical Identification Testing Materials (Unknowns)
  - MSDS Sheets or Software for General Waste Streams
  - Cubic yard boxes with liners
  - Oil Absorbent
  - Reference book with contract specific requirements
  - All Materials Required for Labpacking and Shipping
  - All Labels: Hazardous Waste, Non-Hazardous Waste, Hazard Classes, and Up Labels
- 1.5.2 Tradebe shall provide materials to the City within three (3) weeks of date of request.
- 1.5.3 The City may, at its option, procure necessary supplies from vendor(s) other than Tradebe under this agreement.
- 1.6 **Procedures:** Tradebe shall have, maintain, and follow specific procedures and plans in the following areas:

- Bulking Procedures
- Unacceptable Waste Procedures
- Unknown Waste Procedures
- A Spill & Fire Prevention Plan
- Emergency Preparedness and Contingency Action Plan

1.7 **Certification of Staff:** Tradebe staff shall have a minimum certification of 40 hour Hazardous Materials Technician Level or be under the direct supervision of a certified supervisor.

~~1.8 **Approved Equipment:** The equipment utilized in the performance of this contract shall be properly licensed, placarded and/or certified under all state and federal rules and regulations.~~

1.9 **Safety:** Tradebe personnel shall take all measures necessary to safely load, transport, recycle and/or dispose of collected household hazardous wastes in compliance with all state and federal regulations.

1.10 **Customer Safety:** Tradebe will designate a customer service representative familiar, accountable and responsible for performance of this contract. This representative will provide support and expert technical assistance as needed to the HCC staff. Tradebe shall provide a toll-free-hot-line to access such support.

1.11 **Additional Assistance:** The City may request the assistance of an analyst or technician.

1.12 **Experience and Expertise:**

1.12.1 Demonstrated experience and expertise of Tradebe and its staff in providing products or service of a similar nature to clients comparable to the City for a minimum period of five (5) years.

1.12.2 A brief but complete background of Tradebe including previous experience in hazardous waste management and projects of this nature.

1.12.3 The qualifications and license certifications of staff available for assignment to the proposed project.

1.12.4 Include a copy of any license, or permits required for the collection, transportation and disposal of hazardous materials.

1.12.5 Include copies of any violations, citations, and/or awards your company has received.

2. **GENERAL OVERVIEW OF SERVICE PROVIDER DUTIES:**

2.1 Tradebe shall be responsible for the following duties as well as additional duties hereinafter specified:

- 2.1.1 Initial training/orientation of Collection Center Staff
- 2.1.2 Check and verify packing and final inventory
- 2.1.3 Loading
- 2.1.4 Manifesting
- 2.1.5 Generator status
- 2.1.6 Transportation, recycling and/or disposal of materials at a properly permitted disposal facility.

---

2.2 **Method of Operating Approach:**

2.2.1 Demonstration of a complete understanding of the City's requirements, and the approach to planning, implementing, and performing the Scope of Work.

2.2.2 The complete legal name, address, Federal ID Number or Social Security Number, permanent address at which records will be retained, and telephone number of the Bidder including the name of the person to contact for discussion of the proposal.

2.2.3 An in-depth narrative clearly indicating the Bidders understanding of the Scope of Work and all terms and conditions hereof. It is strongly suggested the Bidder provide a response to each paragraph contained herein identified by paragraph number. Particular attention should be given to specifically how, what with, and when the Bidder will accomplish each of the requirements herein. Provide the following information:

2.2.3.1 **Staffing:** Provide a description of your proposed staff and management for this project, including name of your Project Manager and/or contact person. List the number of personnel by job type, such as chemist, technician, driver, etc. with a summary of their duties at this program. Include any licenses, certifications, etc. the staff may possess.

2.2.3.2 **Equipment List:** Provide a list of equipment which will be provided at the collection site, including all fire prevention, safety, personal protective equipment, and other supplies or equipment you deem suitable or necessary for this project.

2.2.3.3 **Contingency Plan:** Provide a format for a contingency plan, including description of notification procedures for on-site emergencies and evacuation of participants and site workers if necessary.

2.2.3.4 **Spill and Fire Prevention Plan:** Provide a spill prevention and fire prevention plan customized to the anticipated on-site activities coordinated with HCCC Operations Plan.

2.2.3.5 **Packaging:** Provide a description of packaging methods used for collected wastes, including safety procedures if any materials are consolidated or bulked on site.

2.2.3.6 **Bulking Procedures:** Provide a description for standard operating bulking procedure for flammable solvents, waste oil, paint (latex/oil base), and antifreeze.

2.2.3.7 **Waste Streams Utilized:** Provide a complete list of waste streams that will be utilized under this contract.

2.2.3.8 **Specific Wastes:** Provide a description of what recycling and/or disposal options are available for each waste stream or product classification.

2.2.3.9 **Unacceptable Wastes:** List any wastes which you cannot accept and if possible, provide alternatives for managing these wastes.

2.2.3.10 **Unknown Wastes:** Provide description of procedure for identification of unknown wastes to provide for proper segregation and transportation.

2.2.3.11 **Training of Sponsor Personnel and Volunteers:** Provide a description of training to be provided to City personnel and to volunteers. Include any software training for Household Chemical Collection Center Staff.

2.2.3.12 **Transportation and Disposal Facilities:** Provide a list of all transporters and treatment/storage/recycling/disposal facilities which may be utilized in performance of this program. The list should include the name, address, and I.D. or permit number for each transporter or facility.

2.3 The City may revise Tradebe's responsibilities from time to time as permitted by the Contract documents and upon mutual agreement between the City and Tradebe.

### 3. **GENERAL OVERVIEW OF CITY RESPONSIBILITIES:**

3.1 The City will provide the following:

- Provide collection facilities and security
- Coordinate contingency, spill prevention, and fire prevention plans
- Promotion of City program and public education
- Receptacles for disposal of trash and non-hazardous waste
- Crowd control
- Training area/facilities
- Volunteers from community to assist with traffic control and non-hazardous bulking as needed.

Staff will be onsite to answer questions at time of disposal.

4. **BAN VERIFICATION:** The City prohibits landfilling of any material except dried latex paint and deep-well injection or any other land application method of disposal. The City requires land ban verification of all wastes disposed of from the Household Chemical Collection Center.

5. **LIMIT OF RISK:** Tradebe shall limit all risks and liabilities incurred by limiting the number of sites utilized to (handle consolidate/treat/recycle/incinerate/dispose) of wastes transported from the Household Chemical Collection Center.

6. **SUBCONTRACTING:** ~~None of the work or services under this contract shall be subcontracted without prior written approval from the City.~~

7. **EXPERIENCE AND EXPERTISE:**

7.1 Staff must meet the qualifications and license certifications to perform the contract work as specified herein.

Branson Household Chemical Collection Annual Quantity of Material for one year  
 Note: "Unit Price per Pound or Each" must include all manifesting, transportation and disposal.

Description	Qty.	Unit	Treatment/ Disposal Method	Unit Price Per Pound	5 Gal Minimums	Estimated Cost of Disposal
Antifreeze	363	lbs.	Recycle	\$0.57	\$51.88	\$206
Aerosols	600	lbs.	Recycle	\$1.17	\$72.88	\$700.49
Acids (Loose packed)	269		Stabilization	\$1.32	\$87.88	\$354.40
Bases (Loose packed)	458		Stabilization	\$1.32	\$79.88	\$603.41
Batteries (Lead Acid)	37	ea.	Recycle	\$1.32	\$63.88	\$48.75
Batteries (Nicad)	51	lbs.	Recycle	\$2.07	\$63.88	\$105.44
Bulbs (Fluorescent)	2500	ea.	Retort	\$0.92	\$33.88	\$2293.70
Bulk Fuels	2600	lbs.	Fuels Blend	\$0.44	\$45.88	\$1143.23
Capacitors (PCB)	-	ea.	Landfill	\$10.32	\$66.88	
Cleaners (Ammonia Based)	248	lbs.	Stabilization	\$1.32	\$79.88	\$326.74
Cleaners (Water Based)	116	lbs.	Energy Rec	\$0.82	\$86.88	\$94.83
Cylinders (Compressed gas)	59	ea.	Recycle	\$9.00	\$41.88	\$531.00
Cylinders (Fire Extinguishers)	3	ea.	Recycle	\$25.32	\$41.88	\$75.95
Cyanide	-	lbs.	Incin	\$5.32	\$122.88	
Dioxin	-	lbs.	Incin	\$25.32	\$666.88	
Flammable Liquids	1000	lbs.	Fuels Blend	\$1.32	\$64.88	\$1317.48
Flammable Solids	100	lbs.	Incin	\$2.82	\$85.88	\$281.75
Mercury	15	lbs.	Retort	\$5.32	\$266.88	\$79.76
Oil (Motor, Gear, Lube)	600	lbs.	Recycle	\$0.44	\$51.88	\$263.82
Oil (Used Filters)	302	lbs.	Recycle	\$0.71	\$41.88	\$213.99
Oxidizing Solids	150	lbs.	Incin	\$5.32	\$122.88	\$797.62
Paint (Latex)	100	lbs.	Landfill	\$0.88	\$43.88	\$87.75
Paint (Oil Based)	3933	lbs.	Incin	\$1.09	\$77.88	\$4286.97
PCB Ballasts		ea.	Landfill	\$9.00	\$66.88	
Pesticides (Liquid)	600	lbs.	Incin	\$1.32	\$114.88	\$790.49
Pesticides (Powder)	200	lbs.	Incin	\$1.32	\$71.88	\$263.50
Propane Cylinders	20	ea.	Recycle	\$26.88	\$26.88	\$537.67

Reactive	10	lbs.	Incin	\$2.57	\$241.88	\$25.67
Smoke Alarms	-	ea.	N/A	N/A	N/A	N/A
TOTAL	14828		TOTAL			\$15,430.41

All quantities are estimates only and may be more or less; payment will be made at the above rates regardless of the actual quantities. The amounts for each item shall be used solely for evaluation of costs for contract award.

Branson Household Chemical Collection Annual Quantity of Material for one year  
 Note: "Unit Price per Pound or Each" must include all manifesting, transportation and disposal.

**Part Two: Packing and Related Supplies**

Item	Description	Size	Type	Qty.	Unit Price	Estimated Cost of Containers
1	Open Top Drum	5 gallon	poly	30	\$12.60	\$378.00
2	Open Top Drum	5 gallon	fiber	30	\$10.50	\$315.00
3	Open Top Drum	10 gallon	poly	20	\$13.65	\$273.00
4	Open Top Drum	10 gallon	fiber	20	\$13.65	\$273.00
5	Open Top Drum	17 gallon	poly	20	\$36.75	\$735.00
6	Open Top Drum	17 gallon	fiber	20	\$21.00	\$420.00
7	Open Top Drum	30 gallon	poly	20	\$47.25	\$945.00
8	Open Top Drum	30 gallon	fiber	20	\$21.00	\$420.00
9	Open Top Drum	55 gallon	fiber	15	\$21.00	\$315.00
10	Open Top Drum with no side bungs	55 gallon	metal	5	\$40.00	\$200.00
11	Closed Top Drum	55 gallon	metal	20	\$26.25	\$525.00
12	Drum Liners	one roll	-----	2	\$8.00	\$16.00
13	Cubic yard boxes with liners	cubic yard	fiber	25	\$63.00	\$1575.00
14	2 over pack salvage drums	80 gallon	poly	2	\$126.00	\$252.00
15	Vermiculite or similar	18# bag	-----	30	\$22.00	\$660.00
16	Oil absorbent	40 # bag	-----	15	\$7.00	\$105.00
17		Labpack inventory sheets				N/C
18		Chemical ID testing materials for unknowns			\$15.00	
19		All drum labels				N/C



# STAFF REPORT

**ITEM/SUBJECT:** APPOINTMENTS.  
**INITIATED BY:** OFFICE OF THE MAYOR  
**DATE:** NOVEMBER 24, 2020

**EXECUTIVE SUMMARY:**

- This appointment process is in accordance with the Board and Committee Appointments Procedure.

CATEGORY 4

(Appointments made by the Mayor but not approved by the Board of Aldermen)

- The Mayor announces the following appointments submitted by the Branson Housing Authority:

Branson Housing Authority Board:

Doug Baker - Appointment to the Branson Housing Authority to fill the unexpired term of Don Baker until September 2022.

**FINANCIAL IMPACT:**

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

**STAFF RECOMMENDATION:**

- Recommended
- Not Recommended
- Neutral/None

**COMMUNITY PLAN 2030:** T Strategy 1.1 – Area Partnerships

**ATTACHED EXHIBITS:** Exhibit "1" – Letter from Branson Housing Authority

Phone: 417 334-4236  
Fax: 417 334-4236

Branson Housing Authority  
320 WEST MAIN  
BRANSON, MISSOURI 65616

**OAK MANOR**

November 13, 2020

The Honorable Ed Akers  
Mayor of the City of Branson  
110 W. Maddux Street  
Branson, MO 65616

Dear Mayor Akers,

The Branson Housing Authority has a vacancy due to the resignation of Don Baker. We would like to submit Doug Baker to fill the new four year term. Doug has graciously consented to being appointed as a Commissioner of the Branson Housing Authority. It would be very beneficial for someone with insurance expertise to be a member of our Board.

We request that Doug Baker be considered for appointment to the Branson Housing Authority Board of Commissioners.

Please include this matter on your earliest possible agenda. Should you have any questions, feel free to call me or Barbara Edelman at the above number.

We will appreciate being notified when action has been taken. Thank you for your assistance.

Sincerely,



Carol Holt  
Branson Housing Authority Management