

AGENDA

- 1. Call to Order**
- 2. Roll Call**
- 3. Pledge of Allegiance**
- 4. Approval of Minutes**
 - [a.](#) Minutes of the November 28, 2022 Regular Meeting
 - [b.](#) Minutes of the December 12, 2022 Regular Meeting
- 5. Citizen Comments**
- 6. Presentations**
 - a. Cochran Engineering
- 7. Old Business**
 - [a.](#) Bill 4152 - Recreational Marijuana Sales Tax
- 8. Legislation**
 - [a.](#) Resolution - Jokerst New Ballwin Rd
- 9. Consent Items**
 - [a.](#) Administration - Siline's Restaurant Liquor License
 - [b.](#) Finance - Check Signatories
 - [c.](#) Finance - Revenue/Expense Statement
 - [d.](#) Public Works - Snowplow
- 10. Mayor's Report**
- 11. City Administrator's Report**
- 12. City Attorney's Report**
- 13. Staff Reports**
 - [a.](#) Public Works - Claymont Dr
- 14. Aldermanic Comments**
- 15. Closed Session**
- 16. Adjourn**

NOTE: Due to ongoing City business, all meeting agendas should be considered tentative. Additional issues may be introduced during the course of the meeting.

CLOSED SESSION: Pursuant to Section 610.022 RSMo., The Board of Aldermen could, at any time during the meeting, vote to close the public meeting and move to closed session to discuss legal matters, personnel/employee matters, and/or real estate, as provided under Sections 610.021(1) RSMo., 610.021(2) RSMo., 610.021(3) RSMo.

ADA NOTICE: Residents of Ballwin are afforded an equal opportunity to participate in the programs and services of the City of Ballwin regardless of race, color, religion, sex, age, disability, familial status, national origin or political affiliation. If one requires an accommodation, please call (636) 227-8580 V or (636) 527-9200 TDD or 1-800-735-2466 (Relay Missouri) no later than 5:00 p.m. on the third business day preceding the hearing. Offices are open between 8:00 a.m. and 5:00 p.m. Monday through Friday.



**BOARD OF ALDERMEN
Meeting Minutes**

NOVEMBER 28, 2022

7:00 PM 1 GOVERNMENT CTR. BALLWIN, MO 63011

THE MINUTES ARE PREPARED IN SUMMARY TO REFLECT THE OVERALL DISCUSSIONS, NOT VERBATIM QUOTES.

The meeting was called to order by Mayor Pogue at 7:00 p.m.

ROLL CALL

Present

Absent

- Mayor Tim Pogue
- Alderman Mike Utt
- Alderman Michael Finley
- Alderman Kevin M. Roach
- Alderman Mark Stallmann
- Alderman Frank Fleming

Alderman Jim Leahy

- Alderman Ross Bullington
- Alderman David Siegel
- City Administrator Eric Sterman
- City Attorney Robert Jones

The Pledge of Allegiance was recited.

MINUTES

The minutes from the November 14, 2022 Board of Aldermen meeting were submitted for approval. Alderman Frank Fleming made a motion to approve as submitted, seconded by Alderman Michael Finley. The minutes from the November 14, 2022 Board of Aldermen meeting were approved unanimously.

The minutes from the November 14, 2022 Board of Aldermen Closed Meeting were submitted for approval. Alderman Frank Fleming made a motion to approve as submitted, seconded by Alderman Mike Utt. The minutes from the November 14, 2022 Board of Aldermen Closed Meeting were approved unanimously.



**BOARD OF ALDERMEN
Meeting Minutes**

NOVEMBER 28, 2022

7:00 PM 1 GOVERNMENT CTR. BALLWIN, MO 63011

CITIZEN COMMENTS

No Citizen Comments.

LEGISLATION

BILL 4146 - AN ORDINANCE AMENDING THE 2022 BUDGET OF CASH REVENUE AND CASH DISBURSEMENTS FOR THE OPERATING, CAPITAL AND TDD FUNDS OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, PROVIDING FOR EXPENDITURE REVISIONS IN ACCORDANCE WITH SAID BUDGET AND MAKING REAPPROPRIATIONS THEREOF.

Alderman Frank Fleming made a motion for a first reading of Bill 4146, title only, seconded by Mark Stallmann. The vote was unanimous for a first reading. Bill 4146 was read for the first time.

Discussion:

Alderman Kevin Roach asked for highlights of the budget reappropriations, and Mayor Tim Pogue believed the memo written up by Finance Officer Denise Keller and included in the packet was a good summary of the highlights.

A motion was made by Alderman Frank Fleming and seconded by Alderman Kevin Roach for a second reading of Bill 4146, title only. The motion passed unanimously. Bill 4146 was read for a second time.

A roll call vote was taken for passage and approval of Bill 4146. Bill No. 4146 was approved unanimously and became Ordinance No. 22-32.

Bill 4147 - AN ORDINANCE PROVIDING FOR THE ANNEXATION BY THE CITY OF BALLWIN, MISSOURI OF AN AREA OF UNINCORPORATED LAND DESCRIBED HEREIN AND REFERRED TO AS "CASCADES SUBDIVISION."

A motion was made by Alderman Michael Finley and seconded by Alderman Mark Stallmann for a first reading of Bill 4147, title only. The motion passed unanimously. Bill 4147 was read for the first time.

Discussion:

City Administrator Eric Sterman noted that this ordinance is the first of two ordinances annexing new portions into Ballwin: the Cascades and Charleston Oaks subdivisions. Both were approved earlier in the year by the St.



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Louis County Boundary Commission. City Administrator Sterman noted that the approvals before the Board of Alderman tonight are just formalities. Mayor Tim Pogue asked if there were concerns with street annexations, and City Administrator Sterman noted that the Cascades Subdivision streets will need to be deeded over to the City of Ballwin from the Cascades HOA, as the streets are currently privately owned. Therefore, maintenance work on those streets cannot begin until the City owns the streets.

City Administrator Sterman also noted that these two annexations, like the previous one, have been through simplified boundary adjustments, requiring signatures of 75% of the registered voters in each subdivision.

A motion was made by Alderman Michael Finley and seconded by Alderman Mike Utt for a second reading of Bill 4147, title only. The motion passed unanimously. Bill 4147 was read for the second time.

A roll call vote was taken for passage and approval of Bill 4147. Bill No. 4147 was approved unanimously and became Ordinance No. 22-33.

Bill 4148 - AN ORDINANCE PROVIDING FOR THE ANNEXATION BY THE CITY OF BALLWIN, MISSOURI OF AN AREA OF UNINCORPORATED LAND DESCRIBED HEREIN AND REFERRED TO AS "CHARLESTON OAKS SUBDIVISION."

A motion was made by Alderman Ross Bullington and seconded by Alderman David Siegel for a first reading of Bill 4148, title only. The motion passed unanimously. Bill 4148 was read for the first time.

Discussion:

There was no discussion.

A motion was made by Alderman Ross Bullington and seconded by Alderman David Siegel for a second reading of Bill 4148, title only. The motion passed unanimously. Bill 4148 was read for the second time.

A roll call vote was taken for passage and approval of Bill 4148. Bill No. 4148 was approved unanimously and became Ordinance No. 22-34.

Bill 4149 - AN ORDINANCE REVISING THE CITY CODE OF ORDINANCES REGARDING SEXUAL OFFENSES.



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A motion was made by Alderman Mark Stallmann and seconded by Alderman Mike Utt for a first reading of Bill 4149, title only. The motion passed unanimously. Bill 4149 was read for the first time.

Discussion:

Mayor Tim Pogue asked if the state statutes have changed and whether this bill moves us into compliance with the new state statutes. City Attorney Bob Jones replied in the affirmative, stating this bill adds sections onto City Ordinance to bring us into compliance with the new rules.

A motion was made by Alderman Michael Finley and seconded by Alderman David Siegel for a second reading of Bill 4149, title only. The motion passed unanimously. Bill 4149 was read for a second time.

A roll call vote was taken for passage and approval of Bill 4149. Bill No. 4149 was approved unanimously and became Ordinance No. 22-35.

CONSENT ITEMS

Parks – Holloway Park General Contracting

Staff recommends awarding contract to the low bidder, Ideal Landscape & Construction in the amount of \$103,400 which includes the two alternate bids, for Holloway Park.

Discussion:

Parks and Recreation Director Chris Conway told the Board that bids came in under budget for the general contractor for Holloway Park. Alderman Kevin Roach asked if the bulk of the work under the general contractor would be for the concrete pad underneath the new restroom being built. Parks Director Conway added that concrete work on the entire park is the bulk of the work, with utilities being another big part.

A motion was made by Alderman Kevin Roach and seconded by David Siegel to accept staff's recommendation. The motion passed unanimously and the consent item was approved.

MAYOR'S REPORT

Mayor Tim Pogue mentioned the article in the Post Dispatch this morning regarding the comments from St. Louis County Administrator Sam Page that a merger between St. Louis County, St. Louis City and other municipalities is once again being discussed, along with the prospect of a Board of Freeholders. Mayor Pogue made note that he will fight the merger again if it does indeed come to fruition, as he believes it is not in the best interest of our citizens. He made note that there are three former St. Louis County subdivisions that have since come to the City of Ballwin since the last merger talks.



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**CITY ADMINISTRATOR'S
REPORT**

City Administrator Eric Sterman noted that there are several things that may come up with the recently approved recreational marijuana amendment to the state constitution. He noted that City Attorney Bob Jones is working on figuring out what in Ballwin's Code of Ordinances needs to be updated. He mentioned that there are two things that are permitted to be brought to the voters: a potential prohibition on recreational marijuana and a potential 3 percent sales tax on recreational marijuana. The prohibition can only be brought up in a Presidential Election year by a citizen petition or board action, which would mean the earliest it could be brought up is November 2024.

He also stated that the 3 percent sales tax on recreational marijuana would need to be approved at the next Board of Aldermen meeting in order for it to be approved to be put on the April 2023 ballot.

City Administrator Sterman also noted that there are currently no dispensaries in the City of Ballwin right now that would be able to sell recreational marijuana to the public as it stands, so the City has time to approve such a sales tax if the Board deems it necessary. If there are any new businesses that would be interested in selling recreational marijuana, they would have to come before the board.

City Attorney Bob Jones said if the City is interested in creating a 3 percent sales tax on recreational marijuana, the funds would go to the general fund but could be earmarked for a specific fund.

Alderman David Siegel indicated he was interested in seeing if the City of Ballwin could create a lower than three percent tax on recreational marijuana.

A motion was made by Alderman Frank Fleming and seconded by Alderman David Siegel to have City Attorney Bob Jones draft an ordinance for a 3 percent sales tax on recreational marijuana to be brought before the board at the next regular meeting. That motion was approved unanimously.

CITY ATTORNEY'S REPORT

Nothing to report.

STAFF REPORTS

Parks – Holloway Park Comfort Station

Staff recommends purchasing CXT prefabricated comfort station utilizing the Sourcewell Contract at a cost of \$92,805.

Discussion:

Parks & Recreation Director Chris Conway noted that this comfort station bid is for a 2 unit restroom facility without a water fountain. Mayor Tim Pogue noted that the total cost of the project came in around 20 thousand dollars under budget. Aldermen David Siegel and Michael Finley both questioned the removal of the water



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fountain on the comfort station, wondering if it should be put back on there due to popularity of the park, especially among pickleballers.

Parks Director Conway noted that the cost of adding a water fountain onto the scope of the building project would be between four and five thousand dollars.

Alderman Frank Fleming also mentioned he would like to see a water bottle filler as part of the water fountain. A motion was made by Alderman Frank Fleming and seconded by Mark Stallmann to approve the staff report for the Holloway Park Comfort station, adding in a water fountain into the bid. That motion was approved unanimously.

ALDERMANIC COMMENTS

Alderman Kevin Roach made a note recognizing former City Board Member Ray Kerlagon in the audience. Alderman Mark Stallmann wanted to commend City staff for their work on the capital budget. In 2021, it was estimated the City would have a significant budget deficit for 2022, and this year the City will end up \$500,000 in the black.

Alderman Ross Bullington took a moment to welcome the residents of Charleston Oaks into the City of Ballwin.

A motion was made by Alderman Frank Fleming and seconded by Alderman Michael Finley to move to closed session regarding Section 610.021 (2) and 610.021 (9) RSMo. The motion was passed by unanimous affirmative roll call vote and the meeting moved to closed session at 7:42 p.m.

A motion was made by Alderman Frank Fleming and seconded by Alderman Michael Finley to reconvene in open session at 8:16 p.m. The motion was passed by unanimous affirmative voice vote and the motion passed.

The meeting reconvened at 8:17 p.m. A motion was made by Alderman Frank Fleming and seconded by Alderman Michael Finley to adjourn the meeting. The motion was passed by a unanimous voice vote. The meeting was adjourned at 8:18 p.m.

_____ TIM POGUE, MAYOR

ATTEST:

_____ LINDA LECHNER, INTERIM CITY CLERK



Meeting Minutes

DECEMBER 12, 2022

7:00 PM

1 GOVERNMENT CTR. BALLWIN, MO 63011

THE MINUTES ARE PREPARED IN SUMMARY TO REFLECT THE OVERALL DISCUSSIONS, NOT VERBATIM QUOTES.

The meeting was called to order by Mayor Pogue at 7:00 p.m.

ROLL CALL

Present

Absent

- Mayor Tim Pogue
- Alderman Mike Utt
- Alderman Michael Finley
- Alderman Kevin M. Roach
- Alderman Mark Stallmann
- Alderman Frank Fleming
- Alderman Jim Leahy
- Alderman Ross Bullington
- Alderman David Siegel
- City Administrator Eric Sterman
- City Attorney Robert Jones

The Pledge of Allegiance was recited.

MINUTES

The minutes from the November 28, 2022 Board of Aldermen Regular Meeting were submitted for approval. Alderman Mike Utt asked for additional time to research some of the items in the minutes. The minutes will be on the January 9, 2023 agenda for approval.

The minutes from the November 28, 2022 Board of Aldermen Closed Meeting were submitted for approval. Alderman Frank Fleming made a motion to approve as submitted, seconded by Alderman Mike Utt. The minutes from the November 28, 2022 Board of Aldermen Closed Meeting were approved unanimously.



CITIZEN COMMENTS

Mr. Pat Mahon addressed the Board and spoke against the practice of mosquito fogging. Mr. Mahon stated that the permethrin used is harmful to beneficial insects in addition to the mosquitos, and is not as effective as other methods.

Ms. Lori Bresnan addressed the Board, requesting that the mosquito fogging be removed from the 2023 budget. She feels that fogging indiscriminately is harmful to wildlife and beneficial insects, as well as children and pets. She feels it is a tool that is overused and will result in mosquitos that are resistant to the pesticides.

PUBLIC HEARING

Mayor Pogue opened the public hearing for the proposed 2023 Budget and asked if anyone wished to speak in favor of the budget. Alderman Frank Fleming stated that the opening summary of the budget is very well written, and commended Finance Director Keller and City Administrator Sterman. Alderman Fleming also addressed the mosquito fogging and said that it will likely be discussed before notifying the County in the spring. Alderman Mark Stallmann also commended Staff on the budget. Alderman Stallmann also noted that the Budget was completed with no real estate or personal property taxes. Alderman Michael Finley agreed that the Budget is very well done. Alderman Finley said that as chairman of the Public Health & Safety Committee, he would be willing to hold a special meeting to discuss the mosquito fogging issue.

Mayor Pogue asked if anyone wished to speak in opposition to the 2023 Budget. No one came forward, and Mayor Pogue closed the public hearing.

LEGISLATION

BILL 4150 - AN ORDINANCE APPROVING AND ADOPTING AN OPERATIONS BUDGET OF ANTICIPATED CASH REVENUE AND CASH DISBURSEMENTS FOR THE GENERAL REVENUE FUND OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, FOR THE FISCAL YEAR COMMENCING JANUARY 1, 2023, AND ENDING DECEMBER 31, 2023, PROVIDING FOR EXPENDITURES IN ACCORDANCE WITH SAID BUDGET AND MAKING APPROPRIATIONS THEREOF.

A motion was made by Alderman Frank Fleming and seconded by Alderman Michael Finley for a first reading of Bill 4150, title only. The motion passed unanimously. Bill 4150 was read for the first time.



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Discussion:

None.

A motion was made by Alderman Frank Fleming and seconded by Alderman Michael Finley for a second reading of Bill 4150, title only. The motion passed unanimously. Bill 4150 was read for a second time.

A roll call vote was taken for passage and approval of Bill 4150. Bill No. 4150 was approved unanimously and became Ordinance No. 22-36.

Bill 4151 - AN ORDINANCE APPROVING AND ADOPTING A BUDGET OF ANTICIPATED CASH REVENUE AND CASH DISBURSEMENTS FOR THE CAPITAL IMPROVEMENT PROGRAM OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, FOR THE FISCAL YEAR COMMENCING JANUARY 1, 2023, AND ENDING DECEMBER 31, 2023, PROVIDING FOR EXPENDITURES IN ACCORDANCE WITH SAID BUDGET AND MAKING APPROPRIATIONS THEREOF.

A motion was made by Alderman Frank Fleming and seconded by Alderman Ross Bullington for a first reading of Bill 4151, title only. The motion passed unanimously. Bill 4151 was read for the first time.

Discussion:

None.

A motion was made by Alderman Frank Fleming and seconded by Alderman Ross Bullington for a second reading of Bill 4151, title only. The motion passed unanimously. Bill 4151 was read for the second time.

A roll call vote was taken for passage and approval of Bill 4151. Bill No. 4151 was approved unanimously and became Ordinance No. 22-37.

Bill 4152 - AN ORDINANCE LEVYING AN ADDITIONAL SALES TAX ON SALES OF ADULT USE MARIJUANA AND CALLING AN ELECTION FOR VOTER APPROVAL OF SUCH TAX.

A motion was made by Alderman Mark Stallmann and seconded by Alderman David Siegel for a first reading of Bill 4152, title only. The motion passed unanimously. Bill 4152 was read for the first time.



Discussion:

City Administrator Sterman said that other cities have already decided to put this on the ballot, or are deliberating it.

Alderman Stallmann asked if the tax can be lower than 3%. City Attorney Jones said that as long as the voters approve the maximum of 3%, the Board has the flexibility to set it at whatever rate they wish (up to the maximum).

Alderman Finley asked about a microbusiness. City Attorney Jones said that there is a difference in eligibility and qualifying interest for a microbusiness. City Attorney Jones will research and report back with zoning information.

Mayor Pogue asked if there is anything that would preclude the Board from putting the tax toward a dedicated fund such as Public Safety. City Attorney Jones said that can be done, but then the tax will always be earmarked for that fund; it cannot be changed. Mayor Pogue asked if the ballot language would need to be amended if it is decided to do so; City Attorney Jones said yes.

Alderman Roach asked for a clarification of the term “adult use marijuana.” City Attorney Jones said that is the term used in Constitutional Amendment 3, because minors are prohibited from using recreational marijuana. Alderman Roach asked if the proposed tax authority would differentiate between medical and recreational marijuana. City Attorney Jones stated that the City cannot impose this special sales tax on medical marijuana. There is a 4% tax that goes to directly to the Veteran’s Affairs of the State of Missouri for a special fund. Alderman Roach suggested that the language be changed to reflect that the tax would be imposed on recreational marijuana. City Attorney Jones said this ballot language is taken directly from the amendment, and he didn’t want to vary from it as it could be challenged later.

Mayor Pogue asked if the Board wanted to direct the sales tax to a specific fund, would that be addressed within the ordinance. City Attorney Jones said a motion would be needed to amend the bill, and then it would have to be read a second time as amended. Alderman Fleming asked if the tax revenue could be designated as a line item in the budget, without specifying in the ballot language where it would be disbursed. City Attorney Jones said yes. Mayor Pogue noted that in the past, voters have commented that they would like to know what the tax they are voting on will be used for. Alderman Fleming said that he feels that this will be such a small amount of tax revenue that it wouldn’t matter to the voters. Alderman Roach said that he feels dedicating the funds to Public Safety is a marketing technique and that funds can be moved around. Mayor Pogue responded vehemently that this Board does not operate that way.



Alderman Stallmann said he likes the idea of earmarking the tax revenue for a dedicated fund such as Public Safety. Alderman Finley said he concurs with City Attorney Jones on using the language from the amendment.

Alderman Fleming asked City Attorney Jones to research modifying the language and whether it will affect the City’s ability to collect the tax. Alderman Roach said if the language can be modified, he suggests making it clear that the tax is to be levied on recreational marijuana.

Bill 4153 - AN ORDINANCE REVISING THE CITY CODE OF ORDINANCES REGARDING HOME BASED BUSINESSES.

A motion was made by Alderman Mark Stallmann and seconded by Alderman Frank Fleming for a first reading of Bill 4153, title only. The motion passed unanimously. Bill 4153 was read for the first time.

Discussion:

Alderman Stallmann noted that the Planning & Zoning Commission reviewed this ordinance and recommended approval to the Board of Aldermen. This ordinance will bring the City into compliance with State Law. Alderman Frank Fleming stated that this ordinance was studied closely by the Board of Alderman, and appreciates the extra thought put into it.

Alderman Roach questioned why the language stated “inside the residence or in the yard.” City Attorney Jones said that the idea is that it would be a no-impact business, so business activity would not be allowed in a part of the property that is visible to the public. Alderman Roach asked about not allowing street parking for clients/customers. City Attorney Jones said that commercial vehicles can’t be parked on the street, but at any given time, cars may be parked on the street in front of a house, and it would not be known if it was a visitor or a client/customer. He said he did not expect the City to be proactive in enforcing that part of the ordinance, but in general, the City would encourage off-street parking.

Alderman Roach asked how the City will ensure that home-based businesses are compliant with state and federal law and taxes once they register with the City. City Attorney Jones said that if they register a retail sales operation, the City will require a business license and make sure that sales taxes are remitted. The language in the ordinance is taken from House Bill 1662.

Alderman Finley asked how complaints regarding a home business would be handled. City Administrator Sterman said it would be handled by code enforcement or police officers, depending on the complaint.



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7:00 PM

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A motion was made by Alderman Frank Fleming and seconded by Alderman Ross Bullington for a second reading of Bill 4153, title only. The motion passed unanimously. Bill 4153 was read for a second time.

A roll call vote was taken for passage and approval of Bill 4153.
Bill No. 4153 was approved unanimously and became Ordinance No. 22-38.

Bill 4154 - AN ORDINANCE GRANTING A SPECIAL USE EXCEPTION TO SOPHIA TRAN AND NOEL FEHR D/B/A TEALUX CAFÉ FOR A RESTAURANT WITH FRONT YARD PARKING AT 14788 MANCHESTER ROAD.

A motion was made by Alderman Ross Bullington and seconded by Alderman Frank Fleming for a first reading of Bill 4154, title only. The motion passed unanimously. Bill 4154 was read for the first time.

Discussion:

Alderman Stallmann noted that the petitioner came before Planning & Zoning Commission and is in the audience tonight. It was unanimously recommended for approval to the Board of Aldermen.

A motion was made by Alderman Roach to amend the ordinance by correcting the address in two places. Alderman Stallmann seconded the motion, which received unanimous approval.

A motion was made by Alderman Ross Bullington and seconded by Alderman Frank Fleming for a second reading of Bill 4154, title only. The motion passed unanimously. Bill 4154 was read for a second time.

A roll call vote was taken for passage and approval of Bill 4154. Bill No. 4154 was approved unanimously and became Ordinance No. 22-39.

Bill 4155 - AN ORDINANCE GRANTING A SPECIAL USE EXCEPTION TO SHANNON MOORE FOR A RESTAURANT WITH RETAIL SALES AT 109 BALLPARK DRIVE.

A motion was made by Alderman Michael Finley and seconded by Alderman Mike Utt for a first reading of Bill 4155, title only. The motion passed unanimously. Bill 4155 was read for the first time.



Discussion:

Alderman Stallmann noted that the petitioner came before Planning & Zoning Commission and is in the audience tonight. It was unanimously recommended for approval to the Board of Aldermen.

A motion was made by Alderman Michael Finley and seconded by Alderman Mike Utt for a second reading of Bill 4155, title only. The motion passed unanimously. Bill 4155 was read for a second time.

A roll call vote was taken for passage and approval of Bill 4155. Bill No. 4155 was approved unanimously and became Ordinance No. 22-40.

MAYOR’S REPORT

Mayor Tim Pogue made two appointments to the Ballwin Historical Commission: Martin Schnipper and Gary Mertz, with their terms expiring December 31, 2025. A motion was made by Alderman Stallmann and seconded by Alderman Roach to accept the appointments. The motion passed unanimously.

Mayor Pogue thanked Gary Carr and the Parks Department for the holiday lights and decorations at the Old Cabin on Park Drive.

Mayor Pogue gave a year-end summary highlighting the City’s achievements. He thanked the Staff for their work during the year.

CITY ADMINISTRATOR’S REPORT

City Administrator Eric Serman noted that the next Board meeting is scheduled for the day after Christmas, and the office is closed. He asked if the Board wants to cancel that meeting. A motion was made by Alderman Stallmann and seconded by Alderman Mike Utt to cancel the December 26, 2022 meeting. The motion passed unanimously.

Annexations are still on target for January 1, 2023. Legal descriptions for the streets and easements have been drawn up and is with the HOA for approval.

The bid opening for New Ballwin Road was held. This was the second bid request for this project, and the low bid came in lower than the original bid. Mayor Pogue asked if the second bid reduced the scope of work. City Administrator Serman said that the scope of work was unchanged from the first bid request.



Meeting Minutes

DECEMBER 12, 2022

7:00 PM

1 GOVERNMENT CTR. BALLWIN, MO 63011

CITY ATTORNEY’S REPORT

Nothing to report.

ALDERMANIC COMMENTS

Alderman Stallmann said that 2022 has been a great year, and he looks forward to next year. He wished everyone a Merry Christmas and Happy New Year.

Alderman Finley thanked Alderman Stallmann and Mayor Pogue for their feedback from the Planning & Zoning Commission meetings. He noted that the Public Health & Safety Committee/golf carts meeting is scheduled for January 23, 2023, at 6:00 pm. He asked that the meeting be publicized on the City’s Facebook page. Alderman Finley wished everyone happy holidays and thanked the staff for their hard work during the year. He also recognized Jeff Greenberg for his fair reporting in West Newsmagazine.

Alderman Roach noted that longtime Ballwin resident Peggy Duenke had passed away. Mrs. Duenke was known and beloved by many and will be missed.

A motion was made by Alderman Frank Fleming and seconded by Alderman Kevin Roach to adjourn the meeting. The motion was passed by a unanimous voice vote. The meeting was adjourned at 7:58 p.m.

_____ TIM POGUE, MAYOR

ATTEST:

_____ LINDA LECHNER, INTERIM CITY CLERK



INTRODUCED BY
ALDERMEN UTT, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, SIEGEL, BULLINGTON

AN ORDINANCE LEVYING AN ADDITIONAL SALES TAX ON SALES OF ADULT USE MARIJUANA AND CALLING AN ELECTION FOR VOTER APPROVAL OF SUCH TAX.

WHEREAS, on November 8, 2022, the people of Missouri enacted an amendment to the Missouri Constitution relating to the legalization, regulation and taxation of marijuana; and

WHEREAS, among the provisions enacted by the people was Section 2.6(5) of Art. XIV of the Missouri Constitution which authorizes the governing body of any local government to impose an additional sales tax in an amount not to exceed three percent on all tangible personal property retail sales of adult use marijuana sold in the political subdivision in addition to any and all other tangible personal property retail sales tax allowed by law if approved by the voters of the political subdivision at a municipal, county or state general, primary or special election; and

WHEREAS, the Board of Aldermen has determined that it is in the best interests of the people of the City of Ballwin to act in accord with the authority which the voters of Missouri granted to offer the City’s voters an opportunity to approve such a sales tax so that some of the revenue derived from adult marijuana sales can be kept in the City and put to use to enhance services to the residents of Ballwin;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section One. Conditional Levy of Tax. If approved by the voters as hereinafter provided, there is imposed an additional sales tax in an amount of three percent (3%) on all tangible personal property retail sales of adult use marijuana sold in the City in addition to any and all other tangible personal property retail sales tax allowed by law.

Section Two. Calling an Election. At the general municipal election to be held on April 4, 2023, the following proposition shall be submitted to the voters of the City:

Proposition M

Shall the City of Ballwin be authorized to impose an additional sales tax in an amount not to exceed three percent on all tangible personal property retail sales of adult use marijuana sold in the city?

- Yes
- No

Section Three. Election Administration. The city clerk and other administrative officers of the city are hereby authorized and directed to do all things necessary to certify the proposition specified herein to the election authority for submission to the voters at the April 4, 2023, general



municipal election.

Section Four. Notice of Tax Levy. If a majority of the votes cast are in favor of the proposition the city clerk and other administrative officers of the city are authorized and directed within ten days after receipt of the certified election results to forward to the Missouri Director of Revenue by United States registered mail or certified mail a certified copy of this ordinance and the election results in accord with the provisions of Sec. 32.087, RSMo., and to do all things necessary or prudent to effectuate the levying and collection of the tax provided herein and account for revenues provided thereby.

Section Five. Effective Date. This ordinance shall be in full force and effect from and after its passage and approval by the Mayor. In accord with the provisions of Sec. 32.087.2, RSMo., the tax levied hereby shall become effective on the first day of the second calendar quarter after the director of revenue receives notice of adoption of the tax, and shall be imposed on all transactions on which the tax is applicable pursuant to Art. XIV, Section 2.6(5) of the Missouri Constitution.

PASSED this ____ day of _____, 2022.

TIM POGUE, MAYOR

APPROVED this ____ day of _____, 2022.

TIM POGUE, MAYOR

ATTEST: _____
ERIC STERMAN, CITY ADMINISTRATOR

Resolution

City of Ballwin, Missouri

INTRODUCED BY

ALDERMEN UTT, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, SIEGEL, BULLINGTON

A RESOLUTION ACCEPTING A BID FOR NEW BALLWIN ROAD IMPROVEMENTS FROM JOKERST PAVING

WHEREAS, in 2020, the City of Ballwin was awarded a grant and entered into a contract with the Missouri Highways and Transportation Commission providing for roadway improvements on New Ballwin Road from Manchester Road to Twigwood Drive (“Project”).

WHEREAS, the City of Ballwin advertised for competitive bids for the Project and has determined that Jokerst Paving submitted the lowest and best bid at \$1,187,279.64.

THEREFORE, BE IT RESOLVED by the Board of Aldermen that the Mayor or City Administrator of the City of Ballwin is hereby authorized to enter into a contract with Jokerst Paving for construction of the Project at a total contract price of \$1,187,279.64.

PASSED this ____ day of _____, 2023.

TIM POGUE, MAYOR

ATTEST: _____
CITY CLERK



STAFF REPORT

Subject: New Ballwin Road STP-4939(609)

Department/Program: Public Works/Pavement/Streets

Explanation: The 2023 budget provides for the resurfacing of New Ballwin Road through an 80/20 STP project. Sidewalk replacement, and upgrading of curb ramps to current ADA standards will be done by city crews in-house. This work was originally scheduled to occur in 2022 and was bid last summer. The table below summarizes the bids received on July 26, 2022.

	TOTAL BID
Spencer Contracting	\$1,523,061.94
NB West	\$1,615,362.70
TOTAL PROJECT BUDGET	\$816,079.00

The decision was made to wait and rebid the project during December in the hopes of getting more competitive bids. The work was included in the 2023 budget and the amount budgeted for construction was increased to \$1,200,000.

Request for bid notices were sent to several contractors and advertised in the St. Louis Business Journal, ePlan, and on the City’s website and on MoDOT’s website on both July 26, 2022 and on December 6, 2022. Bid specifications are on file at the Public Works Department. The table below summarizes the bids received on December 6, 2022.

	TOTAL BID
Spencer Contracting	\$1,473,152.14
Jokerest Paving& Contracting	\$1,242,355.50
Byrne & Jones Construction	\$1,631,279.25
Raineri Construction	\$1,664,418.66
TOTAL PROJECT BUDGET	\$1,200,000.00

Staff has identified and removed the driveway aprons from the scope of the project at a cost of \$55,075.64. These will be replaced in-house along with the sidewalks now in budget year 2024. This will bring the total project cost below budget.

The portion that MoDot will reimburse does not change despite the higher construction cost. Any amount above the original budget of \$816,079 will be the responsibility of the City of Ballwin. For the contractual work in 2023 and the in-house work in 2024, the anticipated combined cost to the City will be \$689,134.

Recommendation: We recommend accepting the Bid received on December 6, 2022 from Jokerest Paving and contracting not to exceed the budget amount of \$1,200,000.

Submitted By: Jim Link

Date: January 1, 2023



Consent Item

Subject: Liquor License

Department/Program: Administration

Explanation: The liquor license for Siline's is included in this packet for approval.

Recommendation: Staff recommends approval of Siline's Liquor License.

Submitted By: Linda Lechner, Interim City Clerk

Date: January 3, 2023



Consent Item

Subject: Check Signatories

Department/Program: Finance

Explanation: Check signatories are to be approved by the Board annually. Eric Serman and Denise Keller are currently the authorized check signers for all city accounts except the two required under Show Me Courts. The signers for those accounts are the Court staff and Denise. Robert Klahr, attorney for the TDD, is an additional signer for the TDD account. The City does not own the funds in the LOAP account but serves as a custodian for them.

Denise is authorized to make transfers between any of the accounts.

Checking Account	Authorized Signers
General	Eric Serman, Denise Keller
General Money Market Account	Eric Serman, Denise Keller
Payroll	Eric Serman, Denise Keller
Escrow	Eric Serman, Denise Keller
Bail Bond	Eric Serman, Denise Keller
Sewer Lateral	Eric Serman, Denise Keller
Balance Sheet Escrow	Eric Serman, Denise Keller
HRA	Eric Serman, Denise Keller
Federal Asset Seizure	Eric Serman, Denise Keller
POST	Eric Serman, Denise Keller
Telephone Escrow	Eric Serman, Denise Keller
Special Allocations TIF	Eric Serman, Denise Keller
Ballwin Town Center TDD	Eric Serman, Denise Keller, Robert Klahr
Lafayette Older Adult Program (LOAP)	Eric Serman, Denise Keller
Municipal Division - Ballwin	Micheila Grieshaber, Cynthia Roberts, Denise Keller
Municipal Division -Winchester	Micheila Grieshaber, Cynthia Roberts, Denise Keller

Recommendation: Staff recommends that the Board approve the authorized signers for all City accounts as presented.

Submitted By: Denise Keller

Date: January 3, 2023



CONSENT ITEM

RE: Semi-Annual Revenue/Expenditure Statement

Department/Program: Administration/Finance

Explanation: Per RSMo Statute Section 79.160, *“the Board of Aldermen shall semi-annually each year, at times to be set by the Board of Aldermen, make out and spread upon their records a full and detailed account and statement of the receipts and expenditures and indebtedness of the city for the half year ending with the last day of the month immediately preceding the date of such report, which account and statement shall be published in some newspaper in the city.*

In accordance with this statute section, attached is a report of actual revenues and expenditures received/expensed during the period July 1 – December 31, 2022. Upon approval by the Board, this will be published in a local newspaper.

Recommendation: Staff recommends that the Board approve the semi-annual statement of revenues and expenditures.

Submitted By: Denise Keller

Date: January 4, 2023

**CITY OF BALLWIN
GENERAL/CAPITAL PROJECTS FUNDS
REVENUE/EXPENSE STATEMENT
FOR THE SIX MONTH PERIOD ENDING 12/31/22**

REVENUE	General Fund	Capital Projects Fund
Sales Taxes	\$ 4,999,154	\$ 740,028
Other Taxes	1,206,637	-
Licenses & Permits	507,028	-
Public Utility Licenses	1,674,278	-
Court Fines	271,784	-
Police & Communications	186,145	-
Community Programs	1,582,461	-
Grants & Donations	3,139,830	5,152
Sale of Capital Assets	26,665	-
Investment Income	208,826	-
Escrows	17,941	-
Miscellaneous	40,968	-
Other Financing Sources	-	3,333,078
Total:	\$ 13,861,717	\$ 4,078,258
 EXPENDITURES		
Administration	\$ 1,718,279	\$ -
Parks & Recreation	2,617,086	(386)
Police	3,480,564	3,963,794
Public Works	3,218,949	27,675
Other Financing Uses	3,333,078 (1)	-
Total:	\$ 14,367,956	\$ 3,991,083

For the Twelve Month Period Ending 12/31/22:

Revenue	\$ 24,900,147	\$ 7,945,244
Expenditures	26,564,443	6,127,260

(1) This transfer of accumulated fund balance is to fund construction of the new Police Building in the Capital Projects Fund.

I, Denise Keller, Finance Officer for the City of Ballwin, Missouri, certify that to the best of my knowledge, the above unaudited statement is true and in agreement with city records on file as of 12/31/22.

Denise Keller

Denise Keller
Finance Officer

ATTEST:

Eric Sterman
Eric Sterman
City Administrator



Consent Item

Subject: Snow Plow Purchase

Department/Program: Public Works/Snow and Ice

Explanation: In the 2023 Budget we have \$20,000 budgeted for a snowplow for the truck we received in late 2022. Due to limited availability of vehicles in 2022 and a rise in costs, we deferred the snowplow to 2023 budget.

Recommendation: Staff recommends we purchase a snowplow from Woody's Municipal Supply/Buyers Snow Equipment using Sourcewell for a total cost of \$16,998.00.

Submitted By: Jim Link

Date: January 6, 2023

Woody's
Municipal Supply Co.
 PO Box 432 Phone 618-656-5404
 Edwardsville, IL 62025 Fax 618-656-6105
 www.WoodysMunicipal.com

QUOTE - DO NOT PAY

Section 9, Item d.

Quote: 01-896
 Date: 12/29/2022

PO:
 CustId: BALLWIN MO.

Cust Email:
 Phone: (636) 227-8580
 Salesperson: CGoclan
 User: TMoore

Bill To:
 Ballwin, MO., City of
 1 Government Center
 Ballwin, MO 63011

Ship To:
 Ballwin, MO., City of

Item	Type	Description	Qty	Tax	Price	Discount	Net Price	
16500210	QU	Buyers 16500210	1.0000		\$16,998.00			
		Sno - Buyers 10x36 Reversible Snow plow						
		10x36: Power reversing plow						
		Deflector: 12" Rubber						
		Installation:						
		Plow Markers: 36"						
		Swivel Attachment: Quick Hitch						
		Truck Hitch: Quick Hitch, fold down, M2						
		Total 16500210					\$16,998.00	
							Total:	\$16,998.00

Totals		Sub Total:	\$16,998.00
		Total Tax:	\$0.00
		Invoice Total:	\$16,998.00

Quote good for 30 days



Staff Report

Subject: Proposal-Grant Application and Engineering Services Claymont Drive STP Project

Department/Program: Public Works/ Streets

Explanation: Surface Transportation Block Grant Program-Sub allocated (STP-S) – Claymont Drive needs some preventative maintenance done in the next few years to keep it in good shape for longevity. Street lights also can be upgraded and taken over by the City with projects like these to offset future costs down the road. We applied for this grant in 2022 but were unsuccessful in securing the grant.

In 2023 we are going to take a different approach and split this project into 2 phases. The first phase will be just under a mile for the portion between Holloway and Bellerive. In addition, we are going to exclude the engineering from the grant to increase our likelihood of being awarded. Cost for the application fee is \$2,918, which is reimbursable if the grant is not awarded. The application fee is to be paid in the 2023 budget, and the application needs to be submitted by February 10, 2023. Construction would be completed in 2025 or 2026. Phase 2 would be applied for in 2024, and if the City is successful with both grant applications it is possible that both phases would be completed simultaneously.

Total Project cost for the first phase is \$729,618 with the City of Ballwin’s portion being \$263,757.

Recommendation: To approve a Proposal and an Application to East West Gateway for the Claymont Phase 1 project and to award provide professional engineering services for the above project to Cochran Engineering.

Submitted By: Jim Link, Ballwin Public Works

Date: 1/6/23

CONSTRUCTION COST ESTIMATE

STP Application - Due Feb. 9, 2023

City of Ballwin - Claymont Drive Improvement Project - Phase 1

No.	Description	Unit	Quantity	Unit Cost	Cost
1	Construction Mobilization	LS	1	50,000.00	\$50,000.00
2	Replace Non-Compliant ADA Ramps	SF	5,500	8.50	\$46,750.00
3	Misc. Curb Repair	LF	300	28.00	\$8,400.00
4	Partial Depth Pavement Repair	SY	250	35.00	\$8,750.00
5	Pavement Milling	SY	15,500	3.50	\$54,250.00
6	Asphalt Surface Course	TON	3,100	98.00	\$303,800.00
7	Street Lighting	EA	21	6,500.00	\$136,500.00
8	Restoration	LS	1	15,000.00	\$15,000.00
9	"Bicycles May Use Full Lane" Signs	EA	4	250.00	\$1,000.00
10	Construction Traffic Control	LS	1	10,000.00	\$10,000.00
Project Notes:			Construction Sub-Total		\$634,450
1. Project length equals approx. 0.8 miles			15% Contingency		\$95,168
2. Project Limits - Holloway Road to Bellerive Drive			Project Total =		\$729,618
			Federal Share @ 80% =		\$583,694
			Local Share @ 20% =		\$145,924
EWGCC Application Fee (1/2% of Federal Funds Requested) =					\$2,918
Cochran Application Fee =					N/A
Surveying/Engineering/Bidding Fee					\$65,666
Construction Administration/Inspection/Testing					\$49,249
City Expenditure (20% Share + Application Fee + Engineering)					\$263,757



Architecture
Civil Engineering
Land Surveying
Site Development

737 Ru Section 13, Item a.
St. Louis, Missouri 63026
Telephone: 314-842-4033
Fax: 314-842-5957
E-Mail: david@cochraneng.com

December 22, 2022

Mr. Eric Sterman
City Administrator
City of Ballwin
200 Park Drive
Ballwin, MO 63011

**RE: Proposal – Grant Application and Engineering Services
Claymont Drive STP Project – Phase 1**

Dear Mr. Link:

Thank you for giving Cochran the opportunity to submit this proposal to provide STP application services for the above referenced project. In accordance with our meeting earlier this week, we offer the following professional services:

SCOPE OF SERVICES:

1. **Application Phase** – we will prepare and submit the application in accordance with the attached cost estimate. The application is a very detailed and involved process; here are some of the questions and information required on the application:
 - a. Project map showing limits of improvements
 - b. Definition and description of roadway characteristics
 - c. Written description of proposed project
 - d. Proposed Cross Section
 - e. Detailed Map showing improvements and connections to transit Routes, activity centers, and schools
 - f. Written project justification – 1) proposed improvement, 2) transportation problem the improvement will address, 3) effect the improvement will have on the problem, and 4) transportation demand management strategies
 - g. Average daily traffic (ADT) counts
 - h. Pavement Condition – PASER Analysis
 - i. Description of bicycle and pedestrian elements
 - j. Detailed cost estimate
 - k. Project implementation schedule

2. **Design and Bidding Phase** – we will provide professional services necessary to produce a quality set of construction and bidding documents. The scope will be in accordance with the attached cost estimate. Tasks will include the following:
 - a. Determine the needs of the City by meeting with City officials and representative interest groups.
 - b. Conduct topographic, property and utility surveys sufficient to develop plans for the project.
 - c. Develop preliminary plans and cost estimates and recommend to the City the best overall general design.

- d. Submit four copies of preliminary plans and estimates for review by the City and the Missouri Department of Transportation.
 - e. Based on approvals of preliminary plans, prepare detailed construction plans, cost estimates, specifications and related documents as necessary for the purpose of soliciting bids for constructing the project.
 - f. Ensure compliance with all regulations in regards to noise abatement and air quality, if necessary.
 - g. Provide the City with five sets of completed plans, specifications and cost estimates for the purpose of obtaining construction authorization from the Missouri Department of Transportation.
 - h. Upon receipt of construction authorization from MODOT, make final corrections resulting from reviews by agencies involved and provide plans, specifications, and bid documents to the City.
 - i. Provide the City with a list of qualified area bidders and assist the City in advertising for bids.
 - j. Assist the City in evaluating bids and requesting concurrence in award from MoDOT.
3. **Construction Phase** - we will serve as the City's representative for administering the terms of the construction contract between the City and their Contractor. Cochran will endeavor to protect the City against defects and deficiencies in workmanship and materials in work by the Contractor. However, the furnishing of such project representation will not make Cochran responsible for the construction methods and procedures used by the Contractor or for the Contractor's failure to perform work in accordance with the contract documents. Tasks will include the following:
- a. Provide the City with a list of qualified area bidders and assist in advertising for bids, distributing bid packages, pre-bid conference, addendums, and pre-bid questions from Contractors.
 - b. Assist the City in opening and evaluating bids and requesting concurrence in award from MoDOT.
 - c. Assist the City with a preconstruction conference to discuss project details with the Contractor.
 - d. Make periodic site visits to observe the Contractor's progress and quality of work, and to determine if the work conforms to the contract documents. It is contemplated that survey staking and layout will be accomplished by the contractor's forces. We will accompany MoDOT and FHWA representatives on visits of the project site as requested.
 - e. Check shop drawings and review schedules and drawings submitted by the Contractor.
 - f. Reject work not conforming to the project documents.
 - g. Prepare change orders for issuance by the City as necessary and assure that proper approvals are made prior to work being performed.
 - h. Review wage rates, postings, equal employment opportunity and other related items called for in the contract documents.
 - i. Inspect materials, review material certifications furnished by Contractor, sample concrete and other materials as required, and provide for laboratory testing of samples.
 - j. Maintain progress diary and other project records, measure and document quantities, and prepare monthly estimates for payments due the Contractor.
 - k. Be present during critical construction operations.
 - l. Participate in final inspection, provide the City with project documentation (diaries, test results, certifications, etc.), and provide as-built plans for the City's records.

OWNER'S RESPONSIBILITY:

1. The Owner shall give prompt and thorough consideration to all sketches, drawings, bid documents and other documents laid before him. Prompt decisions will be required if project is to proceed on schedule.
2. Advertisement and receipt of construction bids.
3. The Owner shall consider the bids and determine whether the project shall proceed to the construction phase. If the Owner Board determines that the project shall proceed to the construction phase, the Owner, by action of the Board of Aldermen, shall select the successful bidder. The owner may abandon the Project, at any time and for any reason, in its sole discretion and, in such event, shall give seven (7) days written notice to Cochran.

FEE:

1. Since we applied last year, there will be no fee for the "Application Phase" outlined in this proposal.
2. If the grant application is approved by the EWGCC, the total amount of fee to be paid for the "Design and Bidding Phase" outlined in this proposal shall be a lump sum fee of \$65,666.00.
3. If the grant application is approved by the EWGCC, the total amount of fee to be paid for the "Construction Phase" outlined in this proposal shall be a lump sum fee of \$49,249.00.

PAYMENT:

1. An invoice for progress payments will be submitted monthly during the performance period of this contract for professional services rendered. It is agreed that monthly progress payments for fees earned under this agreement are due and payable within thirty (30) days of submission of invoices. Any invoices remaining unpaid beyond thirty (30) days will accrue interest at the rate of one and one-half (1½%) per month on the unpaid balance.
2. It is further understood that if the project is abandoned, or if any work being performed is suspended in whole or in part prior to the completion of any phase, payment will be due in direct proportion to the amount of work accomplished.
3. In addition, payment will be due for all reimbursable expenses incurred prior to receipt of written notice or such abandonment or suspension.

TIME OF PERFORMANCE:

We will make every effort to complete the project within the Owner's time frame and according to schedule. Cochran will not, however, be responsible for delays caused by events beyond our control.

TERMS AND CONDITIONS:

Attached to this proposal is a copy of the Cochran Standard Terms and Conditions. These terms and conditions shall apply to this proposal for professional services, which can also serve as a letter agreement. This document is enclosed for your review and reference.

Mr. Eric Sterman
Claymont Drive STP Project
December 22, 2022

GENERAL:

Cochran's reputation is based on understanding and meeting all the project objectives of our clients. We look forward to having an opportunity to demonstrate that responsiveness by providing timely and cost effective professional services.

If you would like to authorize Cochran to perform the professional services outlined in this proposal, please indicate your acceptance of the terms of this letter agreement by signing in the space provided below and returning one (1) copy for our contract files.

If you have any questions or changes regarding this proposal, please contact me at 314-842-4033. Thank you.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

Sincerely,



Dave Christensen, P.E.
Vice President

Acceptance:
City of Ballwin

By: _____

Title: _____

Date: _____

Attachments – Cochran Standard Terms & Conditions
Cost Estimate

COCHRAN STANDARD TERMS AND CONDITIONS

1. Unless expressly stated in the attached proposal letter (“Proposal”), the Proposal must be accepted in writing within thirty days or the Proposal is void and unenforceable.
2. The acceptance of the Proposal is conditioned upon these Terms and Conditions and the terms of the Proposal, which shall be the only terms and conditions applicable to any agreement between Cochran and Client. Requesting performance of the work by Cochran, sending a notice to proceed with the work, or an acknowledgment of the Proposal by the issuance of a purchase order by Client, notwithstanding any terms additional to or different from those contained herein, shall be deemed to be an acceptance of these Terms and Conditions by Client.
3. The Proposal and these Terms and Conditions constitute the entire agreement (“Contract”) between Cochran and the Client for the services identified in the Proposal. All prior proposals, negotiations, representations, recommendations, statements or agreements made or entered into prior to or contemporaneously with this Contract, whether oral or in writing, are superseded by this Contract unless they are expressly incorporated herein by reference. Any terms contained in any communication from Client which are inconsistent with the Contract shall not be binding upon Cochran.
4. Cochran may submit invoices on not less than a monthly basis. Cochran’s invoices are due and payable within fifteen (15) days of the submission of each invoice. Interest will accrue at the rate of one and one-half percent (1.5%) per month on all unpaid invoices from the date payment was due. In the event that Client disputes an invoice, Client will pay the undisputed portion of the invoice and provide a written explanation to Cochran of the basis for Client’s dispute. If Client fails to pay in full any of Cochran’s invoices, Cochran may immediately, without waiving any other rights it may have, suspend work pending resolution of the payment dispute. Client’s failure to pay any of Cochran’s invoices in full shall be considered a material breach of this Contract.
5. Unless specifically stated to the contrary in the Proposal, reimbursable expenses are in addition to the amounts identified for Cochran’s fees for basic and additional services. Reimbursable expenses shall include, but are not limited to: Client-authorized out-of-town travel, transportation, and subsistence expenses; fees paid for securing approval of jurisdictional authorities; postage, courier, or other delivery fees; material costs for models, mock-ups, or other presentation media; photographic film and development expenses.
6. This Contract is binding upon the heirs, successors and assigns of the parties hereto and may not be assigned by either party without the prior written consent of the other party.
7. Nothing in this Contract is intended to create any enforceable third party rights against Client or Cochran.
8. Cochran will perform all of its services consistent with that degree of skill and learning ordinarily used under the same or similar circumstances by the members of Cochran’s profession working in the same locale.
9. If, and to the extent that Cochran’s scope of work includes construction phase services, any such services shall be provided in accordance with and governed by the applicable terms of AIA Document A201 General Conditions of the Contract for Construction, 2007 Edition (“General Conditions”) If there is a conflict between the General Conditions and this Contract, this Contract will control.
10. When making any interpretation or decision as required by the General Conditions, Cochran will not show partiality to any party, and shall not be liable for interpretations or decisions rendered in good faith.
11. Cochran has no responsibility or obligation to supervise or direct the work activities of the Client’s employees and representatives, or any construction contractors, sub-contractors or any of their employees, or other persons not employed by Cochran.
12. Cochran will abide by any job-site safety programs identified in writing by the Client but will not be responsible for job-site safety of any persons not directly employed by Cochran.
13. Cochran has no responsibility or obligation with respect to the construction means, methods, sequencing or procedures of any construction contractors, sub-contractors or any of their employees.
14. Cochran is not responsible for the failure of any contractor to perform work properly and in accordance with any applicable documents, plans, specifications, codes or standards.
15. Cochran is not responsible for the identification of unsafe conditions, nor for the identification, handling, or removal of hazardous and/or toxic substances found on or brought to the site. Prior to the start of work, the Client shall disclose and identify in writing to Cochran, to the best of Client’s knowledge, all hazardous and/or toxic substances located on the site.
16. Cochran will have no obligation to commence its work until receipt of a written notice-to-proceed from Client and all other information required to be provided by Client. Cochran shall complete its work within any time limits identified in the Proposal. Cochran shall be entitled to an extension of time for performance of its work due to any delays that are due to any cause beyond Cochran’s reasonable control. In no event will Client be entitled to any costs, losses, expenses or damages (including, but not limited to, claims or damages attributable to home office overhead costs, loss of profits, loss of business opportunities and/or additional financing costs) as a result of any delay caused or attributable to Cochran.
17. Cochran and Client waive any and all claims against each other for consequential, indirect, incidental and special damages arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran’s work; including, but not limited to, lost profits, loss of business, financing costs, extended home office overhead and similar types of damages.
18. Provided that written notice of a material breach of this Contract has been provided to the defaulting party and the defaulting party has failed to cure or taken reasonable efforts to cure its default within seven (7) calendar days of its receipt of the notice, the non-defaulting party may terminate this Contract by sending notice of termination to the defaulting party.
19. If the Contract is terminated for any reason not attributable to Cochran, Client will pay for the work performed by Cochran up to the date of termination plus all of Cochran’s costs related to the termination (e.g., close-out costs, costs of terminating contracts with consultants, etc.).
20. In the event that there are any changes in applicable laws, codes or regulations after the Contract is executed that result in the need for Cochran to perform additional services and/or incur additional costs, Client shall pay Cochran for said services and costs at the rates set forth in the Proposal.
21. All documents and electronic media produced by Cochran under this Contract (“Instruments of Service”) shall be the property of the City.
22. Client and Cochran waive all rights against each other, any contractors and other professionals, and any of their respective consultants, contractors, suppliers, subcontractors, agents and employees, for damages caused by perils to the extent covered by insurance, except such rights as they may have to the insurance proceeds.
23. This Contract and the rights of the parties shall be governed by the laws of the State of Missouri.

- 24. Any claims, disputes, or other matters in question arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, at Cochran's sole election and discretion, shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the AAA. A demand for arbitration must be made within a reasonable time, and before the expiration of the applicable statute of limitations. Unless it consents in writing, Cochran may not be joined in any other arbitration involving the same project. The arbitration shall be held where the project is located.
- 25. In the event of any dispute, claim, arbitration or litigation arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, the prevailing party shall be awarded its attorney's fees, expert witness fees, expenses, arbitration fees and expenses, and court costs at the trial and all appellate levels; including costs and fees related to collection efforts. Determination of which party prevailed shall be made by the judge or arbitrator(s). The determination shall be made by reviewing the claims resolved at trial or arbitration (which excludes any claims resolved prior to the taking of evidence), and then determining which party achieved the greater success by quantifying the amounts awarded the party recovering damages or obtaining relief and comparing that result to the relief and/or damages requested by that party at the trial or arbitration. If that party received less than 50% of the relief and/or damages it sought, then the other party prevailed. If that party receives more than 50% of the relief and/or damages it sought, then it prevailed. The judge or arbitrator(s) may consider the percentage of recovery when determining the amount of fees and expenses to be awarded to the prevailing party. If more than one claim is presented, then the judge or arbitrator(s) may elect to evaluate who is the prevailing party on a claim by claim basis, or in the aggregate as they deem appropriate. In making the determination of which party prevailed, the judge or arbitrator(s) shall take into consideration any settlement offers or demands made prior to trial or arbitration.
- 26. **THE TOTAL LIABILITY OF COCHRAN AND ANY OF COCHRAN'S CONSULTANTS FOR ANY ACTIONS, DAMAGES, CLAIMS, DEMANDS, JUDGMENTS, LOSSES, COSTS, OR EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT OR ARBITRATION COSTS AND FEES) ARISING OUT OF OR RESULTING FROM COCHRAN'S OR ITS CONSULTANTS' NEGLIGENT ACTS, ERRORS, OMISSIONS OR BREACHES OF CONTRACT IS LIMITED TO THE LESSER OF THE CONTRACT PRICE OR THE AMOUNT OF PROFESSIONAL LIABILITY INSURANCE MAINTAINED BY COCHRAN AND AVAILABLE TO PAY SAID CLAIM. THIS LIMITATION OF LIABILITY IS APPLICABLE TO ALL CLAIMS THAT MAY BE ASSERTED AGAINST COCHRAN OR ITS CONSULTANTS ARISING OUT OF OR RELATING TO THE PROJECT OR THIS CONTRACT, WHETHER THE CLAIMS ARISE IN CONTRACT, TORT, STATUTE, OR OTHERWISE.**

Updated 01/2016

Initials _____