

In light of the current public health crisis and the Federal, State and County Emergency Declarations, and in accord with the provisions of Sec. 610.020, RSMo., the Board of Aldermen recognizes that it would be dangerous and impractical, if not impossible, for its meeting to be physically accessible to the public. The Board also recognizes the need for the public's business to be attended to in order to protect the public health, safety and welfare. In order to balance both the need for continuity of government and protection of the health and safety of our residents, business persons and employees, this meeting of the Board of Aldermen will not be open to public attendance in person. The meeting will be accessible by the public in real time ONLY by following the instructions in the box below.

You are invited to a Zoom webinar.  
When: Apr 14, 2020 7:00 PM Central Time (US and Canada)  
Topic: 04/14/2020 Board of Aldermen Meeting.

Please click the link below to join the webinar:  
<https://zoom.us/j/497575231>

Or join by phone:  
US: +1 929 205 6099 or +1 312 626 6799 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 6833 or +1 253 215 8782  
Webinar ID: 497 575 231  
International numbers available: <https://zoom.us/u/azzqXxSev>

**Persons interested in making their views known on any matter on the agenda should send an email with their comments to the City Clerk at [jfrazier@claytonmo.gov](mailto:jfrazier@claytonmo.gov). All comments received will be distributed to the entire Board before the meeting.**

Thank you for your understanding and patience as we all try to get through these difficult and dangerous times.

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**CITY OF CLAYTON BOARD OF ALDERMEN  
TUESDAY, APRIL 14, 2020  
VIRTUAL ZOOM MEETING  
CLAYTON, MO 63105  
7:00 P.M.**

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**ROLL CALL**

**MINUTES** – March 24, 2020

**PUBLIC REQUESTS & PETITIONS**

**REPORT FROM THE CITY MANAGER**

1. Presentation of the Annual Audit Report.
2. Ordinance – To approve a contract with XL Contracting, Inc. for the Alley Repairs FY2020 Project. (Bill No. 6788)
  - *To consider approving a contract for reconstruction of various alleys in the Central Business District, as well as spot repairs in residential areas.*
3. Ordinance – To approve a contract with Missouri Petroleum Products Company, LLC for the FY2020 Microsurfacing Project. (Bill No. 6789)
  - *To consider approving a contract for the replacement of non-ADA compliant curb ramps on Forsyth Boulevard and on N. Meramec Avenue.*

4. Ordinance – To approve an amendment to the Clayton City Code relating to parking meter regulations. (Bill No. 6790)
  - *To consider approving an amendment to clean up existing language pertaining to parking meter rental.*
5. Ordinance – To approve an easement agreement to facilitate construction of certain improvements related to the U.S. Capital Redevelopment Project. (Bill No. 6791)
  - *To consider approving a request for aerial and subsurface easements to facilitate construction of US Capital's new development adjacent to City rights-of-way.*
6. Ordinance – To approve an easement with Ameren for electrical service related to the Shaw Park All-Season Recreation project (Bill No. 6792)
  - *To consider approving an easement to allow Ameren to maintain electrical improvements and other related appurtenances and improvements, within Shaw Park.*
7. Ordinance – To approve a pledge agreement with Centene Charitable Foundation, the Clayton Community Foundation, and the City of Clayton for contributions to fund improvements to the recreation complex that includes an ice rink in Shaw Park. (Bill No. 6793)
  - *To consider approving the agreement.*

## **ADJOURNMENT**

Subject to a motion duly made in open session and a roll call vote pursuant to Section 610.022 the Board of Aldermen may also hold a closed meeting, with a closed vote and record for one or more of the reasons as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, negotiation of a contract pursuant to Section 610.021(12) RSMO., proprietary information pursuant to Section 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO.

THE CITY OF CLAYTON

Board of Aldermen  
City Hall – 10 N. Bemiston Avenue  
March 24, 2020  
7:00 p.m.

Minutes

**NOTE: In accord with the provisions of Section 610.015, RSMo., and multiple declarations of emergency at every level of government, and the prohibition on gatherings of 10 or more persons due to the Coronavirus pandemic, normal requirements for voting in the Board meeting were suspended. Accordingly, votes were taken as if all Board members were physically present and in attendance at the meeting.**

Mayor Harris called the meeting to order and requested a roll call. The following individuals were in attendance:

Aldermen: Mark Winings, Joanne Boulton, Rich Lintz, Ira Berkowitz, Bridget McAndrew, and Susan Buse.

Mayor Harris  
City Manager Gipson  
City Attorney O'Keefe

**Motion made by Alderman Lintz to approve the March 10, 2020 minutes. Alderman Boulton seconded.**

**Motion to approve the minutes passed unanimously on a voice vote.**

PUBLIC REQUESTS AND PETITIONS

None

AN ORDINANCE TO CONSIDER ENACTING EMERGENCY MEASURES TO PROTECT THE PUBLIC HEALTH DURING THE CORONAVIRUS PANDEMIC CRISIS

City Manager Gipson reported that considering the current public health crisis and the Federal, State and County Emergency Declarations caused by the Coronavirus ("Covid 19") pandemic this health crisis has put the lives and well-being of every Clayton resident at risk. That risk is markedly increased by social proximity and interaction with members of the public.

The professional guidance of the Centers for Disease Control and emergency health restrictions promulgated by St. Louis County require that the City revise many of its practices and procedures during the present crisis.

The Clayton Charter authorizes the City to adopt health, sanitary and safety regulations and provide for their enforcement.

In response to the Board's questions City Manager Gipson stated that he will provide to the Board updates and changes on a daily basis.

**Alderman Winings introduced Bill No. 6786, an Ordinance to Enact Emergency Measures to Protect the Public Health to be read for the first time by title only.**

City Attorney O’Keefe noted that the proposed draft of the ordinance included in the Board’s packet is not the most updated version. The correct version should include the following, *“Section Two; (g) reallocation of appropriated funds and suspension of purchases, service contracts or improvement projects as determined by the city manager to be prudent, reasonable or necessary in order to protect the city finances and the city’s ability to sustain critical public services during a potentially protracted and widespread public crisis; provided, however, that the city manager shall report any reallocation of funds in excess of \$25,000 to the board of aldermen within seventy-two (72) hours, ...”*

**Alderman Boulton seconded** (as specified by counsel).

**City Attorney O’Keefe reads Bill No. 6786, first reading, an Ordinance Enacting Emergency Measures to Protect the Public Health During the Coronavirus Pandemic Crisis by title only.**

**The motion passed unanimously on a voice vote.**

**Motion made by Alderman Winings that the Board give unanimous consent to consideration for adoption of Bill No. 6786 on the day of its introduction.**

**The motion passed unanimously on a voice vote.**

**Alderman Winings introduced Bill No. 6786, an Ordinance to Enact Emergency Measures to Protect the Public Health to be read for the second time by title only. Alderman Boulton seconded.**

**City Attorney O’Keefe reads Bill No. 6786, second reading, an Ordinance Enacting Emergency Measures to Protect the Public Health During the Coronavirus Pandemic Crisis by title only.**

**The motion passed on a roll call vote: Alderman Winings – Aye; Alderman Boulton – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6645 of the City of Clayton.**

**AN ORDINANCE TO CONSIDER APPROVING AN AMENDMENT TO TITLE III-E OF THE PARKING REGULATIONS IN TITLE III OF THE CITY CODE**

City Manager Gipson reported that the proposed ordinance would amend Schedule III of the Title III Traffic Code by adding locations on Aberdeen Place, University Lane, and Wydown Boulevard for residential parking restrictions.

**Alderman Winings introduced Bill No. 6787, an ordinance to approve an amendment to Table III-E of the Parking Regulations to be read by title for the first time. Alderman Boulton seconded.**

**City Attorney O’Keefe reads Bill No. 6787, first reading, an Ordinance Amending Table III-E of Schedule III of Title III of the Clayton City Code Relating to Parking Restrictions by title only.**

**The motion passed unanimously on a voice vote.**

**Motion made by Alderman Winings that the Board give unanimous consent to consideration for adoption of Bill No. 6787 on the day of its introduction. Alderman Boulton seconded.**

**The motion passed unanimously on a voice vote.**

**Alderman Winings introduced Bill No. 6787, an ordinance to approve an amendment to Table III-E of the Parking Regulations to be read by title for the second time. Alderman Boulton seconded.**

**City Attorney O’Keefe reads Bill No. 6787, second reading, an Ordinance Amending Table III-E of Schedule III of Title III of the Clayton City Code Relating to Parking Restrictions by title only.**

**The motion passed on a roll call vote: Alderman Winings – Aye; Alderman Boulton – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6646 of the City of Clayton.**

**AN ORDINANCE TO CONSIDER APPROVING THE ESTABLISHMENT OF THE 7730 BONHOMME COMMUNITY IMPROVEMENT DISTRICT- 2<sup>ND</sup> READING**

City Manager Gipson reported that a public hearing was held on March 10, 2020 with the first reading, approved by the Board of Aldermen. An overview of the request was provided at that meeting, the second reading is before the Board tonight.

John Jokis, Attorney, Husch Blackwell, representative for the developer was present to answer questions from the Board.

**Alderman Winings introduced Bill No. 6782, an ordinance to approve a petition requesting the formation of the 7730 Bonhomme Community Improvement District to be read by title for the second time. Alderman Boulton seconded.**

**City Attorney O’Keefe reads Bill No. 6782, second reading, an Ordinance of the City of Clayton, Missouri, Approving a Petition Requesting the Creation of the 7730 Bonhomme Community Improvement District; Establishing the District as a Political Subdivision of the State of Missouri; Directing the City Clerk to Notify the Missouri Department of Economic Development of the Creation of the District; Authorizing Certain Actions in Connection Therewith; and Containing a Severability Clause by title only.**

**The motion passed on a roll call vote: Alderman Winings – Aye; Alderman Boulton – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; And Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6647 of the City of Clayton.**

**Alderman Winings recused himself from the meeting (7:19 p.m.).**

**AN ORDINANCE TO CONSIDER APPROVING A REZONING AND A PLANNED UNIT DEVELOPMENT FOR FORSYTH POINTE DEVELOPMENT AT 8001-8049 FORSYTH BOULEVARD**

City Manager Gipson reported that This is the second public hearing to solicit input regarding a proposed rezoning and related Planned Unit Development (PUD) to be granted to Forsyth Acquisitions, LLC & Commerce Bank for a mixed-use development to be known as Forsyth Pointe. The first public hearing was held on March 10, 2020

Scott Haley, U.S. Capital Development, addressed the Board to answer questions.

In response to Alderman Boulton's question, Mr. Haley stated that they have not had a chance to discuss details of the art piece. He noted that they (U. S. Capital Development, Chapman, and Koman are committed to making art a major component. He agreed that they will bring in an art consultant.

Alderman Boulton noted that she received emails from Jake Reby, Chairman, and Dwyer Brown, member of the Public Art Advisory Committee (PAAC) and requested that they are included as part of tonight's minutes. (attached)

Alderman Boulton proposed the following amendment to the PUD, Section E, 3, 4. *Developer shall utilize the services of a qualified public art consultant to assist in selecting artists, locations and installation methods for public art to be included on the Project site. All public art must be submitted to and approved by the Public Art Advisory Commission prior to selection. In considering any proposed artwork the Commission shall consider whether (a) the proposed art would be visually and physically accessible to the public; (b) the art will enhance the public's experience of and interaction with the project; (c) the overall commitment of space and resources for public art is substantial and commensurate with the scale and cost of the project as a whole; (d) the art is unique, dynamic, important and lends distinction to the project and the city, and (e) the art is so composed, constructed and sited as to have a lasting presence and make a continuing contribution to the vitality of the community.*

Alderman Berkowitz commented that he applauds this step in the right direction noting that he feels the amendment does not provide guidance on earning the points and hope that this is worked on further.

**Motion made by Alderman Boulton to amend Bill No. 6783.1 as proposed. Alderman Lintz seconded.**

**The motion passed unanimously on a voice vote.**

**Motion made by Alderman Boulton to amend Bill No. 6783 by text of Bill No. 6783.1 as amended. Alderman Lintz seconded.**

**The motion passed unanimously on a voice vote.**

**Alderman Boulton introduced Bill No. 6783.1, an ordinance to approve rezoning from HDC High Density Commercial District to a Planned Unit Development for 8049 Forsyth Boulevard as amended. to be read by title for the second time. Alderman Lintz seconded.**

**City Attorney O’Keefe reads Bill No. 6783.1, second reading, an Ordinance as amended, Providing for the Rezoning of Certain Property Located at 8049 Forsyth Boulevard, 8015, 8019, 8023, 8025, 8027 Forsyth Boulevard and 8001 Forsyth Boulevard and 15 North Meramec Avenue From High Density Commercial Located in the Downtown Core Overlay District and Planned Unit Development District to a Planned Unit Development District to be Known as the Forsyth Pointe PUD; Providing for the change in the Zoning Map of the City of Clayton, Missouri; Approving a Planned Unit Development for the Property at 8049 Forsyth Boulevard, 8015, 8019, 8023, 8025, 8027 Forsyth Boulevard and 8001 Forsyth Boulevard and 15 North Meramec Avenue; and Other Actions Related Thereto by title only.**

**The motion passed on a roll call vote: Alderman Boulton – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6648 of the City of Clayton.**

Other

City Manager Gipson thanked everyone for support and commitment due to the current circumstances.

Alderman Buse expressed how positive it is to have Alderman Winings’ term extended; and also inquired about the budget projections.

City Manager Gipson reported that the budgeting process would be delayed for a month considering the current circumstances.

There being no further business the meeting adjourned at 7:48 p.m.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

## June Frazier

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**From:** Joanne Boulton  
**Sent:** Tuesday, March 24, 2020 6:21 PM  
**To:** June Frazier  
**Subject:** Fw: Clayton Public Art Advisory Commission recommendation

*Joanne Boulton*

Alderman, Ward 1

City of Clayton

314-277-2640 cell

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**From:** Reby, Jacob W. <jreby@lewisrice.com>  
**Sent:** Tuesday, March 24, 2020 11:58 AM  
**To:** Joanne Boulton <jboulton@claytonmo.gov>; Michelle Harris <mharris@claytonmo.gov>; Richard Lintz <rlintz@claytonmo.gov>; David Gipson <dgipson@claytonmo.gov>  
**Cc:** Ronnie Greenberg <ronnie@thegreenberggallery.com>; Carmen Colangelo (colangelo@wustl.edu) <colangelo@wustl.edu>  
**Subject:** Clayton Public Art Advisory Commission recommendation

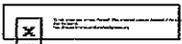
[CAUTION – EXTERNAL EMAIL]

To Clayton Board of Aldermen:

As the chair of PAAC I would recommend the below requirements for any piece of art included in a new real estate development project as a **public benefit**:

- The developer should engage an outside art consultant for the identification and commissioning of an artist, siting and purchase of the Public Art.
- PAAC needs criteria as to the definition of "significant" in order to best determine if the Public Benefit of the art work is met for this particular project. In this situation, a monetary value would be very helpful as a proxy for the term "significant", and I would recommend that be the lesser of ½ of 1% of the total project cost or \$500,000.

Sincerely, Jacob W. Reby, Chair of Clayton Public Art Advisory Commission



**Jacob W. Reby**  
[jreby@lewisrice.com](mailto:jreby@lewisrice.com)  
600 Washington Avenue  
Suite 2500  
St. Louis, Missouri 63101-1311  
314.444.1310 (direct)  
314.612.1310 (fax)  
[www.lewisrice.com](http://www.lewisrice.com)

## June Frazier

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**From:** joanne boulton <joanne.m.boulton@gmail.com>  
**Sent:** Tuesday, March 24, 2020 6:22 PM  
**To:** June Frazier  
**Subject:** Fwd: public art costs  
**Attachments:** art costs.pptx

[CAUTION – EXTERNAL EMAIL]

----- Forwarded message -----

From: **Dwyer Brown** <[dwyerpbrown@gmail.com](mailto:dwyerpbrown@gmail.com)>  
Date: Tue, Mar 17, 2020 at 1:36 PM  
Subject: public art costs  
To: joanne boulton <[joanne.m.boulton@gmail.com](mailto:joanne.m.boulton@gmail.com)>

Hi Joanne. Hope you made it safely to OKC.

Here are several examples of public art projects either proposed or realized and the associated costs. As you can see there are many different styles and mediums available for a range (here) of between \$100K and \$1 million. (The last few slides costs are found in the "presenters notes" on the menu.) I think a budget of between \$400K and \$1 million should be adequate for the two spaces at Forsyth Pointe. If one artist is commissioned for both locations it will most likely cost less than commissioning two artists.

I'm also going to pull together some policy research. Happy to discuss further.

Dwyer

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Joanne M. Boulton

314-277-2640 cell  
[joanne.m.boulton@gmail.com](mailto:joanne.m.boulton@gmail.com)



Alice Aycock, *Another Twister (João)* / Material : powder coated aluminum /  
Size: 18'6" tall / Location: Hanover, Germany / (2015) \$565,000



Zadok Ben-David, *Exotic Tree* / Materials: Corten steel / Size: 11' x 9.6' / \$170,000 (2010)



Cao + Perrot, *Willow Tree* / Materials: stainless steel, mother of pearl /  
Size: 30' x 40' x 35' / Location: Grand Prairie, TX / \$550,000 (2010)



Tony Cragg, *Runner* / Materials: stone / Size: 5'3" x 4' x 2' Location: Salzberg, Germany / \$224,000 (2013)



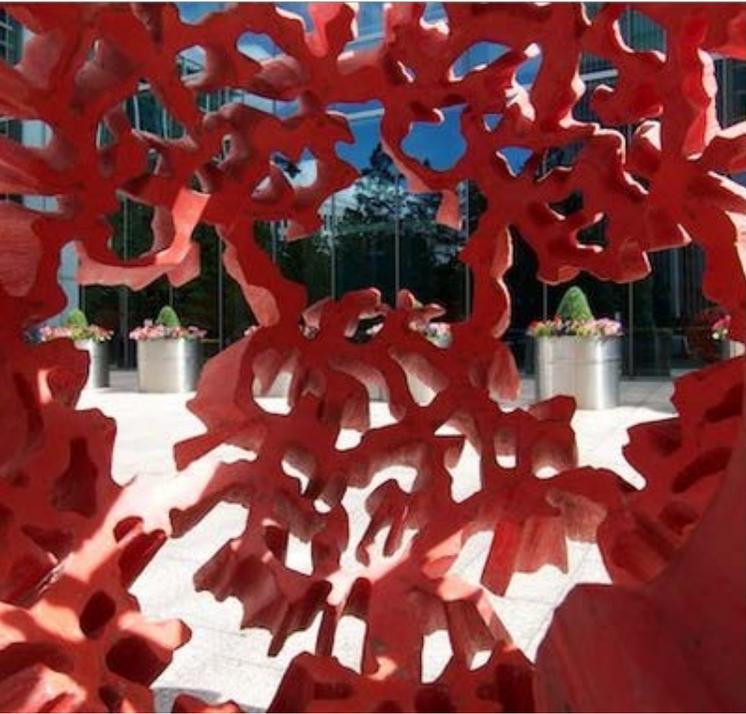
Tony Cragg, *Wild Relatives* / Materials: bronze / Size: 8' x 4.75' x 4.5' / \$492,000 (2013)



Tony Cragg, *Caught Dreaming* / Materials: Bronze / Size: 5' x 9' x 5' / \$527,000 (2006)



Kon Dimopolous, *Blue Tree in a Red Landscape* / Materials: Stainless Steel, Painted Stainless Steel, Galvanized Steel / Size: 23' x 19' x 15' / Location: Healesville Vic., Australia / \$290,000 (2010)



Yvonne Domenge, *Coral Coquino* / Material: Polymers and Onyx Powder / Size: 3' x 7.5' / Location: London / \$130,000 (2015)



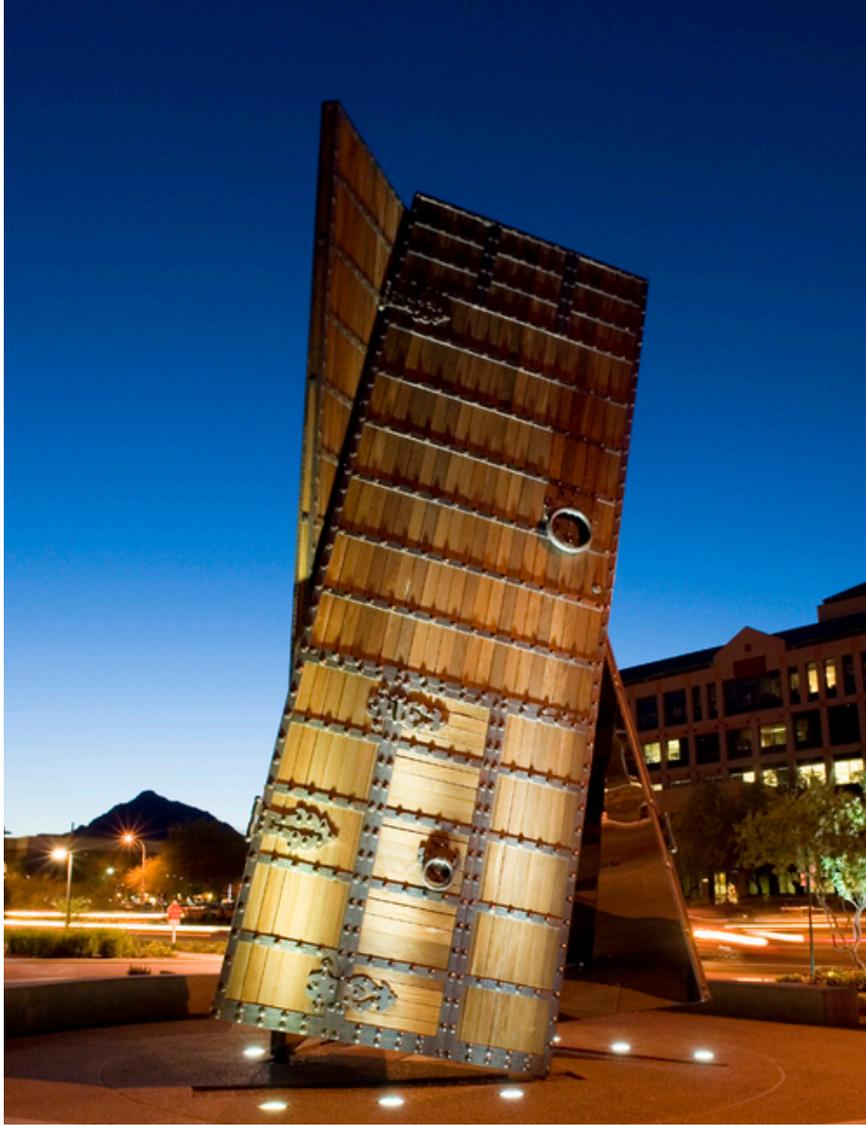
Yvonne Domenge, *Tabachin Ribbon* / Material: Polymers and Onyx Powder / Size: 13' x 13' / Location: Fort Worth, TX / \$155,000 (2010)



Chris Doyle, *Showershade* / Materials: steel, concrete, showers, fans / Location: Austin, TX / \$244,000 (2010)



Donald Lipski, *Sirshasana* / Material: artificial tree with hand-faceted Austrian crystals / Size: 12' x 25' x 25' / Location: Grand Central Terminal in New York, NY / \$300,000 (2000)



Donald Lipski, *The Doors* / Material: Ipe wood, structural steel, forged stainless steel, polished stainless steel, LED / Size: 29'x12'x12' / Location: Scottsdale, AZ / \$450,000 (2007)



Sibylle Pasche, *Riflesso di Stelle* / Materials: Bianco Carrara Marble / Size: 4.5' x 6.5' x 5' / \$150,000 each (2015)



Will Ryman, *Encore* / Materials: fiberglass, stainless steel, marine paint /  
Location: Fairchild Tropical Botanical Garden / \$375,000 (2011)

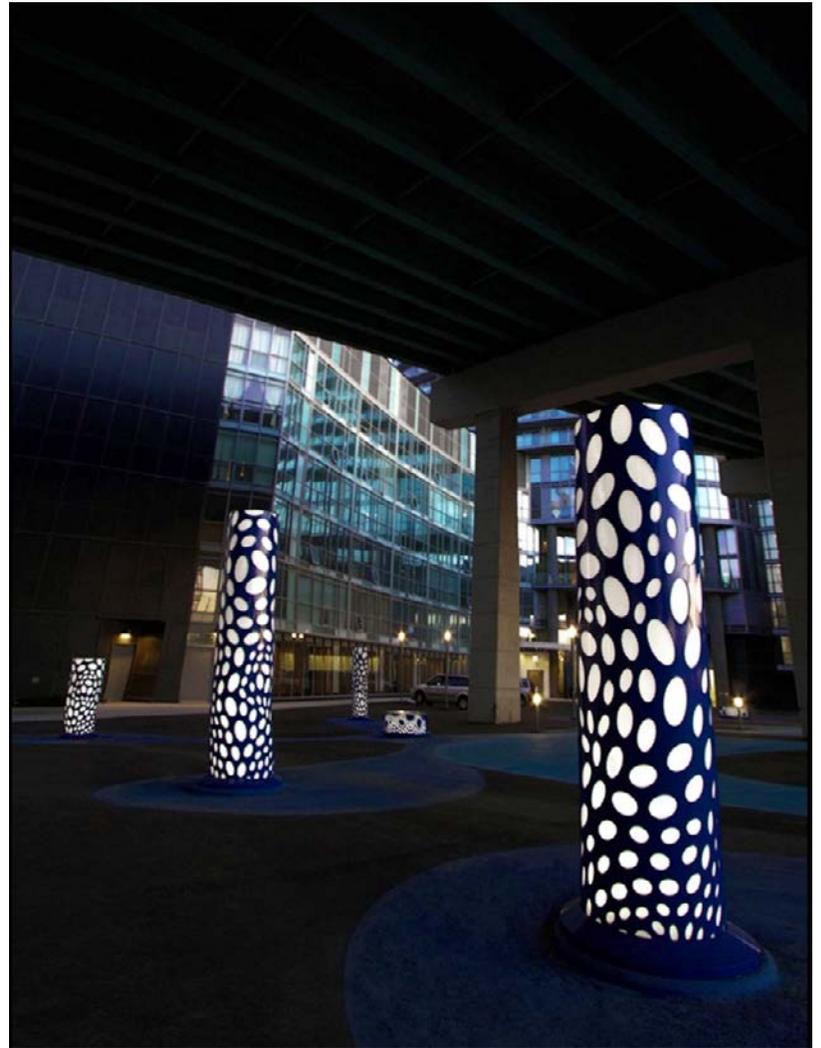


Jim Sanborn, *Vocal Witness* / Materials: Metal (Bronze screening and copper tubing) / Location: Rocky Hill, CT / \$172,000 (2008)













City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

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## REQUEST FOR BOARD ACTION

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**TO:** MAYOR HARRIS; BOARD OF ALDERMEN  
**FROM:** DAVID GIPSON, CITY MANAGER  
MATT MALICK, P.E., INTERIM DIRECTOR OF PUBLIC WORKS  
**DATE:** APRIL 14, 2020  
**SUBJECT:** ORDINANCE - A CONTRACT WITH XL CONTRACTING, INC. FOR THE ALLEY REPAIRS FY2020 PROJECT

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The Public Works Department is requesting approval of a construction contract for the Alley Repairs FY2020 Project. This bid scope included the full or partial reconstruction of various alleys in the Central Business District, as well as alternate bids for spot repairs in residential areas (Hi-Pointe/DeMun and West Bemiston neighborhoods).

Bids were opened at 2 pm on April 3, 2020. The City received seven bids as shown on the attached bid tabulation. Build Pro Concrete, Inc. submitted the lowest bid, but has formally withdrawn their bid because of an error in the bid. XL Contracting, Inc. was the next lowest, responsive, responsible base bid in the amount of \$388,756.70. The final engineer's estimate for this work was \$459,550.00.

XL Contracting, Inc. remained the lowest, responsive, responsible bidder with the inclusions of the alternate bid in the amount of \$83,975.14. The base bid plus alternate totals to \$472,731.84, which is 1.2% less than the next lowest bid.

This project is funded by bond proceeds that have been transferred into the Capital Improvement Fund, there are adequate funds in the FY2020 budget for this activity.

**STAFF RECOMMENDATION:** To approve the ordinance authorizing a contract with XL Contracting, Inc. in the amount of \$472,731.84, plus authorization to approve change orders in an amount not to exceed \$47,268.16, for a total of \$520,000.00, for the Alley Repairs FY2020 Project.

**BILL NO. 6788**

**ORDINANCE NO.**

**AN ORDINANCE APPROVING A CONTRACT WITH XL CONTRACTING, INC. FOR THE ALLEY REPAIRS FY2020 PROJECT**

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**WHEREAS**, the City desires to repair and reconstruct alleys in the Central Business District, Hi-Pointe/DeMun neighborhood, and the West Bemiston neighborhood; and

**WHEREAS**, upon request and advertisement for bids, XL Contracting, Inc. was found to be the lowest, responsive, responsible bidder for the Alley Repairs FY2020 Project;

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

Section 1. The Board of Aldermen approves on behalf of the City a contract with XL Contracting, Inc. for construction services in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, and change orders approved by the Director of Public Works in a cumulative amount not to exceed \$47,268.16, together with such document changes as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Manager and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

Section 2. This Ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

Passed this 14<sup>th</sup> day of April 2020.

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Mayor

ATTEST:

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City Clerk

**Bid Tab**  
**Alley Repair s FY 2020**  
 B12020.PW.40.030  
 Bid Date: 4/30/2020  
 Bid Time: 2:00 PM



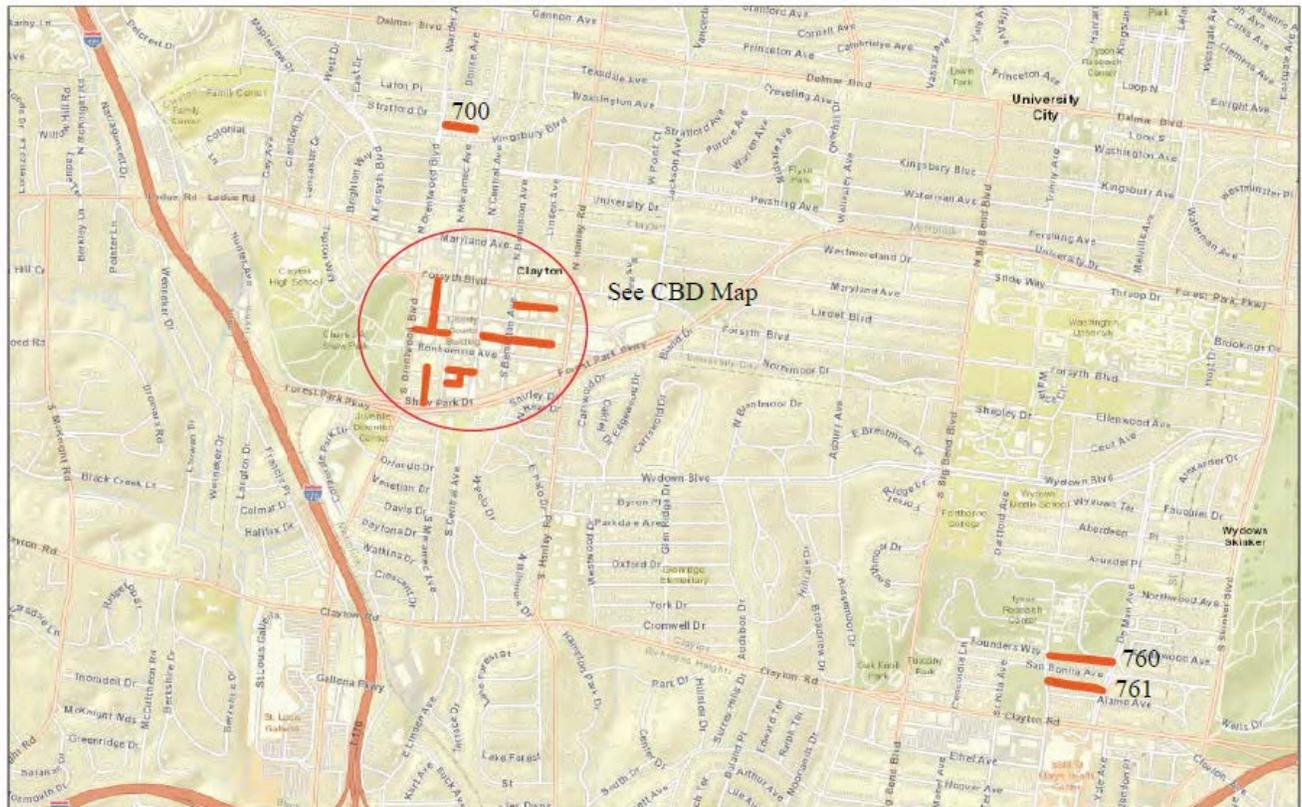
Item No.	Description	Unit	Quantity	Build Pro Concrete*		Krupp Construction		Lambe Trenching & Excavating		Rainett Construction		Gershenson Construction		XL Contracting		Byrne & Jones Construction		Engineers Estimate	
				Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
1	Demolition and Excavation	LS	1	\$4.23	\$4.23	\$77,350.00	\$77,350.00	\$82,284.00	\$82,284.00	\$67,310.00	\$67,310.00	\$85,511.50	\$85,511.50	\$82,500.00	\$82,500.00	\$106,428.00	\$106,428.00	\$100,000.00	\$100,000.00
2	Type 1 Aggregate Base, 4" thick	SY	3,385	\$7.67	\$25,962.95	\$13,25	\$44,851.25	\$8.00	\$27,080.00	\$8.90	\$30,126.50	\$9.50	\$32,157.50	\$4.64	\$15,706.40	\$3.50	\$11,847.50	\$10.00	\$33,850.00
3	8" Concrete Pavement**	SY	3,385	\$46.14	\$156,883.90	\$74.00	\$250,490.00	\$75.00	\$253,875.00	\$70.50	\$238,642.50	\$65.00	\$220,025.00	\$61.40	\$207,839.00	\$101.57	\$343,834.45	\$70.00	\$236,950.00
4	Adjust Graded Inlet/Manhole	EA	10	\$150.00	\$1,500.00	\$730.00	\$7,300.00	\$500.00	\$5,000.00	\$800.00	\$8,000.00	\$750.00	\$7,500.00	\$1,151.09	\$11,510.90	\$100.00	\$1,000.00	\$600.00	\$6,000.00
5	Pavement Marking-24" Stop Bar	LF	110	\$5.00	\$550.00	\$22.00	\$2,420.00	\$10.00	\$1,100.00	\$11.00	\$1,210.00	\$20.00	\$2,200.00	\$0.64	\$70.40	\$0.67	\$73.70	\$15.00	\$1,650.00
6	Over-excavation	EA	11	\$50.00	\$550.00	\$350.00	\$3,850.00	\$150.00	\$1,650.00	\$150.00	\$1,650.00	\$200.00	\$2,000.00	\$44.00	\$484.00	\$44.76	\$492.36	\$100.00	\$1,100.00
7	Traffic Control	CY	500	\$24.57	\$12,285.00	\$24.00	\$12,000.00	\$60.00	\$30,000.00	\$35.00	\$17,500.00	\$30.00	\$15,000.00	\$68.71	\$34,355.00	\$94.31	\$47,155.00	\$50.00	\$25,000.00
8	Traffic Control	LS	1	\$3,500.00	\$3,500.00	\$9,400.00	\$9,400.00	\$5,000.00	\$5,000.00	\$11,400.00	\$11,400.00	\$4,250.00	\$4,250.00	\$13,891.00	\$13,891.00	\$1,000.00	\$1,000.00	\$5,000.00	\$5,000.00
9	Mobilization	LS	1	\$350.00	\$350.00	\$31,500.00	\$31,500.00	\$15,000.00	\$15,000.00	\$34,100.00	\$34,100.00	\$60,000.00	\$60,000.00	\$42,400.00	\$42,400.00	\$14,796.67	\$14,796.67	\$50,000.00	\$50,000.00
<b>Total Bid</b>					<b>\$218,348.37</b>		<b>\$439,161.25</b>		<b>\$400,989.00</b>		<b>\$411,439.00</b>		<b>\$428,844.00</b>		<b>\$388,756.70</b>		<b>\$526,607.68</b>		<b>\$459,550.00</b>
<b>ALTERNATE BID #1 - RESURFACING ALLEY</b>																			
<b>REPAIR</b>																			
Item No.	Description	Unit	Quantity	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
1-Jan	Type 1 Aggregate Base, 4" thick	SY	922	\$4.23	\$3,900.66	\$13.50	\$12,447.00	\$8.00	\$7,376.00	\$10.30	\$9,496.60	\$9.00	\$8,298.00	\$5.62	\$5,181.64	\$3.87	\$3,568.14	\$10.00	\$9,220.00
2-Jan	8" Concrete Pavement**	SY	922	\$68.03	\$62,715.66	\$106.00	\$98,410.00	\$75.00	\$69,150.00	\$101.50	\$93,583.00	\$89.00	\$82,000.00	\$85.35	\$78,692.70	\$142.89	\$131,744.58	\$70.00	\$64,540.00
3-Jan	Pavement Marking-24" Stop Bar	LF	20	\$5.00	\$100.00	\$22.00	\$440.00	\$11.00	\$220.00	\$11.00	\$220.00	\$20.00	\$400.00	\$0.64	\$12.80	\$1.13	\$22.60	\$15.00	\$300.00
4-Jan	Pavement Marking-STOP*	EA	2	\$50.00	\$100.00	\$350.00	\$700.00	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00	\$44.00	\$88.00	\$55.96	\$111.92	\$100.00	\$200.00
<b>Total Alternate Bid</b>					<b>\$57,603.72</b>		<b>\$110,397.00</b>		<b>\$77,326.00</b>		<b>\$103,699.60</b>		<b>\$100,376.00</b>		<b>\$83,975.14</b>		<b>\$135,447.24</b>		<b>\$74,280.00</b>
<b>Base Bid Plus Alternate</b>					<b>\$275,952.09</b>		<b>\$549,558.25</b>		<b>\$478,315.00</b>		<b>\$515,138.60</b>		<b>\$529,220.00</b>		<b>\$472,731.84</b>		<b>\$662,054.92</b>		<b>\$533,810.00</b>

\* bid withdrawn due to errors

## 2020 Alley Repair Project: Downtown Location Map



## 2020 Alley Project: Residential Map



## INSTRUCTIONS FOR EXECUTING CONTRACT

The Contractor, in executing the Contract, shall follow the following requirements:

The Contractor and the Owner shall sign the Contract Documents in not less than triplicate.

If the Contractor is a corporation, the following certificate shall be executed:

I, \_\_\_\_\_ certify that I am the \_\_\_\_\_ secretary of the corporation named as Contractor herein above, that \_\_\_\_\_ who signed the foregoing Contract on behalf of the Contractor was then of said corporation; that said Contract was duly signed for and in behalf of said corporation by Authority of its governing body, and is within the scope of its corporate powers.

If the Contract is signed by the secretary of the corporation, the above certificate shall be executed by some other officer of the corporation under the corporate seal. In lieu of the foregoing certificate there may be attached to the Contract copies of as much of the records of the corporation as will show the official character and authority of the officers signing, duly certified by the secretary or assistant secretary under the corporate seal to be true copies.

If the Contractor is a partnership, each partner shall sign the Contract. If the Contract is not signed by each partner, there shall be attached to the Contract a duly authenticated power of attorney evidencing the signer's (signers") authority to sign such a Contract for and in behalf of the partnership.

If the Contractor is an individual, the trade name (if the Contractor is operating under a trade name) shall be indicated in the Contract and the Contract shall be signed by such individual. If signed by one other than the Contractor there shall be attached to the Contract a duly authenticated power of attorney evidencing the signer's authority to execute such Contract for and in behalf of the Contractor.

The full name and business address of the Contractor shall be inserted and the Contract shall be signed with his official signature. The name of the signing party or parties shall be typewritten or printed under all signatures to the Contract.

The Contract shall be deemed as having been awarded when formal notice of award shall have been duly served upon the intended awardee (i.e., the bidder with whom the Owner contemplates entering into a Contract) by some officer or agent of the Owner duly authorized to give such notice.

**CITY-CONTRACTOR AGREEMENT**

This Agreement is made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Clayton, Missouri (hereinafter the "City") and **XL Contracting, Inc.**, a Corporation with offices at **20 Mid Rivers Trade Court, Suite 100, St. Peters, MO 63376**, (hereinafter the "Contractor"). The project shall be identified as **Alley Repairs FY2020**, Project No.: **BI.2020.PW.40.030**

**WITNESSETH:**

The Contractor and the City for the consideration set forth herein agree as follows:

**ARTICLE I - The Contract Documents**

The Contract Documents consist of the Invitation for Bids and Bid Specifications previously issued by the City for the Work and Contractor’s submission in response thereto, the General Conditions of City-Contractor Agreement, Non-Collusion Affidavit, Performance and Payment Bond, Specifications, Drawings, the Construction Schedule, all Addenda and all Modifications issued after execution of this Contract, which together with this Agreement form the Contract, and are all as fully made a part of the Contract as if attached to this Agreement or repeated herein. All definitions set forth in the General Conditions of City-Contractor Agreement are applicable to this Agreement. This Contract cannot be modified except by duly authorized and executed written amendment.

**ARTICLE II - Scope of Work**

The Contractor, acting as an independent contractor, shall do everything required by the Contract Documents. Contractor represents and warrants that contractor has special skills which qualify contractor to perform the Work in accordance with the Contract and that contractor is free to perform all such Work and is not a party to any other agreement, written or oral, the performance of which would prevent or interfere with the performance, in whole or in part, of the Work.

**ARTICLE III - Time of Completion**

All time limits stated in the Contract Documents are of the essence. The Work to be performed under this Contract shall commence within ten (10) days of the date of the written Notice to Proceed from the City to the Contractor and shall be completed within **One Hundred Five (105)** consecutive calendar days from and including the date of said written Notice to Proceed.

**ARTICLE IV - The Contract Sum and Payments**

Based upon Applications for Payment and an Invoice duly delivered by the Contractor to the City by the twentieth day of the month for work performed, in accordance with the Contract, the City shall pay the Contractor for the performance of the Work, the sum of **Four Hundred Seventy Two Thousand Seven Hundred Thirty One Dollars and Eighty Four Cents (\$472,731.84)** (the "Contract Sum") as follows:

- (a) On or about the tenth day of each following month, ninety percent (90%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated into the Work, and ninety percent (90%) of the portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site to be incorporated into the Work, through the period ending up to the twentieth of the preceding month, less the aggregate of all previous progress payments;
- (b) Within thirty (30) days of substantial completion of the Work, a sum sufficient to increase the total payments to ninety percent (90%) of the Contract Sum; and
- (c) Final payment within thirty (30) days after the Work is certified by the City as fully completed and accepted by the City including any required documentation.
- (d) The foregoing schedule shall not apply if contrary to federal funding requirements or unless funds from a state grant are not timely received.
- (e) Estimates of work performed and materials delivered shall be finally determined by the City.

- (f) The foregoing retainage amounts are agreed to be required to ensure performance of the Contract.
- (g) Payment shall be deemed made when mailed or personally delivered, whichever is earlier.

#### **ARTICLE V - Performance of the Work**

- (a) Within fourteen (14) calendar days after being awarded the Contract, the Contractor shall prepare and submit for the City's approval (1) a **Construction Schedule** for the Work in a bar chart format which Construction Schedule shall indicate the dates for starting and completing the various stages of construction on a street by street basis and (2) a **Traffic Control Plan** indicating the location of all proposed signage, detours, road closures throughout the project which adequately address the traffic control plan of the proposed work. All traffic control shall be according to the standards of the Manual on Uniform Traffic Control Devices (Millenium Edition) developed by the Federal Highway Administration. No work will commence until the Contractor's Schedule and Traffic Control Plan is submitted and approved by the City. The Contractor shall be required by the Director of Public Works to substantially finish portions of the Work prior to continuation of further work remaining on the project, including backfilling, paving, sodding or cleanup.
- (b) Completion of the Work in accordance with the time limits set forth in the Construction Schedule is an essential condition of this Contract. If the Contractor fails to complete the Work in accordance with the Construction Schedule, unless the delay is excusable under the provisions of Article VI hereof, the Contractor shall pay the City as liquidated damages and not as a penalty, the sum of **\$500.00** for each calendar day the Contractor fails to comply with the Construction Schedule. The total amount so payable to the City as liquidated damages may be deducted from any sums due or to become due to Contractor from City.
- (c) After Commencement of the Work, and until final completion of the Work, the Contractor shall report to the City as such intervals as the City may reasonably direct, the actual progress of the work compared to the Construction Schedule. If the Contractor falls behind the Construction Schedule for

any reason, he shall promptly take, and cause his Subcontractors to take, such action as is necessary to remedy the delay, and shall submit promptly to the City for approval a supplementary schedule or progress chart demonstrating the manner in which the delay will be remedied; provided, however, that if the delay is excusable under Article VI hereof, the Contractor will not be required to take, or cause his Subcontractors to take, any action which would increase the overall cost of the Work (whether through overtime premium pay or otherwise), unless the City shall have agreed in writing to reimburse the Contractor for such increase in cost. Any increase in cost incurred in remedying a delay which is not excusable under Article VI hereof shall be borne by the Contractor.

#### **ARTICLE VI - Delays Beyond Contractor's Control**

(a) If the Contractor fails to complete the Work in accordance with the Construction Schedule solely as a result of the act or neglect of the City, or by strikes, lockouts, fire or other similar causes beyond the Contractor's control, the Contractor shall not be required to pay liquidated damages to the City pursuant to paragraph (b) of Article V hereof, provided the Contractor uses his best efforts to remedy the delay in the manner specified in paragraph (c) of Article V hereof. If, as a result of any such cause beyond the Contractor's control, the delay in completion of the Work in accordance with the Construction Schedule is so great that it cannot be remedied in the aforesaid manner, or if the backlog of Work is so great that it cannot be remedied without incurring additional cost which the City does not authorize, then the time of completion and the Construction Schedule shall be extended pursuant to a Change Order for the minimum period of delay occasioned by such cause. The period of delay and extension shall be determined by the City.

(b) Notwithstanding the foregoing paragraph (a), no extension of time or other relief shall be granted for any delay the cause of which occurs more than seven (7) days before claim therefor is made in writing by the Contractor to the City, and no extension of time shall be granted if the Contractor could have avoided the need for such extension by the exercise of reasonable care and foresight. In the case of a continuing cause of delay, only one claim is necessary.

- (c) Weather shall not constitute a cause for granting an extension of time.
- (d) In the event a delay is caused by the City, the Contractor's sole remedy shall consist of his rights under this Article VI.

#### **ARTICLE VII - Changes in the Work**

- (a) The City may make changes within the general scope of the Contract by altering, adding to or deducting from the Work, the Contract Sum being adjusted accordingly. All such changes in the Work shall be executed under the General Conditions of the Contract. No extra work or change shall be made except pursuant to a Change Order from the City in accordance with the General Conditions. Any claim for an increase in the Contract Sum resulting from any such change in the Work shall be made by the Contractor in accordance with the General Conditions.
- (b) If the requested change would result in a delay in the Construction Schedule, the provisions of paragraph (c) of Article V and of Article VI hereof shall apply. If the requested change would result in a decrease in the time required to perform the Work, the completion date and the Construction Schedule shall be adjusted by agreement between the parties to reflect such decrease.
- (c) Any adjustment in the Contract Sum for duly authorized extra work or change in the Work shall be determined based on the unit prices previously specified, to the extent such unit prices are applicable. To the extent such unit prices are not applicable, the adjustment in the Contract Sum shall, at the option of the City, be determined by an acceptable lump sum properly itemized and supported by sufficient substantiating data to permit evaluation, or by an acceptable cost plus percentage or fixed fee.

#### **ARTICLE VIII - Termination**

- (a) If the Contractor is adjudged insolvent or bankrupt, or if the Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's

insolvency, or if the Contractor fails, except in cases for which extension of time is provided, to make progress in accordance with the Construction Schedule, or if the Contractor fails to make prompt payment to Subcontractors for material or labor, or persistently disregards laws, ordinances or the instructions of the City, or otherwise breaches any provision of the Contract, the City may, without prejudice to any other right or remedy, by giving written notice to the Contractor, terminate the Contract, take possession of the Work and of all materials and equipment thereon and finish the Work by whatever method the City may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum shall exceed the expenses of finishing the Work, including additional architectural, managerial and administrative expenses, such excess shall be paid to the Contractor. If such expenses shall exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the City promptly upon demand.

In the event of termination pursuant to this paragraph, the Contractor, upon the request of the City, shall promptly

(i) assign to the City in the manner and to the extent directed by the City all right, title and interest of the Contractor under any subcontracts, purchase orders and construction equipment leases to which the Contractor is a party and which relate to the Work or to construction equipment required therefor, and

(ii) make available to the City to the extent directed by the City all construction equipment owned by the Contractor and employed in connection with the Work.

(b) Performance of the Work hereunder may be terminated by the City by giving three (3) days prior written notice to the Contractor. In the event of termination, under this paragraph (b) the Contract Sum shall be reduced by the percentage of work not completed on the date of termination.

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**ARTICLE IX - Contractor's Insurance**

Contractor's insurance shall be endorsed to cover the contractual liability of the Contractor under the General Conditions referring to Property Insurance.

**ARTICLE X - Indemnities**

(a) **Liability**: Contractor indemnifies, defends, and holds the City harmless for all third party claims or suits for libel, slander, property damage, and bodily injury, including death, because of the Contractor's negligence, general liability or product liability that arise out of the Project or anyone directly or indirectly employed by the Contractor or anyone for whose acts the City may be liable, regardless of whether caused in whole or in part by the City's negligence. These obligations include all judgments or awards recovered from the claims or suits, including court costs and attorney fees.

(b) **Professional Liability**: Contractor indemnifies and holds the City harmless for all third-party claims or suits for damages, including consequential or economic damages, to the extent caused by the negligent acts, errors or omissions of the Contractor, its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in performing professional services under this Agreement. These obligations include all judgments or awards recovered from the claims or suits, including court costs and attorney fees.

(c) **Other Indemnities**: Contractor indemnifies, defends, and holds the City harmless for all third-party claims or suits for fines, penalties, liquidated damages or any other damages of whatsoever nature to the extent caused by the negligence or wrongdoing of the Contractor, its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. These obligations include all judgments or awards recovered from the claims or suits, including courts costs and attorney fees.

(d) Contractor agrees that its indemnity obligations set forth in this Article will not be affected in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for

the City, the Contractor, or any of the subcontractors under workers’ compensation acts, employer’s liability insurance, or other employee benefit acts.

**ARTICLE XI - Insurance**

(a) Except to the extent set forth in Section (b) of this Article, the Contractor will purchase and maintain the following insurance to cover its operations under this Agreement without limiting the liability of the Contractor under this Agreement. This insurance will be provided by insurance companies acceptable to the City and licensed to do business in each jurisdiction where the Work is performed.

1. Workers’ Compensation Insurance in full compliance with workers’ compensation laws of the State of Missouri together with Employer’s Liability Coverage with minimum limits of liability in the amount of \$3,000,000.00 for each accident and each disease.

2. Commercial Automobile Liability Insurance under Form CA 00 01, covering all owned hired, and non-owned vehicles, with minimum combined single limits of liability of \$2,000,000 for each accident.

3. Commercial General Liability Insurance, and, if necessary, excess liability insurance on a “true following-form” basis, all of which is written on an occurrence basis, with the following minimum limits of liability:

General Aggregate	\$3,000,000.00
Products/completed operations aggregate	\$3,000,000.00
Personal and advertising injury	\$3,000,000.00
Each occurrence	\$3,000,000.00
Fire damage legal liability	\$3,000,000.00
Medical expenses	\$ 5,000.00

(b) The Commercial General Liability and the Commercial Automobile Liability Insurance coverages and their respective limits set forth in Section (a) of this Article are being explicitly required and obtained to insure the indemnity obligations set forth in Section (a) of Article X to meet the requirements of § 434.100.2(8) R.S.Mo. The parties further acknowledge that the cost of these insurance coverages is included in the Contract Price and that the limits and coverages afforded by them is the Contractor's total aggregate liability under the indemnity obligations set forth in Section (a) of Article X.

(c) Contractor's Commercial Automobile Liability, Commercial General Liability, and Professional Liability policies – and any excess policies necessary to meet the required limits – will include contractual liability coverage. The City of Clayton, its officers, boards, board members, commissions, commissioners, agents, and employees will be named as an additional insured on the Contractor's Commercial General Liability policy by using ISO Additional Insured Endorsement (Form B), CG 20 10 11 85. The Commercial General Liability, Commercial Automobile Liability and required excess policies will include a severability or cross-liability clause and such insurance will be endorsed to make such insurance primary with respect to any applicable insurance maintained by the City.

(d) Contractor waives any rights of subrogation under its Professional Liability Insurance policy for the City's benefit and is doing so before commencing any of the Work.

(e) Contractor will furnish an insurance certificate to Owner evidencing that it has met the insurance requirements of this Article, including attaching the requisite additional insured, primary and alternate employer endorsements. These documents must be provided before beginning the Work and upon each renewal of the coverage during the performance of the Work. The certificate will provide that thirty-days written notice will be given to City before any policy is canceled. Contractor will give written notice to City as soon as it receives written notice of cancellation from any of its insurance carriers. The certificate of insurance must clearly designate the name of the Project.

(f) Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees; or the Contractor shall procure a

bond guaranteeing payment of losses and related investigations, claim administrative and defense expenses.

**ARTICLE XII - The Work**

The Scope of Work includes the replacement of various alleys within the City of Clayton and provides for the removal and replacement of concrete slabs and the underlying aggregate base course, traffic control, and other incidental items as shown in the specifications.

**ARTICLE XIII - Notices**

Any notice hereunder shall be personally delivered or mailed, postage prepaid, by certified mail, return receipt requested addressed to:

City of Clayton  
10 N. Bemiston Avenue  
Clayton, Missouri 63105  
Attention: Public Works Department

or to Contractor at:

XL Contracting, Inc.  
20 Mid Rivers Trade Court, Suite 100  
St. Peters, MO 63376  
Attn: Matt St. John

**CONTRACT SIGNATURE PAGE**

\* In making out this form the proper name and title should be used. For example, if the Contractor is a corporation and this form is to be executed by its president, the words President should be used under Title. Attestation should be done by the Secretary of the Corporation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF CLAYTON

By: \_\_\_\_\_  
City Manager

(SEAL)

Attest:

\_\_\_\_\_  
City Clerk

DATE: \_\_\_\_\_

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

\_\_\_\_\_  
Title

(SEAL)

Attest:

DATE: \_\_\_\_\_

**FORM OF CONTRACT PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That

XL Contracting, Inc.

(Name of Contractor)

20 Mid Rivers Trade Court, Suite 100, St. Peters, MO 63376

(Address of Contractor)

a Corporation, hereinafter  
(Corporation, Partnership, or Individual)

called Principal, and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

herein after called Surety, are held and firmly bound unto

CITY OF CLAYTON, ST. LOUIS COUNTY, MISSOURI

(Name of OWNER)

10 N. BEMISTON AVE.

(Address of OWNER)

Hereinafter called OWNER, in the penal sum of Four Hundred Seventy Two Thousand Seven Hundred Thirty One Dollars and Eighty Four Cents (\$472,731.84) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_ 2020, a copy of which is hereto attached and made a part hereof for the construction of:

**Alley Repairs FY2020**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one (1) year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void: otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed hereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, Bond shall guarantee the faithful performance of the prevailing wage. Contractor shall pay not less than the prevailing wage included herein to all workers performing work under the contract.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary  
  
(SEAL)

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

\_\_\_\_\_  
Witness as to Principal  
  
(Address) \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary  
  
(SEAL)

\_\_\_\_\_  
Witness as to Surety  
  
(Address) \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact  
  
\_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_

NOTE: Date of bond must not be prior to date of contract. If CONTRACTOR is partnership, all partners should execute bond.

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

**FORM OF CONTRACT PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: That

XL Contracting, Inc.

(Name of Contractor)

20 Mid Rivers Trade Court, Suite 100, St. Peters, MO 63376

(Address of Contractor)

a Corporation, hereinafter called Principal, and

(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

CITY OF CLAYTON, ST. LOUIS COUNTY, MISSOURI

(Name of OWNER)

hereinafter called OWNER, in penal sum **Four Hundred Seventy Two Thousand Seven Hundred Thirty One Dollars and Eighty Four Cents (\$472,731.84)** in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2020, a copy of which is hereto attached and made a part hereof for the construction of:

**Alley Repairs FY2020**

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, Bond shall guarantee the faithful performance of the prevailing wage. Contractor shall pay not less than the prevailing wage included herein to all workers performing work under the contract.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

\_\_\_\_\_  
Principal

(SEAL)

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

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

(SEAL)

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of bond must not be prior to date of contract. If CONTRACTOR is partnership, all partners should execute bond.

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

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## GENERAL CONDITIONS OF CITY-CONTRACTOR AGREEMENT

### ARTICLE 1 - CONTRACT DOCUMENTS

#### 1.1 DEFINITIONS

1.1.1 The Contract Documents. The Contract Documents consists of the Invitation for Bids and Bid Specifications previously issued by the City for the Work and Contractor's submission in response thereto, the City-Contractor Agreement, General Conditions of the City-Contractor Agreement, Non-Collusion Affidavit, the Performance and Payment Bond, the Drawings, the Technical Specifications, the Construction Schedule, all Addenda and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, or (2) a Change Order.

1.1.2 The Contract. The Contract documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, both written and oral, including the bidding documents. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1.

1.1.3 The Work. The term Work includes all labor necessary to complete the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.1.5 Notice to Proceed. The written notice from the City notifying the Contractor of the date on or before which Contractor is to begin prosecution of the work.

1.1.6 Standard Specifications: The St. Louis County Standard Specifications for Highway Construction (Jan. 1, 1997 edition).

1.1.7 Substantial Completion: The state in the progress of the Work when the Work or a designated portion thereof is sufficiently complete in accordance with the Contract Documents so the City can reasonably occupy or utilize the Work for its intended use.

#### 1.2 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS

1.2.1 The Contract Documents shall be signed in not less than triplicate by the City and Contractor.

1.2.2 The Contractor represents that Contractor has visited the site, become familiar with the local conditions under which the Work is to be performed, and correlated any observations with the requirements of the Contract Documents.

1.2.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items as provided in Subparagraph 3.3 necessary for

execution and completion of the Work. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

### **1.3 COPIES FURNISHED AND OWNERSHIP**

1.3.1 Unless otherwise provided in the Contract Documents, the Contractor will be furnished a maximum of six (6) copies, free of charge, of the Drawings and Specifications for the execution of the work.

1.3.2 All Drawings, Specifications and copies thereof furnished by the City are and shall at all times remain property of the City. Such documents shall not be used on any other project.

## **ARTICLE 2 - CITY**

### **2.1 DEFINITION**

2.1.1 The term City means the City or its authorized representative.

### **2.2 CITY'S RIGHT TO STOP THE WORK**

2.2.1 If the Contractor fails to correct defective Work or fails to supply materials or equipment in accordance with the Contract Documents, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

### **2.3 CITY'S RIGHT TO CARRY OUT THE WORK**

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the City may, after seven (7) days' written notice to the Contractor and without prejudice to any other remedy City may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City promptly upon request.

## **ARTICLE 3 - CONTRACTOR**

### **3.1 DEFINITION**

3.1.1 The Contractor is the person or organization identified as such in the City-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or Contractor's authorized representative. The Contractor shall not subcontract except in accordance with the terms of this Agreement.

### **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

3.2.1 The Contractor shall supervise and direct the Work, using his best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

### 3.3 LABOR, MATERIALS AND EQUIPMENT

3.3.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

3.3.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. If the City reasonably objects to any person employed by the Contractor, the employee shall be immediately dismissed from the Work.

3.3.3 The Contractor shall execute and complete the Work in such a manner that avoids jurisdictional and other disputes among labor unions.

3.3.4 The Contractor shall comply with, and is bound by, the provisions of Missouri statutes pertaining to the payment of wages on public works projects contained in sections 290.210 through 290.340 (RSMo 2000), and any amendments thereto, including, but not limited to the following:

- 1) In accordance with section 290.250, the Contractor shall not pay less than the prevailing hourly rate of wages specified by the Missouri Department of Labor and Industrial Relations Division of Labor Standards to all workers performing Work under the Agreement.
- 2) In accordance with section 290.250, the Contractor shall forfeit as a penalty to the City ten dollars (\$10.00) for each worker employed for each calendar day, or portion thereof, such worker is paid less than the said stipulated rates for any Work done under the Agreement, by him or by any Subcontractor under him and shall include provisions in all bonds guaranteeing the faithful performance of said prevailing hourly wage clause.
- 3) In accordance with section 290.265, the Contractor shall post a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed to complete the Work in a prominent and easily accessible place at the site of the Work and such notice shall remain posted during the full time that any workers shall be employed on the Work.
- 4) Certified payrolls shall also be submitted prior to final payment for all Work completed by the Contractor or Subcontractors.
- 5) In accordance with section 290.290, before final payment is made an affidavit must be filed by the Contractor stating that he has fully complied with the prevailing wage law. No payment shall be made unless and until this affidavit is filed therewith in proper form and order.

### 3.4 WARRANTY

3.4.1 The Contractor warrants to the City that all materials and equipment furnished under the Contract and incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract

Documents. All Work not so conforming to these standards shall be considered defective. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of all materials and equipment.

### **3.5 PERMITS, FEES AND NOTICES**

3.5.1 The Contractor shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the Work.

3.5.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the City in writing and any necessary changes shall be adjusted by appropriate Modification. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the City, the Contractor shall assume full responsibility thereof and shall bear all costs attributable thereto.

### **3.6 SUPERINTENDENT**

3.6.1 This person shall be a non-working superintendent who will be responsible for the satisfactory progression of the work and to ensure that all work is being completed in accordance with the plans and specifications. This person is also to relay any conflicts or discrepancies that arise in the plans to the City's representative for resolution or interpretation. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor.

### **3.7 RESPONSIBILITY FOR THOSE PERFORMING THE WORK**

3.7.1 The Contractor shall be responsible to the City for the acts and omissions of all his employees and all Subcontractors, their agents and employees and all other persons performing any of the Work under a Contract with the Contractor.

### **3.8 DRAWINGS AND SPECIFICATIONS AT THE SITE**

3.8.1 The Contractor shall maintain at the site for the City one copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders and other Modifications, in good order and marked to record all changes made during construction. The Drawings, marked to record all changes made during construction, shall be delivered to the City upon completion of the Work. The Contractor shall also maintain on the project site a digital level (2' in length shall be used for ADA ramp slope measurements), survey level, legs, and rod at all times, which are deemed adequate by the project engineer.

### **3.9 CLEANING UP AND STORAGE**

3.9.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. The Contractor shall not "stockpile" any material on the jobsite and all excavated material shall be hauled off the site at the time of excavation. However, stockpiling of materials delivered and used on the same day will be allowed if all materials are in place or removed at the end of the day.

3.9.2 In conjunction with Sec. 106.5 of the Standard Specifications, the Contractor is responsible for securing his own project storage site which shall not be located on City Right-of-Way without prior written consent of the Director of Public Works. After completion of the Work the Contractor shall remove all remaining waste materials and rubbish from and about the Project as well as all tools, construction equipment, machinery and surplus materials, and shall clean all surfaces and leave the Work "broom clean" or its equivalent, except as otherwise specified.

3.9.3 The Contractor shall make satisfactory arrangements to store material and equipment after delivery and during construction off of the City right-of-way. The City will assume no responsibility for these arrangements.

### **3.10 CASH ALLOWANCES**

3.10.1 The Contractor acknowledges and agrees that the Contract Sum includes all cash allowances specified in the Contract Documents.

## **ARTICLE 4 - SUBCONTRACTORS**

### **4.1 DEFINITION**

4.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the Work.

4.1.2 Nothing contained in the Contract Documents shall create any contractual relation between the City and any Subcontractor or Sub-subcontractor.

### **4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

4.2.1 Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the Contractor shall submit a completed and signed Subcontractor Approval form, along with other required Bid documents to the City. Contractor shall complete and submit a Supplemental Subcontractor Approval form to the City in the event of any substitution or addition of a Subcontractor by the Contractor. No work shall be performed by a Subcontractor until such Subcontractor has been approved by the City.

4.2.2 Prior to the award of the Contract, the City will notify the Bidder in writing if the City, after due investigation, objects to any such person or entity proposed by the Bidder pursuant to Subparagraph 4.2.1 above. If the City objects to any such proposed person or entity, the Bidder may, at his option, (1) withdraw his Bid, or (2) submit an acceptable substitute person or entity with no adjustment in his bid price.

4.2.3 Contractor shall at all times during the term of the Contract be in compliance with Sec. 108.1 of the Standard Specifications and shall not subcontract more than forty nine percent (49%) of the total Contract cost.

4.2.4 The City reserves the right to reject a Subcontractor, if in the City's sole discretion, delays may result in the performance of Work as a result of Subcontractor's other obligation. The Contractor shall be held responsible, in addition to the submission of the "Subcontractor

Approval Form," to apprise the City of any additional work which a Subcontractor accrues throughout the duration of the project. This shall include work for the City under a different Contract, or any other person or entity. If such said additional work shall detrimentally impact the progression of the Work under this Contract, the City retains the right to require the Contractor to submit a substitute Subcontractor for this work at no additional cost to the City.

4.2.5 The Contractor shall not contract with any Subcontractor or any person or organization (including those who are to furnish materials or equipment fabricated to a special design), for proposed proportions of the Work designated in the Contract Documents or in the Instruction to Bidders or, if none is so designated, with any Subcontractor proposed for the principal portions of the Work, who has been rejected by the City.

4.2.6 If the City requires a change of any proposed Subcontractor or person or organization during the execution of the Work approved under the present Contract, the Contract Sum shall be increased or decreased by the difference in cost resulting from such change and an appropriate Change Order shall be issued.

4.2.7 The Contractor shall not make any substitution for any proposed Subcontractor or person or organization that has not been accepted by the City prior to the Contract Award, unless the substitution is accepted by the City in writing prior to such substitution.

### **4.3 SUBCONTRACTUAL RELATIONS**

4.3.1 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

- 1) require the Work to be performed in accordance with the requirements of the Contract Documents;
- 2) require submission to the Contractor of applications for payment under each Subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 8 hereof;
- 3) require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to Subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the City;
- 4) waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 10 except such rights as they may have to the proceeds of such insurance held by the City as trustee;
- 5) obligate each Subcontractor specifically to consent to the provisions of this Paragraph 4.3; and
- 6) require the Subcontractor (and the Sub-subcontractor's to indemnify and hold harmless the City against all claims, damages, losses, expenses and attorneys' fees arising out of or resulting from the performance of the Work by Subcontractor, and its

agents and employees, unless such claims, damages or losses are caused solely by the negligent act of the City.

#### **4.4 PAYMENTS TO SUBCONTRACTORS**

4.4.1 The Contractor shall pay each Subcontractor upon receipt of payment from the City, an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's Work, less the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments to his Subcontractors.

4.4.2 If the City withholds payment to the Contractor for any cause that is the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall pay that Subcontractor on demand for its Work to the extent completed.

4.4.3 The City shall not have any obligation to pay or to see to the payment of any sum to any Subcontractor or Sub-subcontractor.

### **ARTICLE 5 - SEPARATE CONTRACTS**

#### **5.1 CITY'S RIGHT TO AWARD SEPARATE CONTRACTS**

5.1.1 The City reserves the right to award other contracts on other terms and conditions in connection with other portions of the Project.

5.1.2 During construction, it may become necessary to increase the amount of excavation or to utilize a soil stabilization process if unsuitable subgrade conditions are found. The Contractor shall immediately contact the project engineer if this condition occurs. The project engineer and the Contractor shall agree upon the existence of unsuitable subgrade, the depth in which to remove the unsuitable soil, and the extent of the problem area prior to any additional work. No payment will be made for any area that undergoes additional excavation that is not indicated in the above scope of work and has not been approved by the project engineer prior to the excavation. All additional excavation that becomes necessary shall be paid at the unit bid price for "Excavation." The City reserves the right to contract with a separate contractor for the use of a soil stabilization process. No direct payment will be made for delays incurred due to this process and the Contractor's only compensation will be the allotment of additional days for the delay. The number of days shall be from the time the Contractor initially notifies the City of an unsuitable subgrade condition and until two days after the completion of the soil stabilization process.

#### **5.2 MUTUAL RESPONSIBILITY OF CONTRACTORS**

5.2.1 The Contractor shall afford other contractors reasonable opportunity for the delivery and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate the Work with theirs.

5.2.2 If any part of the Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the City any apparent discrepancies or defects in such work that render it unsuitable for proper execution of the Work. Failure of the Contractor so to inspect and report shall constitute an acceptance of

the other contractor's work as fit and proper to receive the Work, except as to defects which may develop in the other contractor's work after the execution of the Contractor's Work that could not have been discovered by the Contractor upon reasonable inspection.

5.2.3 If the Contractor causes damage to the work or property of any other contractor on the Project, and such separate contractor sues the City or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the City shall notify the Contractor who shall defend such proceedings at Contractor's own expense, and if any judgment or award against the City arises therefrom the Contractor shall pay or satisfy it and shall reimburse the City for all attorneys' fees and court or arbitration costs which the City has incurred.

### **5.3 CITY'S RIGHT TO CLEAN UP**

5.3.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph 3.9, the City may clean up and charge the cost thereof to the several contractors.

## **ARTICLE 6 - GENERAL PROVISIONS**

### **6.1 GOVERNING LAW**

6.1.1 The Contract shall be governed by the laws of the State of Missouri.

### **6.2 SUCCESSORS AND ASSIGNS**

6.2.1 This Contract shall be binding upon the successors, assigns and legal representatives of each party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract without the prior written consent of the other, nor shall the Contractor assign any sums due or to become due to him hereunder, without the prior written consent of the City.

### **6.3 RIGHTS AND REMEDIES**

6.3.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

### **6.4 ROYALTIES AND PATENTS**

6.4.1 The Contractor shall pay all royalties and license fees payable on all designs, processes or products used in connection with the Work or incorporated therein, unless otherwise agreed upon by the City. The Contractor shall defend all suits or claims for infringement of any patent rights and shall indemnify and hold the City harmless from and against any loss on account thereof.

### **6.5 PERFORMANCE AND PAYMENT BOND**

6.5.1 The Contractor shall furnish the performance and payment bond required in the Instructions to Bidders.

## **ARTICLE 7 - TIME**

### **7.1 DEFINITIONS**

7.1.1 The Contract Time is the period of time allotted in the City-Contractor Agreement for completion of the Work. Said work shall include all punchlist items deemed necessary by the City, exclusive of MSD-generated punchlist items. The date of completion of the Contract shall be the date when all work including City punchlist items have been approved in writing by the City.

7.1.2 The date of commencement of the Work is the date established in the written Notice to Proceed from the City to the Contractor.

7.1.3. The term "day" as used in the Contract Documents shall mean calendar day.

### **7.2 PROGRESS AND COMPLETION**

7.2.1 All time limits stated in the Contract Documents are of the essence.

7.2.2 The Contractor shall begin the Work on the date of commencement provided in the City-Contractor Agreement. The Contractor shall carry the Work forward expeditiously with adequate forces and shall complete it within the Contract Time and in accordance with the Construction Schedule.

## **ARTICLE 8 - PAYMENTS AND COMPLETION**

### **8.1 CONTRACT SUM**

8.1.1 The Contract Sum is stated in the City-Contractor Agreement and is the total amount payable by the City to the Contractor for the performance of the Work.

### **8.2 APPLICATION FOR PAYMENT**

8.2.1 By 12:00 P.M. on or before the twentieth day of the month, upon Substantial Completion of various stages of the Work, and upon final completion of the Work, the Contractor shall submit to the City an itemized Application for Payment pursuant to the City-Contractor Agreement on such forms and supported by such data substantiating the Contractor's right to payment as the City may require.

8.2.2 If payments are to be made on account of materials or equipment to be incorporated into the Work and delivered and suitably stored at the site, such payments shall be conditioned upon submission by the Contractor of bills of sale or such other documents satisfactory to the City to establish the City's title to such materials or equipment or to otherwise protect the City's interest.

8.2.3 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated into the Work or not, will pass to the City upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances (hereinafter referred to as "liens").

### **8.3. PAYMENT**

8.3.1 If the Contractor has made Application for Payment as above, the City will, in accordance with the City-Contractor Agreement, make payment to the Contractor for such amount as it determines to be properly due pursuant to the Contractor's Application for Payment, or state in writing the City's reasons for withholding all or any portion of such payment.

8.3.2 No progress payment, nor any partial or entire use or occupancy of the Work by the City, shall constitute an acceptance of any Work not completed in accordance with the Contract Documents.

### **8.4 COMPLETION AND FINAL PAYMENT**

8.4.1 Upon receipt of written notice from the Contractor that the Work is fully completed and ready for final inspection and acceptance, and upon receipt of a final application for Payment, the City will promptly make such inspection and, when the City finds the Work acceptable under the Contract Documents and the Contract fully performed, the City will make final payment to the Contractor in accordance with the City-Contractor Agreement.

8.4.2 The final payment shall not become due until the Contractor submits to the City (1) an Affidavit that all payrolls, bills for materials and equipment, and other indebtedness incurred in connection with the execution and completion of the Work for which the City or its property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of the surety, if any, to final payment, (3) if required by the City, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the City and (4) Prevailing Wage Affidavit as required by subsection 3.3.4. If any Subcontractor refuses to furnish a release or waiver required by the City, the Contractor may furnish a bond satisfactory to the City indemnifying the City against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the City all moneys that the City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

8.4.3 The acceptance of final payment shall constitute a satisfaction of all claims by the Contractor, except those previously made in writing and still unsettled.

## **ARTICLE 9 - PROTECTION OF PERSONS AND PROPERTY**

### **9.1 SAFETY PRECAUTIONS AND PROGRAMS**

9.1.1 The Contractor shall initiate, maintain and supervise safety precautions and programs in connection with the performance of the Work.

### **9.2 SAFETY OF PERSONS AND PROPERTY**

9.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- 1) all employees on the Work and all other persons who may be affected thereby;

- 2) all the Work, all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- 3) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

9.2.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction over the safety of persons or property to protect them from damage, injury or loss. The Contractor shall erect and maintain all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying City and users of adjacent utilities. The Contractor shall provide signs, barrels, or any other safety devices that the City deems necessary for public safety. No additional payment will be made and this work shall be considered incidental to the Contract. The City will place safety devices as it deems necessary if the Contractor fails to provide the required items within 24 hours of notification. The Contract Sum shall be reduced by the cost of these devices.

9.2.3 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

9.2.4 All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, or any Sub-subcontractor, or anyone directly or indirectly employed by anyone for whose acts they may be liable, shall be remedied by the Contractor. The City shall document any complaint by any person regarding damage or loss to property caused by Contractor by requesting such complainant to complete a Damage Claim form. A copy of the Damage Claim form shall be submitted by the City to the Contractor and the Contractor shall correct the problem, repair such damage or otherwise compensate the complainant or file a claim for such damage with Contractor's insurance company within ten (10) days of the receipt of the Damage Claim form from the city. If the City shall have a legitimate basis for believing that such claim is valid, the City shall have the option to withhold payment of funds until (i) such damages are repaired; or (ii) the City has been provided with evidence that the Contractor has made restitution to the complainant.

9.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the City.

## **ARTICLE 10 - PROPERTY INSURANCE**

### **10.1 PROPERTY INSURANCE**

10.1.1 Unless otherwise provided, the Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the City, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of Fire, Extended Coverage, Vandalism and Malicious Mischief.

10.1.2 The Contractor shall purchase and maintain such steam, boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the City, the Contractor, Subcontractors and Sub-subcontractors in the Work.

10.1.3 Certificates of Insurance acceptable to the City shall be filed with the City prior to commencement of the work. Certificates of Insurance must state on the certificate: **"The City of Clayton, its officers, boards, board members, commissions, commissioners, agents, and employees as additional insureds."** These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled until at least fifteen days' prior written notice has been given to the City.

10.1.4 Any loss insured by property insurance maintained by the City shall be adjusted with the City and made payable to the City as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause.

10.1.5 The City and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this Article, except such rights as they may have to the proceeds of such insurance held by the City as trustee. The Contractor shall require similar waivers by Sub-contractors and Sub-subcontractors in accordance with Subparagraph 4.3.1.

## **ARTICLE 11 - CHANGES IN THE WORK**

### **11.1 CHANGE ORDERS**

11.1.1 The City, without invalidating the Contract, may order Changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and the Construction Schedule being adjusted in accordance with the City-Contractor Agreement. All such changes in the Work shall be authorized by Change Order, and shall be executed under the applicable conditions of the Contract Documents.

11.1.2 A Change Order is a written order to the Contractor signed by the City, issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Construction Schedule. The Contract Sum and the Contract Time may be changed only by Change Order.

11.1.3 The cost or credit to the City resulting from a Change in the Work shall be determined in accordance with the City-Contractor Agreement.

### **11.2 CLAIMS FOR ADDITIONAL COST**

11.2.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the City written notice thereof within twenty (20) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

### **11.3 MINOR CHANGES IN THE WORK**

11.3.1 The City shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or the Construction Schedule and not inconsistent with the intent of the Contract Documents. Such changes may be effected by written Field Order or by other written order. Such changes shall be binding on the City and the Contractor.

## **ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK**

### **12.1 UNCOVERING OF WORK**

12.1.1 If any Work should be covered contrary to the request of the City, it must, if required by the City, be uncovered for his observation and replaced, at the Contractor's expense.

12.1.2 If any Work has been covered which the City has not specifically requested to observe prior to being covered, the City may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the Cost of uncovering and replacement shall, by appropriate Change Order, be charged to the City. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs.

### **12.2 CORRECTION OF WORK**

12.2.1 The Contractor shall promptly correct all Work rejected by the City as defective or as failing to conform to the Contract Documents, whether observed before or after substantial completion of the Work, and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting such rejected Work.

12.2.2 If, within one year after the Date of Substantial Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the City.

12.2.3 All defective or non-conforming Work shall be removed from the site if necessary, and the Work shall be corrected to comply with the Contract Documents without additional cost to the City.

12.2.4 The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

12.2.5 If the Contractor fails to correct such defective or non-conforming Work, the City may correct it in accordance with Paragraph 2.3.

### **12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**

12.3.1 If the City prefers to accept defective or non-conforming Work, City may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Sum or, if the amount is determined after final payment, it shall be paid by the Contractor.

## **ARTICLE 13 - MISCELLANEOUS PROVISIONS**

### **13.1 SCHEDULING OF WORK AND INTERFERENCE WITH TRAFFIC**

13.1.1 The Contractor's Work must be scheduled and accomplished in stages such that local traffic is maintained during construction. It shall be the Contractor's responsibility to provide a traffic way that is usable in all weather conditions. The Contractor shall construct and maintain in a safe condition temporary pavements and connections for local traffic.

13.1.2 Temporary guardrail, or other suitable temporary barriers shall be provided to protect traffic from the Work. At all times until final acceptance of the Work, the Contractor shall provide and maintain such signs, lights, watchmen and barriers, in addition to the temporary guardrail, as may be necessary to properly protect the Work and provide for safe and convenient public travel.

13.1.3 No additional payment shall be made for temporary guardrail, barriers, signs, lights, or other work as may be necessary to maintain traffic and to protect the work and the public and all labor, equipment and material necessary to accomplish this task shall be considered incidental

### **13.2 ACCESS**

13.2.1 Areas of intersections and roadways within the construction limits shall be constructed in phases so that at no time will access be denied.

13.2.2 Access to private driveways will be limited by the nature of the Work. The Contractor shall schedule his work such that at no time during the life of this Contract will any driveway be denied access for any reason other than the curing of concrete. All concrete, including curbs, sidewalks and driveway pavements, shall be formed and poured within a two calendar day period for each and every driveway. Excavation for this work shall be accomplished a maximum of one calendar day prior to forming, however, access shall be provided immediately after excavation. At the end of the curing period, access shall be immediately supplied using asphalt or compacted aggregate. The first lift of all asphalt drives shall be completed and paved within fourteen (14) calendar days of their excavation.

13.2.3 All temporary materials used for access will be the responsibility of the Contractor and shall be included in the unit bid price for each related item. No separate payment will be made for the placement, maintenance or removal of said access.

13.2.4 If access is not supplied as set out above, the City will supply said access with its own forces, without notification to the Contractor, and will deduct such costs from the sums due the Contractor, notwithstanding any other provisions given this Contract. Wherever excavation affects pedestrian access to houses or public buildings, plank or other suitable bridges shall be placed at convenient intervals.

13.2.5 In the event any part of the Work to be performed hereunder shall require the Contractor or his Subcontractors to enter, cross or work upon or beneath the right-of-way or other property of a railroad, the Contractor shall comply with the related requirements for such Work as are set out in the Contract Documents.

**13.3 CONSTRUCTION STAKING AND LAYOUT**

13.3.1 The Contractor shall be responsible for providing labor, equipment and materials necessary for construction staking and layout as required, to the grades, elevations and alignment as determined by the City of Clayton. No separate payment will be made for construction staking and layout. No payment shall be made for restaking except as expressly authorized due to changes made by the City during construction.

**13.4 OVERTIME**

13.4.1 In order to provide sufficient control of work, the Contractor shall be required to inform the City of scheduled overtime work, including work on Saturdays, Sundays and City holidays at least forty-eight (48) hours in advance of any such work. If the Contractor fails to appear on a scheduled overtime period, the City shall deduct the cost for the City's assigned personnel from the Contract Sum for the time period scheduled.

**13.5 CITY HOLIDAYS**

13.5.1 There are ten (10) city holidays. They are:

New Year's Day	Labor Day
Martin Luther King, Jr. Day	Thanksgiving Day
President's Day	Day after Thanksgiving
Memorial Day	Christmas Eve
Fourth of July	Christmas Day

\*observed dates apply

**13.6 [Intentionally Left Blank]**

**13.7 INTERFERENCE WITH EXISTING WATER SERVICES AND MAINS**

13.7.1 The Contractor shall minimize the outage of water service to residents. The cutting off of water service shall be only with the consent of the City. The Contractor shall notify the City and have their approval prior to commencing work on each water main or connection item.

13.7.2 The Contractor shall conduct his work in such a manner as not to endanger existing water mains, services or appurtenances. Mains and services shall be adequately supported where they cross or are adjacent to the excavation. The Contractor shall bear the cost of all repairs to water mains or appurtenances damaged because of contractor's own carelessness or neglect.

**13.8 INTERRUPTION OF WATER SERVICE**

13.8.1 When it becomes necessary to shut down any existing water main, a representative of the City shall be notified to be present during this operation. The total time for the main to be shut down should be held to a minimum and in no case shall any customer be without water service for more than eight (8) hours. The Contractor shall notify each water customer whose water service will be interrupted at least one hour prior to shutdown. The Contractor shall assume full responsibility for shutting down the main and notifying the customers.

### **13.9 PRECONSTRUCTION CONFERENCE**

13.9.1 A preconstruction conference may be held prior to the issuance of a Notice to Proceed with the Work. This meeting will be attended by the Contractor, the City, and representatives of the various utility companies that have facilities in the project area. The meeting date will be established after the taking of bids and at a time convenient to all parties.

### **13.10 SEQUENCE OF WORK**

13.10.1 A schedule of the Contractor's work shall be submitted to the City for approval with a listing of the order in which the Contract items will be constructed and the approximate dates for starting and finishing each Contract item.

13.10.2 The City shall have the right to specify the order of construction as deemed necessary.

### **13.11 CONSTRUCTION LIMITS**

13.11.1 The construction limits consist of the public street rights-of-way and acquired easement areas. The Contractor shall limit operations accordingly. The Contractor shall acquire the property owners' permission for any activity outside the public right-of-way or easement areas.

### **13.12 ALTERED QUANTITIES**

13.12.1 In accordance with Section 109.3 of the Standard Specifications, the City reserves the right to make changes in plan details which may vary the accepted quantities from those shown on the itemized Bid.

13.12.2 The Contractor shall accept, as payment in full, payment at the original Contract unit prices bid for the accepted quantities of work done. No allowance will be made for any increased expense or loss of expected profit suffered by the Contractor resulting directly from such altered quantities or indirectly from expenses derived by handling small quantities of materials or performing operations within restricted areas. No allowance shall be made for any increased expense or loss of expected profit suffered because of the anticipated use of specific equipment that was not used.

### **13.13 MEASUREMENT OF WEIGHED QUANTITIES**

13.13.1 The Contractor's attention is directed to the fact that the City requires that all weight certificates be signed by a bonded Weighmaster. The Contractor must furnish the City's inspector on the job site with original weight certificates signed by a bonded Weighmaster for all materials supplied by the Contractor that are incorporated into his improvement, which payment therefore is based on weight.

### **13.14 ADDITIONS TO CONTRACT**

13.14.1 Unit prices in this Agreement may be used to negotiate a Change Order for additional work involving similar projects.

### **13.15 PURCHASE OF MATERIALS AND EQUIPMENT**

13.15.1 Sales to contractors who purchase construction materials and supplies to fulfill contracts for the City are not subject to sales tax. The City may monitor all supplies purchased, used, and consumed in fulfilling the project.

13.15.2 Contractors will be give a project exemption certificate.

13.15.3 Contractors must provide a copy of the City's exemption letter and the project exemption certificate to suppliers when purchasing materials and supplies to be consumed in the project.

13.15.4 Contractors are not exempt from sales tax on the purchase of machinery, equipment or tools used in fulfilling these contracts.

13.15.5 Suppliers shall render to the contractor invoices bearing the name of the City and the project identification number. These invoices must be retained by the purchasing contractor for a period of five (5) years.

13.15.6 Contractors must file a sales tax return for all excess re-saleable materials and supplies that are not returned to the supplier. This return must be filed and paid not later than the due date of the contractor's sales tax return following the month in which the contractor determines that the materials were not used in the project.

13.15.7 An exempt organization that fails to revise the project exemption certificate expiration date as necessary to complete any work required by the contract will be liable for any sales tax due as determined by an audit of the contractor.

### **13.16 TESTING**

13.16.1 Materials Testing and Inspection Service: City may employ and pay for a qualified independent materials and geotechnical testing laboratory to perform testing and inspection service during construction operations. Contractor to coordinate all work.

13.16.2 The Contractor shall bear all costs of any inspections, tests, or approvals required under any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction.

13.16.3 The City will provide any special inspection and testing services to verify the Work is performed in accordance with the Contract. The City will provide the Contractor with a listing of tests to be performed and approximate location or frequency. The Contractor will be required to notify the City forty-eight (48) hours prior to the time the Contractor will be ready for specific tests required by the City. If such special inspection or testing reveals failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear the cost of the City's inspection and re-testing and such cost shall be deducted then or thereafter due Contractor. In all other cases, the City shall bear such costs.

### **13.17 SEWER SPECIFICATIONS**

13.17.1 The Metropolitan St. Louis Sewer District Specifications (MSD Specifications), shall govern the Project, unless otherwise superseded by the Technical Specifications and Job Special Provisions.

### **13.18 CONTROL OF MATERIAL**

13.18.1 All tickets will be collected to verify the quantity of each item in their original form only. Photocopies or facsimiles will not be accepted. All tickets shall be submitted on the day of delivery, either to the City personnel or the Public Works office or they will not be accepted for payment.

13.18.2 Contractors and subcontractors will be required to produce letters of certification or certified test reports from material producers and suppliers in order to determine compliance with specifications for designated materials prior to the incorporation thereof into the work.

13.18.3 The City will determine which materials are to be tested. The form and content of these test reports shall be in accordance with recognized standards and practices for this work or as otherwise determined by the City.

13.18.4 No direct payment will be made for this work.

### **13.19 MEASUREMENT OF QUANTITIES**

13.19.1 Unless otherwise directed within the Technical Specifications, the quantities for which payment will be made will be those shown in the Agreement for the various items, provided the Project is constructed essentially to the lines and grades shown on the plans. Contract quantities will be used for final payment except when:

- a) Errors are formed in the original computations in excess of 15% of the contract quantities.
- b) An original cross section is found to have an average deviation from the true elevation in excess of one foot.
- c) An authorized change in grade, slope or typical section is made.
- d) Unauthorized deviations decrease the quantities on the plans.

When the above conditions are encountered, the correction or revisions will be computed and added to or deducted from the contract quantity.

13.19.2 When the plans have been altered or when disagreement exists between the Contractor and the City as to the accuracy of the plan quantities of any balance, or the entire project, either party shall have the right to request a re-computation of contract quantities within any area, by hand calculation of the average-end-area method for cubic yard quantities, and standard measurement methods for other quantities, by written notice to the other party. The written notice shall contain evidence that an error exists in the original groundline elevation or in the original computations which will affect the final payment quantity in excess of 15%. When

such final measurement is required, it will be made from the latest available ground surface and the design section.

13.19.3 These specifications require that the Contractor must furnish the representative of the City, on the job site, with original weight certificates on a daily basis signed by a bonded weighmaster for all materials supplied by the Contractor that are incorporated into this work, which payment therefore is based on weight.

### **13.20 WORKMANSHIP**

13.20.1 The Contractor shall at all times employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by these specifications. All workmen shall have sufficient skill and experience to perform properly the work assigned to them.

13.20.2 The labor provided by the Contractor shall be directed to be of a workmanlike character with respect to the methods of construction and quality of completed work; and, shall not encumber the premises or adjacent property or streets with materials and/or equipment.

13.20.3 "Removal" shall be defined as removal and disposal off the site unless otherwise specified or directed by the engineer.

## **ARTICLE 14 - EQUAL OPPORTUNITY AND NON-DISCRIMINATION**

### **14.1 EQUAL OPPORTUNITY**

14.1.1 The contractor, with regard to the work performed by it after award and prior to completion of the Work, will not discriminate on the basis of race, age, color, religion, sex, national origin or disability in the selection and retention of subcontractors. The contractor will comply with Title VII of the Civil Rights Act of 1964, as the same has been or may be amended from time to time. In all solicitation either by competitive bidding or negotiations made by the contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified of the contractor's obligations under this contract and the regulations relative to nondiscrimination on the ground of race, color, age, religion, sex, national origin or disability.

14.1.2 The contractor will take action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, sex, national origin or disability. Such action shall include, but not be limited to the employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor agrees to post notices pertaining to the foregoing in conspicuous places available to employees and applicants for employment.

14.1.3 The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, national origin or disability.

14.1.4 The contractor will comply with all provisions of federal, state and local codes, ordinances and regulations governing the regulation of Equal Employment Opportunity and Non-Discrimination.

## **14.2 NON-DISCRIMINATION**

14.2.1 During performance of the obligations set forth in this Agreement, Contractor agrees that it shall not discriminate against any employee or applicant for employment in the terms or conditions of employment including but not limited to: recruitment, selection, training, upgrading, promotion, demotion, transfer, layoff, or termination due to said person's race, religion, creed, color, sex, age, national origin, handicap, or disability.

## **14.3 GENERAL**

14.3.1 In the event that any or all of the provision(s) of the foregoing paragraphs conflict with federal, state or other local laws, ordinances or regulations, then the requirements of such federal, state or local laws, ordinances, or regulations shall prevail. Compliance with the foregoing provisions shall not relieve the contractor from adherence to any and all additional requirements regarding equal employment or non-discrimination set forth in such federal, state or other local laws, ordinances or regulations.

## **ARTICLE 15 - CONFLICTS OF INTEREST**

15.1.1 The parties agree to abide by all applicable federal, state and local laws, ordinances and regulations relating to conflicts of interest. Additionally, but not in limitation of the foregoing, no elected official or other official of Clayton having any power of review or approval of any of the undertakings contemplated by this Agreement, shall knowingly participate in any decision(s) relating thereto which affect his or her personal interests or those of his/her immediate family, or those of any corporation or partnership in which he or she or a member of his/her immediate family is directly or indirectly interested.

15.1.2 Clayton shall not knowingly, after due inquiry, employ or contract with any person if a member of his or her immediate family is a member of the Clayton Board of Aldermen, or is employed by Clayton in an administrative capacity (i.e., those who have selection, hiring or supervisory or operational responsibility for the work to be performed pursuant to this Agreement); provided, however, that the foregoing shall not apply to temporary or seasonal employment. Clayton shall not knowingly, after due inquiry, employ or contract with any corporation or partnership if an elected official of Clayton or a person employed by Clayton in an administrative capacity (as defined in the foregoing sentence), or a member of the immediate family of such elected official or person employed in an administrative capacity shall have an interest, directly or indirectly, therein.

15.1.3 For the purposes of this section "immediate family" includes: husband, wife, son, daughter, father, mother, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, uncle, aunt, nephew, niece, step-parent and step-child.

15.1.4 For purposes of this section, a person shall be deemed to have an interest in a corporation or partnership if he or she, or any member of his/her immediate family shall own, whether singularly or collectively, directly or indirectly, ten percent (10%) more of any

corporation or partnership, or shall own an interest having a value of ten thousand dollars (\$10,000) or more therein, or an individual or a member of his/her immediate family shall receive, whether singularly or collectively, directly or indirectly, of a salary, gratuity, or other compensation or remuneration of five thousand dollars (\$5,000) or more per year therefrom.

15.1.5 In the event that any or all of the foregoing provision(s) shall conflict with federal, state or other local laws, ordinances or regulations, then the requirements of such federal, state or local laws, ordinances, or regulations shall prevail. Compliance with the foregoing provisions shall not relieve parties contracting with the City of Clayton from adherence to any and all additional requirements regarding conflicts of interest set forth in such federal, state or other local laws, ordinances or regulations.

## **ARTICLE 16 – ALIEN REGISTRATION, COMPLIANCE AND ENFORCEMENT**

### **16.1 DEFINITIONS**

16.1.1 "Business entity", any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business entity" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "business entity" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "business entity" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo;

16.1.2 "Contractor", a person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity;

16.1.3 "Employee", any person performing work or service of any kind or character for hire within the state of Missouri;

16.1.4 "Employer", any person or entity employing any person for hire within the state of Missouri, including a public employer. Where there are two or more putative employers, any person or entity taking a business tax deduction for the employee in question shall be considered an employer of that person for purposes of this section;

16.1.5 "Employment", the act of employing or state of being employed, engaged, or hired to perform work or service of any kind or character within the state of Missouri;

16.1.6 "Federal work authorization program", any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L.99-603;

- 16.1.7 "Knowingly", a person acts knowingly or with knowledge,
- (a) With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or
  - (b) With respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result;

16.1.8 "Municipality", the City of Clayton, Missouri.

16.1.9 "Public employer", every department, agency, or instrumentality of the state of Missouri or any political subdivision of the state of Missouri;

16.1.10 "Unauthorized alien", an alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3);

16.1.11 "Work", any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected or due, including but not limited to all activities conducted by business entities.

## **16.2 ILLEGAL ACTS**

16.2.1 No business entity or employer may knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the municipality.

16.2.2. Accordingly, if the amount to be paid pursuant to this contract or grant exceeds five thousand dollars by the municipality the contracting or grant recipient business entity shall, as a condition of the award of contract or grant, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. No such business entity or employer shall violate subsection 16.2.1 of this section.

16.2.3 The affidavit shall be approved as to form by the municipal attorney.

16.2.4 An employer may enroll and participate in a federal work authorization program and shall verify the employment eligibility of every employee in the employer's hire whose employment commences after the employer enrolls in a federal work authorization program. The employer shall retain a copy of the dated verification report received from the federal government. Any business entity that participates in such program shall have an affirmative defense that such business entity has not violated subsection 16.2.1 of this section.

16.2.5 A general contractor or subcontractor of any tier shall not be liable under subsection 16.2.1 of this section when such general contractor or subcontractor contracts with its direct subcontractor who violates subsection 16.2.1 of this section, if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 16.2.1 of this section and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.

16.2.6 The determination of whether a worker is an unauthorized alien shall be made by the federal government. A determination of such status of an individual by the federal government shall create a rebuttable presumption as to that individual's status in any judicial proceedings brought under this section.

## **ARTICLE 17 – SAFETY PROGRAMS, COMPLIANCE AND PENALTIES**

### **17.1 DEFINITIONS**

17.1.1 "Construction", construction, reconstruction, demolition, painting and decorating, or major repair;

17.1.2 "Department", the Missouri department of labor and industrial relations;

17.1.3 "Person", any natural person, joint venture, partnership, corporation, or other business or legal entity;

17.1.4 "Municipality", the City of Clayton, Missouri;

17.1.5 "Public works", all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds.

### **17.2 OSHA 10-HOUR TRAINING**

17.2.1 Any person signing a contract to work on the construction of public works for the municipality shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work on such construction project.

### **17.3 DOCUMENTATION**

17.3.1 Any employee found on a worksite subject to this section without documentation of the successful completion of the course required under subsection 17.2.1 of this Article shall be afforded twenty days to produce such documentation before being subject to removal from the project.

### **17.4 PENALTIES**

17.4.1 The contractor to whom the contract is awarded and any subcontractor under such contractor shall require all on-site employees to complete the ten-hour training program required under subsection 2 of this section. The contractor shall forfeit as a penalty to the municipality, two thousand five hundred dollars plus one hundred dollars for each employee employed by the contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the time period in subsections 2 and 3 of this section have elapsed. The municipality shall withhold and retain therefrom, all sums and amounts due and owing as a result of any violation of this section when making payments to the contractor under the contract. The contractor may withhold from any subcontractor, sufficient sums to cover any penalties the public body has withheld from the

contractor resulting from the subcontractor's failure to comply with the terms of this section. If the payment has been made to the subcontractor without withholding, the contractor may recover the amount of the penalty resulting from the fault of the subcontractor.

### **17.5 INVESTIGATION**

17.5.1 In determining whether a violation of this section has occurred, and whether the penalty under subsection 4 of this section shall be imposed, the department shall investigate any claim of violation. Upon completing such investigation, the department shall notify the municipality and any party found to be in violation of this section of its findings and whether a penalty shall be assessed. Determinations under this section may be appealed in the Circuit Court of St. Louis County.

### **17.6 ENFORCEMENT**

17.6.1 If the contractor or subcontractor fails to pay the penalty within forty-five days following notification by the department, the department shall pursue an enforcement action to enforce the monetary penalty provisions of subsection 4 of this section against the contractor or subcontractor found to be in violation of this section. If the court orders payment of the penalties as prescribed under subsection 4 of this section, the department shall be entitled to recover its actual cost of enforcement in addition to such penalty amount.

## **ARTICLE 18 - TRANSIENT EMPLOYERS**

### **18.1 REQUIREMENTS**

18.1.1 Per RSMo section 285.234, every transient employer, as defined in section 285.230 shall post in a prominent and easily accessible place at the work site a clearly legible copy of the following:

18.1.1.1 The notice of registration for employer withholding issued to such transient employer by the director of revenue;

18.1.1.2 Proof of coverage for workers' compensation insurance or self-insurance signed by the transient employer and verified by the department of revenue through the records of the division of workers' compensation; and

18.1.1.3 The notice of registration for unemployment insurance issued to such transient employer by the division of employment security.

### **18.2 ENFORCEMENT**

18.2.1 Any transient employer failing to comply with the provisions of this section shall be liable for a penalty of five hundred dollars per day until the notices required by this section are posted as provided by this section.



**CONTRACTOR’S AFFIDAVIT FOR PUBLIC CONSTRUCTION PROJECTS**

The undersigned, being duly sworn, does state and depose as follows:

1. I am the \_\_\_\_\_(title) of \_\_\_\_\_(company) which is a contractor on the \_\_\_\_\_ Project, and authorized to sign this Affidavit on the Company’s behalf.

2. I have verified the information set forth in this Affidavit for the Contractor. If any subcontractors have been retained on the Project, I have also verified the information as to any subcontractor.

3. The Contractor and its subcontractors have Workers’ Compensation Insurance that covers its employees working on the Project and such insurance meets or exceeds the requirements established by law.

4. The Contractor and its subcontractors have verified the U.S. citizenship or lawful status of all workers employed on the Project and do not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

5. The Contractor and its subcontractors have been informed by the City of the requirements to pay prevailing wage and will pay the prevailing wages to all workers employed on the Project as established by the applicable Annual Wage Order for the County where the Project occurs.

6. The Contractor and its subcontractors are in compliance with federal law requiring an accredited apprenticeship program, if applicable.

7. The Contractor and its subcontractors are enrolled and participate in a federal work authorization program with respect to employees working in connection with the contracted services.

Further Affiant sayeth naught.

\_\_\_\_\_  
Authorized Officer of Contractor

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:\_\_\_\_\_



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

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## REQUEST FOR BOARD ACTION

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**TO:** MAYOR HARRIS; BOARD OF ALDERMEN  
**FROM:** DAVID GIPSON, CITY MANAGER  
MATT MALICK, P.E., INTERIM DIRECTOR OF PUBLIC WORKS  
**DATE:** APRIL 14, 2020  
**SUBJECT:** ORDINANCE - A CONTRACT WITH MISSOURI PETROLEUM PRODUCTS COMPANY, LLC FOR THE FY2020 MICROSURFACING PROJECT

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The Public Works Department is requesting approval of a construction contract for the FY2020 Microsurfacing Project with Missouri Petroleum Products Company, LLC. This bid scope included the replacement non-ADA compliant curb ramps along the route and application of microsurfacing on Forsyth Blvd (from the north city limits near Lafon to just east of Jackson Ave. and from Big Bend Blvd. to the eastern city limits) and on N. Meramec Ave. (from Maryland Ave. to the northern city limits). Maps are attached for reference.

The bid also included an add alternate for the curb ramps on the north side of Forsyth at Washington University. These ramps are maintained by Washington University and city staff has shared the bid results with Washington University. This add alternate was included for the purpose of establishing this cost for the university, who could then enter into an agreement with the contractor directly.

Bids were opened at 2:00 pm on March 31, 2020. The City received two bids as shown on the attached bid tabulation. Missouri Petroleum submitted the lowest, responsive, responsible base bid in the amount of \$748,512.17. The final engineer's estimate for this work was \$765,669.00.

Missouri Petroleum also submitted the lowest, responsive, responsible add alternate bid. Alternate Bid "A" in the amount of \$19,973.50.

This project is funded by bond proceeds that have been transferred into the Capital Improvement Fund, there are adequate funds in the FY2020 budget for this activity.

**STAFF RECOMMENDATION:** To approve the ordinance authorizing a contract with Missouri Petroleum Products Company, LLC in the amount of \$748,512.17, plus authorization to approve change orders in an amount not to exceed \$75,000.00, for a total of \$823,512.17 for the FY2020 Microsurfacing Project.

**BILL NO. 6789**

**ORDINANCE NO.**

**AN ORDINANCE APPROVING A CONTRACT WITH MISSOURI PETROLEUM PRODUCTS COMPANY, LLC FOR THE FY2020 MICROSURFACING PROJECT**

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**WHEREAS**, the City desires to microsurface streets and reconstruct adjacent curb ramps on Forsyth Blvd (north city limits near Lafon to just east of Jackson Ave. and from Big Bend Blvd. to east city limits) and N. Meramec Ave. (Maryland Ave. to the north city limits); and

**WHEREAS**, upon request and advertisement for bids, Missouri Petroleum Products Company, LLC was found to be the lowest, responsive, responsible bidder for the FY2020 Microsurfacing Project;

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

Section 1. The Board of Aldermen approves on behalf of the City a contract with Missouri Petroleum Products Company, LLC for construction services in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, and change orders approved by the Director of Public Works in a cumulative amount not to exceed \$75,000, together with such document changes as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Manager and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

Section 2. This Ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

Passed this 14<sup>th</sup> day of April 2020.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**Bid Tab**

**Microsurfacing FY2020**  
**BI.2020.PW.1401.020**



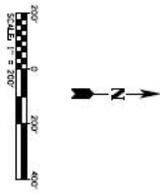
Bid Date: 3/31/2020  
 Bid Time: 2:00 PM

<b>BASE BID*</b>				<b>Missouri Petroleum</b>		<b>Byrne &amp; Jones</b>		<b>Engineers Estimate</b>	
<b>Item No.</b>	<b>Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>	<b>Unit Price</b>	<b>Extended Price</b>	<b>Unit Price</b>	<b>Extended Price</b>
1	Microsurfacing (Two Lifts @ 15lbs/SY)	SY	69,316	\$4.47	\$309,842.52	\$4.80	\$332,716.80	\$4.00	\$277,264.00
2	Remove & Replace Concrete Sidewalk (5" Thick)	SF	9,040	\$8.50	\$76,840.00	\$20.25	\$183,060.00	\$12.00	\$108,480.00
3	Remove & Replace Concrete Curb Ramp (7" Thick)	SF	4,595	\$20.00	\$91,900.00	\$28.50	\$130,957.50	\$20.00	\$91,900.00
4	Detectable Warnings	SF	708	\$37.00	\$26,196.00	\$39.00	\$27,612.00	\$40.00	\$28,320.00
5	Remove & Replace Concrete Curb & Gutter	LF	1,190	\$35.00	\$41,650.00	\$101.00	\$120,190.00	\$55.00	\$65,450.00
6	Remove and Reset Granite Curb	LF	276	\$50.00	\$13,800.00	\$175.00	\$48,300.00	\$25.00	\$6,900.00
7	Sodding	SY	507	\$65.00	\$32,955.00	\$20.00	\$10,140.00	\$20.00	\$10,140.00
8	Permanent Yellow Pavement Striping, Paint 4"	LF	20,450	\$0.15	\$3,067.50	\$0.70	\$14,315.00	\$1.00	\$20,450.00
9	Permanent White Pavement Striping, Paint 4"	LF	9,603	\$0.15	\$1,440.45	\$0.70	\$6,722.10	\$1.00	\$9,603.00
10	Permanent White Pavement Striping, Paint 12"	LF	2,941	\$5.00	\$14,705.00	\$2.00	\$5,882.00	\$5.00	\$14,705.00
11	Permanent Yellow Pavement Striping, Paint 12"	LF	265	\$5.00	\$1,325.00	\$2.00	\$530.00	\$5.00	\$1,325.00
12	Permanent White Pavement Striping, Paint 24"	LF	774	\$12.00	\$9,288.00	\$4.00	\$3,096.00	\$8.00	\$6,192.00
13	Permanent Pavement Marking Symbols, Paint	EA	105	\$100.00	\$10,500.00	\$66.00	\$6,930.00	\$100.00	\$10,500.00
14	Stanchion Base, Concrete	CY	1	\$5,600.00	\$5,600.00	\$6,600.00	\$6,600.00	\$5,000.00	\$5,000.00
15	Pedestrian Push Button Stanchion	EA	6	\$826.00	\$4,956.00	\$1,220.00	\$7,320.00	\$300.00	\$1,800.00
16	SH-Flat Sheet	SF	11	\$105.00	\$1,155.00	\$24.00	\$264.00	\$150.00	\$1,650.00
17	Conduit, Pushed (3" Diameter)	LF	65	\$35.00	\$2,275.00	\$13.00	\$845.00	\$30.00	\$1,950.00
18	Cable, 16 AWG 2 Conductor	LF	1,209	\$1.30	\$1,571.70	\$0.85	\$1,027.65	\$20.00	\$24,180.00
19	Detector, Pedestrian Push Button, APS, Freezeproof	EA	10	\$920.00	\$9,200.00	\$1,635.00	\$16,350.00	\$800.00	\$8,000.00
20	Push Button Extender	EA	1	\$245.00	\$245.00	\$320.00	\$320.00	\$500.00	\$500.00
21	Remove & Replace PCC Base (8" Thick)	SY	20	\$125.00	\$2,500.00	\$170.00	\$3,400.00	\$68.00	\$1,360.00
22	Traffic Control	LS	1	\$32,500.00	\$32,500.00	\$55,600.00	\$55,600.00	\$30,000.00	\$30,000.00
23	Mobilization	LS	1	\$55,000.00	\$55,000.00	\$57,820.00	\$57,820.00	\$40,000.00	\$40,000.00
<b>Total Bid</b>					<b>\$748,512.17</b>		<b>\$1,039,998.05</b>		<b>\$765,669.00</b>

<b>ALTERNATE BID #A – Washington University</b>				<b>Missouri Petroleum</b>		<b>Byrne &amp; Jones</b>		<b>Engineers Estimate</b>	
<b>Item No.</b>	<b>Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>	<b>Unit Price</b>	<b>Extended Price</b>	<b>Unit Price</b>	<b>Extended Price</b>
1	Remove & Replace Concrete Sidewalk (5" Thick)	SF	1,275	\$8.50	\$10,837.50	\$20.25	\$25,818.75	\$12.00	\$15,300.00
2	Remove & Replace Concrete Curb Ramp (7" Thick)	SF	242	\$20.00	\$4,840.00	\$28.50	\$6,897.00	\$20.00	\$4,840.00
3	Detectable Warnings	SF	48	\$37.00	\$1,776.00	\$39.00	\$1,872.00	\$40.00	\$1,920.00
4	Remove & Replace Concrete Curb & Gutter	LF	72	\$35.00	\$2,520.00	\$101.00	\$7,272.00	\$55.00	\$3,960.00
<b>Total Alternate Bid</b>					<b>\$19,973.50</b>		<b>\$41,859.75</b>		<b>\$26,020.00</b>

<b>Base Bid Plus Alternate</b>					<b>\$768,485.67</b>		<b>\$1,081,857.80</b>		<b>\$791,689.00</b>
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**PLAN LEGEND**  
 MICRO-SURFACING LIMITS

**FORSYTH/N. MERAMEC MICROSURFACING  
 PLAN SHEETS**  
 SHEET 2 OF 2



DATE	DESCRIPTION

PROJECT NO. 16046  
 SHEET NO. 19 OF 22  
 FROM STA. TO STA.  
 DATE: 08/20/2018  
 TIME: 10:00 AM  
 DRAWN BY: J. BIRCH  
 CHECKED BY: J. BIRCH  
 APPROVED BY: J. BIRCH  
 PROFESSIONAL ENGINEER  
 LICENSE NO. 000215



## INSTRUCTIONS FOR EXECUTING CONTRACT

The Contractor, in executing the Contract, shall follow the following requirements:

The Contractor and the Owner shall sign the Contract Documents in not less than triplicate.

If the Contractor is a corporation, the following certificate shall be executed:

I, \_\_\_\_\_ certify that I am the \_\_\_\_\_ secretary of the corporation named as Contractor herein above, that \_\_\_\_\_ who signed the foregoing Contract on behalf of the Contractor was then of said corporation; that said Contract was duly signed for and in behalf of said corporation by Authority of its governing body, and is within the scope of its corporate powers.

If the Contract is signed by the secretary of the corporation, the above certificate shall be executed by some other officer of the corporation under the corporate seal. In lieu of the foregoing certificate there may be attached to the Contract copies of as much of the records of the corporation as will show the official character and authority of the officers signing, duly certified by the secretary or assistant secretary under the corporate seal to be true copies.

If the Contractor is a partnership, each partner shall sign the Contract. If the Contract is not signed by each partner, there shall be attached to the Contract a duly authenticated power of attorney evidencing the signer's (signers") authority to sign such a Contract for and in behalf of the partnership.

If the Contractor is an individual, the trade name (if the Contractor is operating under a trade name) shall be indicated in the Contract and the Contract shall be signed by such individual. If signed by one other than the Contractor there shall be attached to the Contract a duly authenticated power of attorney evidencing the signer's authority to execute such Contract for and in behalf of the Contractor.

The full name and business address of the Contractor shall be inserted and the Contract shall be signed with his official signature. The name of the signing party or parties shall be typewritten or printed under all signatures to the Contract.

The Contract shall be deemed as having been awarded when formal notice of award shall have been duly served upon the intended awardee (i.e., the bidder with whom the Owner contemplates entering into a Contract) by some officer or agent of the Owner duly authorized to give such notice.

**CITY-CONTRACTOR AGREEMENT**

This Agreement is made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Clayton, Missouri (hereinafter the "City") and **Missouri Petroleum Products Company, LLC**, a Limited Liability Corporation with offices at **1620 Woodson Rd., St. Louis, MO 63114**, (hereinafter the "Contractor"). The project shall be identified as **FY2020 Microsurfacing**, Project No.: **BI.2020.PW.1401.020**

**WITNESSETH:**

The Contractor and the City for the consideration set forth herein agree as follows:

**ARTICLE I - The Contract Documents**

The Contract Documents consist of the Invitation for Bids and Bid Specifications previously issued by the City for the Work and Contractor's submission in response thereto, the General Conditions of City-Contractor Agreement, Non-Collusion Affidavit, Performance and Payment Bond, Specifications, Drawings, the Construction Schedule, all Addenda and all Modifications issued after execution of this Contract, which together with this Agreement form the Contract, and are all as fully made a part of the Contract as if attached to this Agreement or repeated herein. All definitions set forth in the General Conditions of City-Contractor Agreement are applicable to this Agreement. This Contract cannot be modified except by duly authorized and executed written amendment.

**ARTICLE II - Scope of Work**

The Contractor, acting as an independent contractor, shall do everything required by the Contract Documents. Contractor represents and warrants that contractor has special skills which qualify contractor to perform the Work in accordance with the Contract and that contractor is free to perform all

such Work and is not a party to any other agreement, written or oral, the performance of which would prevent or interfere with the performance, in whole or in part, of the Work.

### **ARTICLE III - Time of Completion**

All time limits stated in the Contract Documents are of the essence. The Work to be performed under this Contract shall commence within ten (10) days of the date of the written Notice to Proceed from the City to the Contractor and shall be completed within **One Hundred Twenty (120)** consecutive calendar days from and including the date of said written Notice to Proceed.

### **ARTICLE IV - The Contract Sum and Payments**

Based upon Applications for Payment and an Invoice duly delivered by the Contractor to the City by the twentieth day of the month for work performed, in accordance with the Contract, the City shall pay the Contractor for the performance of the Work, the sum of **Seven Hundred Forty-Eight Thousand Five Hundred Twelve dollars and seventeen cents (\$748,512.17)** (the "Contract Sum") as follows:

- (a) On or about the tenth day of each following month, ninety percent (90%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated into the Work, and ninety percent (90%) of the portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site to be incorporated into the Work, through the period ending up to the twentieth of the preceding month, less the aggregate of all previous progress payments;
- (b) Within thirty (30) days of substantial completion of the Work, a sum sufficient to increase the total payments to ninety percent (90%) of the Contract Sum; and
- (c) Final payment within thirty (30) days after the Work is certified by the City as fully completed and accepted by the City including any required documentation.
- (d) The foregoing schedule shall not apply if contrary to federal funding requirements or unless funds from a state grant are not timely received.

- (e) Estimates of work performed and materials delivered shall be finally determined by the City.
- (f) The foregoing retainage amounts are agreed to be required to ensure performance of the Contract.
- (g) Payment shall be deemed made when mailed or personally delivered, whichever is earlier.

#### **ARTICLE V - Performance of the Work**

(a) Within fourteen (14) calendar days after being awarded the Contract, the Contractor shall prepare and submit for the City's approval (1) a **Construction Schedule** for the Work in a bar chart format which Construction Schedule shall indicate the dates for starting and completing the various stages of construction on a street by street basis and (2) a **Traffic Control Plan** indicating the location of all proposed signage, detours, road closures throughout the project which adequately address the traffic control plan of the proposed work. All traffic control shall be according to the standards of the Manual on Uniform Traffic Control Devices (Millenium Edition) developed by the Federal Highway Administration. No work will commence until the Contractor's Schedule and Traffic Control Plan is submitted and approved by the City. The Contractor shall be required by the Director of Public Works to substantially finish portions of the Work prior to continuation of further work remaining on the project, including backfilling, paving, sodding or cleanup.

(b) Completion of the Work in accordance with the time limits set forth in the Construction Schedule is an essential condition of this Contract. If the Contractor fails to complete the Work in accordance with the Construction Schedule, unless the delay is excusable under the provisions of Article VI hereof, the Contractor shall pay the City as liquidated damages and not as a penalty, the sum of **\$500.00** for each calendar day the Contractor fails to comply with the Construction Schedule. The total amount so payable to the City as liquidated damages may be deducted from any sums due or to become due to Contractor from City.

(c) After Commencement of the Work, and until final completion of the Work, the Contractor shall report to the City as such intervals as the City may reasonably direct, the actual progress of the work

compared to the Construction Schedule. If the Contractor falls behind the Construction Schedule for any reason, he shall promptly take, and cause his Subcontractors to take, such action as is necessary to remedy the delay, and shall submit promptly to the City for approval a supplementary schedule or progress chart demonstrating the manner in which the delay will be remedied; provided, however, that if the delay is excusable under Article VI hereof, the Contractor will not be required to take, or cause his Subcontractors to take, any action which would increase the overall cost of the Work (whether through overtime premium pay or otherwise), unless the City shall have agreed in writing to reimburse the Contractor for such increase in cost. Any increase in cost incurred in remedying a delay which is not excusable under Article VI hereof shall be borne by the Contractor.

#### **ARTICLE VI - Delays Beyond Contractor's Control**

(a) If the Contractor fails to complete the Work in accordance with the Construction Schedule solely as a result of the act or neglect of the City, or by strikes, lockouts, fire or other similar causes beyond the Contractor's control, the Contractor shall not be required to pay liquidated damages to the City pursuant to paragraph (b) of Article V hereof, provided the Contractor uses his best efforts to remedy the delay in the manner specified in paragraph (c) of Article V hereof. If, as a result of any such cause beyond the Contractor's control, the delay in completion of the Work in accordance with the Construction Schedule is so great that it cannot be remedied in the aforesaid manner, or if the backlog of Work is so great that it cannot be remedied without incurring additional cost which the City does not authorize, then the time of completion and the Construction Schedule shall be extended pursuant to a Change Order for the minimum period of delay occasioned by such cause. The period of delay and extension shall be determined by the City.

(b) Notwithstanding the foregoing paragraph (a), no extension of time or other relief shall be granted for any delay the cause of which occurs more than seven (7) days before claim therefor is made in writing by the Contractor to the City, and no extension of time shall be granted if the Contractor

could have avoided the need for such extension by the exercise of reasonable care and foresight. In the case of a continuing cause of delay, only one claim is necessary.

(c) Weather shall not constitute a cause for granting an extension of time.

(d) In the event a delay is caused by the City, the Contractor's sole remedy shall consist of his rights under this Article VI.

### **ARTICLE VII - Changes in the Work**

(a) The City may make changes within the general scope of the Contract by altering, adding to or deducting from the Work, the Contract Sum being adjusted accordingly. All such changes in the Work shall be executed under the General Conditions of the Contract. No extra work or change shall be made except pursuant to a Change Order from the City in accordance with the General Conditions. Any claim for an increase in the Contract Sum resulting from any such change in the Work shall be made by the Contractor in accordance with the General Conditions.

(b) If the requested change would result in a delay in the Construction Schedule, the provisions of paragraph (c) of Article V and of Article VI hereof shall apply. If the requested change would result in a decrease in the time required to perform the Work, the completion date and the Construction Schedule shall be adjusted by agreement between the parties to reflect such decrease.

(c) Any adjustment in the Contract Sum for duly authorized extra work or change in the Work shall be determined based on the unit prices previously specified, to the extent such unit prices are applicable. To the extent such unit prices are not applicable, the adjustment in the Contract Sum shall, at the option of the City, be determined by an acceptable lump sum properly itemized and supported by sufficient substantiating data to permit evaluation, or by an acceptable cost plus percentage or fixed fee.

**ARTICLE VIII - Termination**

(a) If the Contractor is adjudged insolvent or bankrupt, or if the Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor fails, except in cases for which extension of time is provided, to make progress in accordance with the Construction Schedule, or if the Contractor fails to make prompt payment to Subcontractors for material or labor, or persistently disregards laws, ordinances or the instructions of the City, or otherwise breaches any provision of the Contract, the City may, without prejudice to any other right or remedy, by giving written notice to the Contractor, terminate the Contract, take possession of the Work and of all materials and equipment thereon and finish the Work by whatever method the City may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum shall exceed the expenses of finishing the Work, including additional architectural, managerial and administrative expenses, such excess shall be paid to the Contractor. If such expenses shall exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the City promptly upon demand.

In the event of termination pursuant to this paragraph, the Contractor, upon the request of the City, shall promptly

(i) assign to the City in the manner and to the extent directed by the City all right, title and interest of the Contractor under any subcontracts, purchase orders and construction equipment leases to which the Contractor is a party and which relate to the Work or to construction equipment required therefor, and

(ii) make available to the City to the extent directed by the City all construction equipment owned by the Contractor and employed in connection with the Work.

(b) Performance of the Work hereunder may be terminated by the City by giving three (3) days prior written notice to the Contractor. In the event of termination, under this paragraph (b) the Contract Sum shall be reduced by the percentage of work not completed on the date of termination.

**ARTICLE IX - Contractor's Insurance**

Contractor's insurance shall be endorsed to cover the contractual liability of the Contractor under the General Conditions referring to Property Insurance.

**ARTICLE X - Indemnities**

(a) **Liability**: Contractor indemnifies, defends, and holds the City harmless for all third party claims or suits for libel, slander, property damage, and bodily injury, including death, because of the Contractor's negligence, general liability or product liability that arise out of the Project or anyone directly or indirectly employed by the Contractor or anyone for whose acts the City may be liable, regardless of whether caused in whole or in part by the City's negligence. These obligations include all judgments or awards recovered from the claims or suits, including court costs and attorney fees.

(b) **Professional Liability**: Contractor indemnifies and holds the City harmless for all third-party claims or suits for damages, including consequential or economic damages, to the extent caused by the negligent acts, errors or omissions of the Contractor, its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in performing professional services under this Agreement. These obligations include all judgments or awards recovered from the claims or suits, including court costs and attorney fees.

(c) **Other Indemnities**: Contractor indemnifies, defends, and holds the City harmless for all third-party claims or suits for fines, penalties, liquidated damages or any other damages of whatsoever nature to the extent caused by the negligence or wrongdoing of the Contractor, its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. These obligations include all judgments or awards recovered from the claims or suits, including courts costs and attorney fees.

(d) Contractor agrees that its indemnity obligations set forth in this Article will not be affected in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the City, the Contractor, or any of the subcontractors under workers' compensation acts, employer's liability insurance, or other employee benefit acts.

**ARTICLE XI - Insurance**

(a) Except to the extent set forth in Section (b) of this Article, the Contractor will purchase and maintain the following insurance to cover its operations under this Agreement without limiting the liability of the Contractor under this Agreement. This insurance will be provided by insurance companies acceptable to the City and licensed to do business in each jurisdiction where the Work is performed.

1. Workers' Compensation Insurance in full compliance with workers' compensation laws of the State of Missouri together with Employer's Liability Coverage with minimum limits of liability in the amount of \$3,000,000.00 for each accident and each disease.

2. Commercial Automobile Liability Insurance under Form CA 00 01, covering all owned hired, and non-owned vehicles, with minimum combined single limits of liability of \$3,000,000 for each accident.

3. Commercial General Liability Insurance, and, if necessary, excess liability insurance on a "true following-form" basis, all of which is written on an occurrence basis, with the following minimum limits of liability:

General Aggregate	\$3,000,000.00
Products/completed operations aggregate	\$3,000,000.00
Personal and advertising injury	\$3,000,000.00
Each occurrence	\$3,000,000.00
Fire damage legal liability	\$3,000,000.00
Medical expenses	\$ 10,000.00

(b) The Commercial General Liability and the Commercial Automobile Liability Insurance coverages and their respective limits set forth in Section (a) of this Article are being explicitly required and obtained to insure the indemnity obligations set forth in Section (a) of Article X to meet the requirements of § 434.100.2(8) R.S.Mo. The parties further acknowledge that the cost of these insurance coverages is included in the Contract Price and that the limits and coverages afforded by them is the Contractor's total aggregate liability under the indemnity obligations set forth in Section (a) of Article X.

(c) Contractor's Commercial Automobile Liability, Commercial General Liability, and Professional Liability policies – and any excess policies necessary to meet the required limits – will include contractual liability coverage. The City of Clayton, its officers, boards, board members, commissions, commissioners, agents, and employees will be named as an additional insured on the Contractor's Commercial General Liability policy by using ISO Additional Insured Endorsement (Form B), CG 20 10 11 85. The Commercial General Liability, Commercial Automobile Liability and required excess policies will include a severability or cross-liability clause and such insurance will be endorsed to make such insurance primary with respect to any applicable insurance maintained by the City.

(d) Contractor waives any rights of subrogation under its Professional Liability Insurance policy for the City's benefit and is doing so before commencing any of the Work.

(e) Contractor will furnish an insurance certificate to Owner evidencing that it has met the insurance requirements of this Article, including attaching the requisite additional insured, primary and alternate employer endorsements. These documents must be provided before beginning the Work and upon each renewal of the coverage during the performance of the Work. The certificate will provide that thirty-days written notice will be given to City before any policy is canceled. Contractor will give written notice to City as soon as it receives written notice of cancellation from any of its insurance carriers. The certificate of insurance must clearly designate the name of the Project.

(f) Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City either: the insurer shall reduce or eliminate such deductibles or self-insured

retentions as respects the City, its officers, officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administrative and defense expenses.

**ARTICLE XII - The Work**

The Scope of Work includes the replacement of various alleys within the City of Clayton and provides for the removal and replacement of concrete slabs and the underlying aggregate base course, traffic control, and other incidental items as shown in the specifications.

**ARTICLE XIII - Notices**

Any notice hereunder shall be personally delivered or mailed, postage prepaid, by certified mail, return receipt requested addressed to:

City of Clayton  
10 N. Bemiston Avenue  
Clayton, Missouri 63105  
Attention: Public Works Department

or to Contractor at:

Missouri Petroleum Products Company, LLC  
1620 Woodson Dr.  
St. Louis, MO 63114  
Attention: Steve Jeffs

**CONTRACT SIGNATURE PAGE**

\* In making out this form the proper name and title should be used. For example, if the Contractor is a corporation and this form is to be executed by its president, the words President should be used under Title. Attestation should be done by the Secretary of the Corporation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF CLAYTON

By: \_\_\_\_\_  
City Manager

(SEAL)

Attest:

\_\_\_\_\_  
City Clerk

DATE: \_\_\_\_\_

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

\_\_\_\_\_  
Title

(SEAL)

Attest:

DATE: \_\_\_\_\_

**FORM OF CONTRACT PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That

Missouri Petroleum Products Company, LLC

(Name of Contractor)

1620 Woodson Rd., St. Louis, MO 63114

(Address of Contractor)

a Corporation, hereinafter  
(Corporation, Partnership, or Individual)

called Principal, and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

herein after called Surety, are held and firmly bound unto

CITY OF CLAYTON, ST. LOUIS COUNTY, MISSOURI

(Name of OWNER)

10 N. BEMISTON AVE.

(Address of OWNER)

Hereinafter called OWNER, in the penal sum of Seven Hundred Forty-Eight Thousand Five Hundred Twelve dollars and seventeen cents (\$ 748,512.17 ) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_ 2020, a copy of which is hereto attached and made a part hereof for the construction of:

**FY2020 Microsurfacing**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one (1) year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void: otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed hereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, Bond shall guarantee the faithful performance of the prevailing wage. Contractor shall pay not less than the prevailing wage included herein to all workers performing work under the contract.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary  
  
(SEAL)

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

\_\_\_\_\_  
Witness as to Principal  
  
\_\_\_\_\_  
(Address)  
  
\_\_\_\_\_

\_\_\_\_\_  
(Address)  
  
\_\_\_\_\_  
  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
(Surety) Secretary  
  
(SEAL)

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Witness as to Surety  
  
\_\_\_\_\_  
(Address)  
  
\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact  
  
\_\_\_\_\_  
(Address)  
  
\_\_\_\_\_

NOTE: Date of bond must not be prior to date of contract. If CONTRACTOR is partnership, all partners should execute bond.

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

**FORM OF CONTRACT PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: That

Missouri Petroleum Products Company, LLC

(Name of Contractor)

1620 Woodson Rd., St. Louis, MO 63114

(Address of Contractor)

a Corporation, hereinafter called Principal, and  
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

CITY OF CLAYTON, ST. LOUIS COUNTY, MISSOURI

(Name of OWNER)

hereinafter called OWNER, in penal sum Seven Hundred Forty-Eight Thousand Five Hundred Twelve dollars and seventeen cents (\$ 748,512.17) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_ 2020, a copy of which is hereto attached and made a part hereof for the construction of:

**FY2020 Microsurfacing**

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, Bond shall guarantee the faithful performance of the prevailing wage. Contractor shall pay not less than the prevailing wage included herein to all workers performing work under the contract.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

\_\_\_\_\_  
Principal

(SEAL)

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

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

(SEAL)

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of bond must not be prior to date of contract. If CONTRACTOR is partnership, all partners should execute bond.

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

## GENERAL CONDITIONS OF CITY-CONTRACTOR AGREEMENT

### ARTICLE 1 - CONTRACT DOCUMENTS

#### 1.1 DEFINITIONS

1.1.1 The Contract Documents. The Contract Documents consists of the Invitation for Bids and Bid Specifications previously issued by the City for the Work and Contractor's submission in response thereto, the City-Contractor Agreement, General Conditions of the City-Contractor Agreement, Non-Collusion Affidavit, the Performance and Payment Bond, the Drawings, the Technical Specifications, the Construction Schedule, all Addenda and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, or (2) a Change Order.

1.1.2 The Contract. The Contract documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, both written and oral, including the bidding documents. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1.

1.1.3 The Work. The term Work includes all labor necessary to complete the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.1.5 Notice to Proceed. The written notice from the City notifying the Contractor of the date on or before which Contractor is to begin prosecution of the work.

1.1.6 Standard Specifications: The St. Louis County Standard Specifications for Highway Construction (Jan. 1, 1997 edition).

1.1.7 Substantial Completion: The state in the progress of the Work when the Work or a designated portion thereof is sufficiently complete in accordance with the Contract Documents so the City can reasonably occupy or utilize the Work for its intended use.

#### 1.2 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS

1.2.1 The Contract Documents shall be signed in not less than triplicate by the City and Contractor.

1.2.2 The Contractor represents that Contractor has visited the site, become familiar with the local conditions under which the Work is to be performed, and correlated any observations with the requirements of the Contract Documents.

1.2.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items as provided in Subparagraph 3.3 necessary for

execution and completion of the Work. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

### **1.3 COPIES FURNISHED AND OWNERSHIP**

1.3.1 Unless otherwise provided in the Contract Documents, the Contractor will be furnished a maximum of six (6) copies, free of charge, of the Drawings and Specifications for the execution of the work.

1.3.2 All Drawings, Specifications and copies thereof furnished by the City are and shall at all times remain property of the City. Such documents shall not be used on any other project.

## **ARTICLE 2 - CITY**

### **2.1 DEFINITION**

2.1.1 The term City means the City or its authorized representative.

### **2.2 CITY'S RIGHT TO STOP THE WORK**

2.2.1 If the Contractor fails to correct defective Work or fails to supply materials or equipment in accordance with the Contract Documents, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

### **2.3 CITY'S RIGHT TO CARRY OUT THE WORK**

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the City may, after seven (7) days' written notice to the Contractor and without prejudice to any other remedy City may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City promptly upon request.

## **ARTICLE 3 - CONTRACTOR**

### **3.1 DEFINITION**

3.1.1 The Contractor is the person or organization identified as such in the City-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or Contractor's authorized representative. The Contractor shall not subcontract except in accordance with the terms of this Agreement.

### **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

3.2.1 The Contractor shall supervise and direct the Work, using his best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

### 3.3 LABOR, MATERIALS AND EQUIPMENT

3.3.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

3.3.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. If the City reasonably objects to any person employed by the Contractor, the employee shall be immediately dismissed from the Work.

3.3.3 The Contractor shall execute and complete the Work in such a manner that avoids jurisdictional and other disputes among labor unions.

3.3.4 The Contractor shall comply with, and is bound by, the provisions of Missouri statutes pertaining to the payment of wages on public works projects contained in sections 290.210 through 290.340 (RSMo 2000), and any amendments thereto, including, but not limited to the following:

- 1) In accordance with section 290.250, the Contractor shall not pay less than the prevailing hourly rate of wages specified by the Missouri Department of Labor and Industrial Relations Division of Labor Standards to all workers performing Work under the Agreement.
- 2) In accordance with section 290.250, the Contractor shall forfeit as a penalty to the City ten dollars (\$10.00) for each worker employed for each calendar day, or portion thereof, such worker is paid less than the said stipulated rates for any Work done under the Agreement, by him or by any Subcontractor under him and shall include provisions in all bonds guaranteeing the faithful performance of said prevailing hourly wage clause.
- 3) In accordance with section 290.265, the Contractor shall post a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed to complete the Work in a prominent and easily accessible place at the site of the Work and such notice shall remain posted during the full time that any workers shall be employed on the Work.
- 4) Certified payrolls shall also be submitted prior to final payment for all Work completed by the Contractor or Subcontractors.
- 5) In accordance with section 290.290, before final payment is made an affidavit must be filed by the Contractor stating that he has fully complied with the prevailing wage law. No payment shall be made unless and until this affidavit is filed therewith in proper form and order.

### 3.4 WARRANTY

3.4.1 The Contractor warrants to the City that all materials and equipment furnished under the Contract and incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract

Documents. All Work not so conforming to these standards shall be considered defective. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of all materials and equipment.

### **3.5 PERMITS, FEES AND NOTICES**

3.5.1 The Contractor shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the Work.

3.5.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the City in writing and any necessary changes shall be adjusted by appropriate Modification. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the City, the Contractor shall assume full responsibility thereof and shall bear all costs attributable thereto.

### **3.6 SUPERINTENDENT**

3.6.1 This person shall be a non-working superintendent who will be responsible for the satisfactory progression of the work and to ensure that all work is being completed in accordance with the plans and specifications. This person is also to relay any conflicts or discrepancies that arise in the plans to the City's representative for resolution or interpretation. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor.

### **3.7 RESPONSIBILITY FOR THOSE PERFORMING THE WORK**

3.7.1 The Contractor shall be responsible to the City for the acts and omissions of all his employees and all Subcontractors, their agents and employees and all other persons performing any of the Work under a Contract with the Contractor.

### **3.8 DRAWINGS AND SPECIFICATIONS AT THE SITE**

3.8.1 The Contractor shall maintain at the site for the City one copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders and other Modifications, in good order and marked to record all changes made during construction. The Drawings, marked to record all changes made during construction, shall be delivered to the City upon completion of the Work. The Contractor shall also maintain on the project site a digital level (2' in length shall be used for ADA ramp slope measurements), survey level, legs, and rod at all times, which are deemed adequate by the project engineer.

### **3.9 CLEANING UP AND STORAGE**

3.9.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. The Contractor shall not "stockpile" any material on the jobsite and all excavated material shall be hauled off the site at the time of excavation. However, stockpiling of materials delivered and used on the same day will be allowed if all materials are in place or removed at the end of the day.

3.9.2 In conjunction with Sec. 106.5 of the Standard Specifications, the Contractor is responsible for securing his own project storage site which shall not be located on City Right-of-Way without prior written consent of the Director of Public Works. After completion of the Work the Contractor shall remove all remaining waste materials and rubbish from and about the Project as well as all tools, construction equipment, machinery and surplus materials, and shall clean all surfaces and leave the Work "broom clean" or its equivalent, except as otherwise specified.

3.9.3 The Contractor shall make satisfactory arrangements to store material and equipment after delivery and during construction off of the City right-of-way. The City will assume no responsibility for these arrangements.

### **3.10 CASH ALLOWANCES**

3.10.1 The Contractor acknowledges and agrees that the Contract Sum includes all cash allowances specified in the Contract Documents.

## **ARTICLE 4 - SUBCONTRACTORS**

### **4.1 DEFINITION**

4.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the Work.

4.1.2 Nothing contained in the Contract Documents shall create any contractual relation between the City and any Subcontractor or Sub-subcontractor.

### **4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

4.2.1 Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the Contractor shall submit a completed and signed Subcontractor Approval form, along with other required Bid documents to the City. Contractor shall complete and submit a Supplemental Subcontractor Approval form to the City in the event of any substitution or addition of a Subcontractor by the Contractor. No work shall be performed by a Subcontractor until such Subcontractor has been approved by the City.

4.2.2 Prior to the award of the Contract, the City will notify the Bidder in writing if the City, after due investigation, objects to any such person or entity proposed by the Bidder pursuant to Subparagraph 4.2.1 above. If the City objects to any such proposed person or entity, the Bidder may, at his option, (1) withdraw his Bid, or (2) submit an acceptable substitute person or entity with no adjustment in his bid price.

4.2.3 Contractor shall at all times during the term of the Contract be in compliance with Sec. 108.1 of the Standard Specifications and shall not subcontract more than forty nine percent (49%) of the total Contract cost.

4.2.4 The City reserves the right to reject a Subcontractor, if in the City's sole discretion, delays may result in the performance of Work as a result of Subcontractor's other obligation. The Contractor shall be held responsible, in addition to the submission of the "Subcontractor

Approval Form," to apprise the City of any additional work which a Subcontractor accrues throughout the duration of the project. This shall include work for the City under a different Contract, or any other person or entity. If such said additional work shall detrimentally impact the progression of the Work under this Contract, the City retains the right to require the Contractor to submit a substitute Subcontractor for this work at no additional cost to the City.

4.2.5 The Contractor shall not contract with any Subcontractor or any person or organization (including those who are to furnish materials or equipment fabricated to a special design), for proposed proportions of the Work designated in the Contract Documents or in the Instruction to Bidders or, if none is so designated, with any Subcontractor proposed for the principal portions of the Work, who has been rejected by the City.

4.2.6 If the City requires a change of any proposed Subcontractor or person or organization during the execution of the Work approved under the present Contract, the Contract Sum shall be increased or decreased by the difference in cost resulting from such change and an appropriate Change Order shall be issued.

4.2.7 The Contractor shall not make any substitution for any proposed Subcontractor or person or organization that has not been accepted by the City prior to the Contract Award, unless the substitution is accepted by the City in writing prior to such substitution.

### **4.3 SUBCONTRACTUAL RELATIONS**

4.3.1 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

- 1) require the Work to be performed in accordance with the requirements of the Contract Documents;
- 2) require submission to the Contractor of applications for payment under each Subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 8 hereof;
- 3) require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to Subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the City;
- 4) waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 10 except such rights as they may have to the proceeds of such insurance held by the City as trustee;
- 5) obligate each Subcontractor specifically to consent to the provisions of this Paragraph 4.3; and
- 6) require the Subcontractor (and the Sub-subcontractor's to indemnify and hold harmless the City against all claims, damages, losses, expenses and attorneys' fees arising out of or resulting from the performance of the Work by Subcontractor, and its

agents and employees, unless such claims, damages or losses are caused solely by the negligent act of the City.

#### **4.4 PAYMENTS TO SUBCONTRACTORS**

4.4.1 The Contractor shall pay each Subcontractor upon receipt of payment from the City, an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's Work, less the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments to his Subcontractors.

4.4.2 If the City withholds payment to the Contractor for any cause that is the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall pay that Subcontractor on demand for its Work to the extent completed.

4.4.3 The City shall not have any obligation to pay or to see to the payment of any sum to any Subcontractor or Sub-subcontractor.

### **ARTICLE 5 - SEPARATE CONTRACTS**

#### **5.1 CITY'S RIGHT TO AWARD SEPARATE CONTRACTS**

5.1.1 The City reserves the right to award other contracts on other terms and conditions in connection with other portions of the Project.

5.1.2 During construction, it may become necessary to increase the amount of excavation or to utilize a soil stabilization process if unsuitable subgrade conditions are found. The Contractor shall immediately contact the project engineer if this condition occurs. The project engineer and the Contractor shall agree upon the existence of unsuitable subgrade, the depth in which to remove the unsuitable soil, and the extent of the problem area prior to any additional work. No payment will be made for any area that undergoes additional excavation that is not indicated in the above scope of work and has not been approved by the project engineer prior to the excavation. All additional excavation that becomes necessary shall be paid at the unit bid price for "Excavation." The City reserves the right to contract with a separate contractor for the use of a soil stabilization process. No direct payment will be made for delays incurred due to this process and the Contractor's only compensation will be the allotment of additional days for the delay. The number of days shall be from the time the Contractor initially notifies the City of an unsuitable subgrade condition and until two days after the completion of the soil stabilization process.

#### **5.2 MUTUAL RESPONSIBILITY OF CONTRACTORS**

5.2.1 The Contractor shall afford other contractors reasonable opportunity for the delivery and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate the Work with theirs.

5.2.2 If any part of the Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the City any apparent discrepancies or defects in such work that render it unsuitable for proper execution of the Work. Failure of the Contractor so to inspect and report shall constitute an acceptance of

the other contractor's work as fit and proper to receive the Work, except as to defects which may develop in the other contractor's work after the execution of the Contractor's Work that could not have been discovered by the Contractor upon reasonable inspection.

5.2.3 If the Contractor causes damage to the work or property of any other contractor on the Project, and such separate contractor sues the City or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the City shall notify the Contractor who shall defend such proceedings at Contractor's own expense, and if any judgment or award against the City arises therefrom the Contractor shall pay or satisfy it and shall reimburse the City for all attorneys' fees and court or arbitration costs which the City has incurred.

### **5.3 CITY'S RIGHT TO CLEAN UP**

5.3.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph 3.9, the City may clean up and charge the cost thereof to the several contractors.

## **ARTICLE 6 - GENERAL PROVISIONS**

### **6.1 GOVERNING LAW**

6.1.1 The Contract shall be governed by the laws of the State of Missouri.

### **6.2 SUCCESSORS AND ASSIGNS**

6.2.1 This Contract shall be binding upon the successors, assigns and legal representatives of each party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract without the prior written consent of the other, nor shall the Contractor assign any sums due or to become due to him hereunder, without the prior written consent of the City.

### **6.3 RIGHTS AND REMEDIES**

6.3.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

### **6.4 ROYALTIES AND PATENTS**

6.4.1 The Contractor shall pay all royalties and license fees payable on all designs, processes or products used in connection with the Work or incorporated therein, unless otherwise agreed upon by the City. The Contractor shall defend all suits or claims for infringement of any patent rights and shall indemnify and hold the City harmless from and against any loss on account thereof.

### **6.5 PERFORMANCE AND PAYMENT BOND**

6.5.1 The Contractor shall furnish the performance and payment bond required in the Instructions to Bidders.

## **ARTICLE 7 - TIME**

### **7.1 DEFINITIONS**

7.1.1 The Contract Time is the period of time allotted in the City-Contractor Agreement for completion of the Work. Said work shall include all punchlist items deemed necessary by the City, exclusive of MSD-generated punchlist items. The date of completion of the Contract shall be the date when all work including City punchlist items have been approved in writing by the City.

7.1.2 The date of commencement of the Work is the date established in the written Notice to Proceed from the City to the Contractor.

7.1.3. The term "day" as used in the Contract Documents shall mean calendar day.

### **7.2 PROGRESS AND COMPLETION**

7.2.1 All time limits stated in the Contract Documents are of the essence.

7.2.2 The Contractor shall begin the Work on the date of commencement provided in the City-Contractor Agreement. The Contractor shall carry the Work forward expeditiously with adequate forces and shall complete it within the Contract Time and in accordance with the Construction Schedule.

## **ARTICLE 8 - PAYMENTS AND COMPLETION**

### **8.1 CONTRACT SUM**

8.1.1 The Contract Sum is stated in the City-Contractor Agreement and is the total amount payable by the City to the Contractor for the performance of the Work.

### **8.2 APPLICATION FOR PAYMENT**

8.2.1 By 12:00 P.M. on or before the twentieth day of the month, upon Substantial Completion of various stages of the Work, and upon final completion of the Work, the Contractor shall submit to the City an itemized Application for Payment pursuant to the City-Contractor Agreement on such forms and supported by such data substantiating the Contractor's right to payment as the City may require.

8.2.2 If payments are to be made on account of materials or equipment to be incorporated into the Work and delivered and suitably stored at the site, such payments shall be conditioned upon submission by the Contractor of bills of sale or such other documents satisfactory to the City to establish the City's title to such materials or equipment or to otherwise protect the City's interest.

8.2.3 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated into the Work or not, will pass to the City upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances (hereinafter referred to as "liens").

### **8.3. PAYMENT**

8.3.1 If the Contractor has made Application for Payment as above, the City will, in accordance with the City-Contractor Agreement, make payment to the Contractor for such amount as it determines to be properly due pursuant to the Contractor's Application for Payment, or state in writing the City's reasons for withholding all or any portion of such payment.

8.3.2 No progress payment, nor any partial or entire use or occupancy of the Work by the City, shall constitute an acceptance of any Work not completed in accordance with the Contract Documents.

### **8.4 COMPLETION AND FINAL PAYMENT**

8.4.1 Upon receipt of written notice from the Contractor that the Work is fully completed and ready for final inspection and acceptance, and upon receipt of a final application for Payment, the City will promptly make such inspection and, when the City finds the Work acceptable under the Contract Documents and the Contract fully performed, the City will make final payment to the Contractor in accordance with the City-Contractor Agreement.

8.4.2 The final payment shall not become due until the Contractor submits to the City (1) an Affidavit that all payrolls, bills for materials and equipment, and other indebtedness incurred in connection with the execution and completion of the Work for which the City or its property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of the surety, if any, to final payment, (3) if required by the City, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the City and (4) Prevailing Wage Affidavit as required by subsection 3.3.4. If any Subcontractor refuses to furnish a release or waiver required by the City, the Contractor may furnish a bond satisfactory to the City indemnifying the City against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the City all moneys that the City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

8.4.3 The acceptance of final payment shall constitute a satisfaction of all claims by the Contractor, except those previously made in writing and still unsettled.

## **ARTICLE 9 - PROTECTION OF PERSONS AND PROPERTY**

### **9.1 SAFETY PRECAUTIONS AND PROGRAMS**

9.1.1 The Contractor shall initiate, maintain and supervise safety precautions and programs in connection with the performance of the Work.

### **9.2 SAFETY OF PERSONS AND PROPERTY**

9.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- 1) all employees on the Work and all other persons who may be affected thereby;

- 2) all the Work, all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- 3) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

9.2.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction over the safety of persons or property to protect them from damage, injury or loss. The Contractor shall erect and maintain all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying City and users of adjacent utilities. The Contractor shall provide signs, barrels, or any other safety devices that the City deems necessary for public safety. No additional payment will be made and this work shall be considered incidental to the Contract. The City will place safety devices as it deems necessary if the Contractor fails to provide the required items within 24 hours of notification. The Contract Sum shall be reduced by the cost of these devices.

9.2.3 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

9.2.4 All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, or any Sub-subcontractor, or anyone directly or indirectly employed by anyone for whose acts they may be liable, shall be remedied by the Contractor. The City shall document any complaint by any person regarding damage or loss to property caused by Contractor by requesting such complainant to complete a Damage Claim form. A copy of the Damage Claim form shall be submitted by the City to the Contractor and the Contractor shall correct the problem, repair such damage or otherwise compensate the complainant or file a claim for such damage with Contractor's insurance company within ten (10) days of the receipt of the Damage Claim form from the city. If the City shall have a legitimate basis for believing that such claim is valid, the City shall have the option to withhold payment of funds until (i) such damages are repaired; or (ii) the City has been provided with evidence that the Contractor has made restitution to the complainant.

9.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the City.

## **ARTICLE 10 - PROPERTY INSURANCE**

### **10.1 PROPERTY INSURANCE**

10.1.1 Unless otherwise provided, the Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the City, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of Fire, Extended Coverage, Vandalism and Malicious Mischief.

10.1.2 The Contractor shall purchase and maintain such steam, boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the City, the Contractor, Subcontractors and Sub-subcontractors in the Work.

10.1.3 Certificates of Insurance acceptable to the City shall be filed with the City prior to commencement of the work. Certificates of Insurance must state on the certificate: **"The City of Clayton, its officers, boards, board members, commissions, commissioners, agents, and employees as additional insureds."** These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled until at least fifteen days' prior written notice has been given to the City.

10.1.4 Any loss insured by property insurance maintained by the City shall be adjusted with the City and made payable to the City as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause.

10.1.5 The City and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this Article, except such rights as they may have to the proceeds of such insurance held by the City as trustee. The Contractor shall require similar waivers by Sub-contractors and Sub-subcontractors in accordance with Subparagraph 4.3.1.

## **ARTICLE 11 - CHANGES IN THE WORK**

### **11.1 CHANGE ORDERS**

11.1.1 The City, without invalidating the Contract, may order Changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and the Construction Schedule being adjusted in accordance with the City-Contractor Agreement. All such changes in the Work shall be authorized by Change Order, and shall be executed under the applicable conditions of the Contract Documents.

11.1.2 A Change Order is a written order to the Contractor signed by the City, issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Construction Schedule. The Contract Sum and the Contract Time may be changed only by Change Order.

11.1.3 The cost or credit to the City resulting from a Change in the Work shall be determined in accordance with the City-Contractor Agreement.

### **11.2 CLAIMS FOR ADDITIONAL COST**

11.2.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the City written notice thereof within twenty (20) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

### **11.3 MINOR CHANGES IN THE WORK**

11.3.1 The City shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or the Construction Schedule and not inconsistent with the intent of the Contract Documents. Such changes may be effected by written Field Order or by other written order. Such changes shall be binding on the City and the Contractor.

## **ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK**

### **12.1 UNCOVERING OF WORK**

12.1.1 If any Work should be covered contrary to the request of the City, it must, if required by the City, be uncovered for his observation and replaced, at the Contractor's expense.

12.1.2 If any Work has been covered which the City has not specifically requested to observe prior to being covered, the City may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the Cost of uncovering and replacement shall, by appropriate Change Order, be charged to the City. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs.

### **12.2 CORRECTION OF WORK**

12.2.1 The Contractor shall promptly correct all Work rejected by the City as defective or as failing to conform to the Contract Documents, whether observed before or after substantial completion of the Work, and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting such rejected Work.

12.2.2 If, within one year after the Date of Substantial Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the City.

12.2.3 All defective or non-conforming Work shall be removed from the site if necessary, and the Work shall be corrected to comply with the Contract Documents without additional cost to the City.

12.2.4 The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

12.2.5 If the Contractor fails to correct such defective or non-conforming Work, the City may correct it in accordance with Paragraph 2.3.

### **12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**

12.3.1 If the City prefers to accept defective or non-conforming Work, City may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Sum or, if the amount is determined after final payment, it shall be paid by the Contractor.

## **ARTICLE 13 - MISCELLANEOUS PROVISIONS**

### **13.1 SCHEDULING OF WORK AND INTERFERENCE WITH TRAFFIC**

13.1.1 The Contractor's Work must be scheduled and accomplished in stages such that local traffic is maintained during construction. It shall be the Contractor's responsibility to provide a traffic way that is usable in all weather conditions. The Contractor shall construct and maintain in a safe condition temporary pavements and connections for local traffic.

13.1.2 Temporary guardrail, or other suitable temporary barriers shall be provided to protect traffic from the Work. At all times until final acceptance of the Work, the Contractor shall provide and maintain such signs, lights, watchmen and barriers, in addition to the temporary guardrail, as may be necessary to properly protect the Work and provide for safe and convenient public travel.

13.1.3 No additional payment shall be made for temporary guardrail, barriers, signs, lights, or other work as may be necessary to maintain traffic and to protect the work and the public and all labor, equipment and material necessary to accomplish this task shall be considered incidental

### **13.2 ACCESS**

13.2.1 Areas of intersections and roadways within the construction limits shall be constructed in phases so that at no time will access be denied.

13.2.2 Access to private driveways will be limited by the nature of the Work. The Contractor shall schedule his work such that at no time during the life of this Contract will any driveway be denied access for any reason other than the curing of concrete. All concrete, including curbs, sidewalks and driveway pavements, shall be formed and poured within a two calendar day period for each and every driveway. Excavation for this work shall be accomplished a maximum of one calendar day prior to forming, however, access shall be provided immediately after excavation. At the end of the curing period, access shall be immediately supplied using asphalt or compacted aggregate. The first lift of all asphalt drives shall be completed and paved within fourteen (14) calendar days of their excavation.

13.2.3 All temporary materials used for access will be the responsibility of the Contractor and shall be included in the unit bid price for each related item. No separate payment will be made for the placement, maintenance or removal of said access.

13.2.4 If access is not supplied as set out above, the City will supply said access with its own forces, without notification to the Contractor, and will deduct such costs from the sums due the Contractor, notwithstanding any other provisions given this Contract. Wherever excavation affects pedestrian access to houses or public buildings, plank or other suitable bridges shall be placed at convenient intervals.

13.2.5 In the event any part of the Work to be performed hereunder shall require the Contractor or his Subcontractors to enter, cross or work upon or beneath the right-of-way or other property of a railroad, the Contractor shall comply with the related requirements for such Work as are set out in the Contract Documents.

### 13.3 CONSTRUCTION STAKING AND LAYOUT

13.3.1 The Contractor shall be responsible for providing labor, equipment and materials necessary for construction staking and layout as required, to the grades, elevations and alignment as determined by the City of Clayton. No separate payment will be made for construction staking and layout. No payment shall be made for restaking except as expressly authorized due to changes made by the City during construction.

### 13.4 OVERTIME

13.4.1 In order to provide sufficient control of work, the Contractor shall be required to inform the City of scheduled overtime work, including work on Saturdays, Sundays and City holidays at least forty-eight (48) hours in advance of any such work. If the Contractor fails to appear on a scheduled overtime period, the City shall deduct the cost for the City's assigned personnel from the Contract Sum for the time period scheduled.

### 13.5 CITY HOLIDAYS

13.5.1 There are ten (10) city holidays. They are:

New Year's Day	Labor Day
Martin Luther King, Jr. Day	Thanksgiving Day
President's Day	Day after Thanksgiving
Memorial Day	Christmas Eve
Fourth of July	Christmas Day

\*observed dates apply

### 13.6 [Intentionally Left Blank]

### 13.7 INTERFERENCE WITH EXISTING WATER SERVICES AND MAINS

13.7.1 The Contractor shall minimize the outage of water service to residents. The cutting off of water service shall be only with the consent of the City. The Contractor shall notify the City and have their approval prior to commencing work on each water main or connection item.

13.7.2 The Contractor shall conduct his work in such a manner as not to endanger existing water mains, services or appurtenances. Mains and services shall be adequately supported where they cross or are adjacent to the excavation. The Contractor shall bear the cost of all repairs to water mains or appurtenances damaged because of contractor's own carelessness or neglect.

### 13.8 INTERRUPTION OF WATER SERVICE

13.8.1 When it becomes necessary to shut down any existing water main, a representative of the City shall be notified to be present during this operation. The total time for the main to be shut down should be held to a minimum and in no case shall any customer be without water service for more than eight (8) hours. The Contractor shall notify each water customer whose water service will be interrupted at least one hour prior to shutdown. The Contractor shall assume full responsibility for shutting down the main and notifying the customers.

### **13.9 PRECONSTRUCTION CONFERENCE**

13.9.1 A preconstruction conference may be held prior to the issuance of a Notice to Proceed with the Work. This meeting will be attended by the Contractor, the City, and representatives of the various utility companies that have facilities in the project area. The meeting date will be established after the taking of bids and at a time convenient to all parties.

### **13.10 SEQUENCE OF WORK**

13.10.1 A schedule of the Contractor's work shall be submitted to the City for approval with a listing of the order in which the Contract items will be constructed and the approximate dates for starting and finishing each Contract item.

13.10.2 The City shall have the right to specify the order of construction as deemed necessary.

### **13.11 CONSTRUCTION LIMITS**

13.11.1 The construction limits consist of the public street rights-of-way and acquired easement areas. The Contractor shall limit operations accordingly. The Contractor shall acquire the property owners' permission for any activity outside the public right-of-way or easement areas.

### **13.12 ALTERED QUANTITIES**

13.12.1 In accordance with Section 109.3 of the Standard Specifications, the City reserves the right to make changes in plan details which may vary the accepted quantities from those shown on the itemized Bid.

13.12.2 The Contractor shall accept, as payment in full, payment at the original Contract unit prices bid for the accepted quantities of work done. No allowance will be made for any increased expense or loss of expected profit suffered by the Contractor resulting directly from such altered quantities or indirectly from expenses derived by handling small quantities of materials or performing operations within restricted areas. No allowance shall be made for any increased expense or loss of expected profit suffered because of the anticipated use of specific equipment that was not used.

### **13.13 MEASUREMENT OF WEIGHED QUANTITIES**

13.13.1 The Contractor's attention is directed to the fact that the City requires that all weight certificates be signed by a bonded Weighmaster. The Contractor must furnish the City's inspector on the job site with original weight certificates signed by a bonded Weighmaster for all materials supplied by the Contractor that are incorporated into his improvement, which payment therefore is based on weight.

### **13.14 ADDITIONS TO CONTRACT**

13.14.1 Unit prices in this Agreement may be used to negotiate a Change Order for additional work involving similar projects.

### **13.15 PURCHASE OF MATERIALS AND EQUIPMENT**

13.15.1 Sales to contractors who purchase construction materials and supplies to fulfill contracts for the City are not subject to sales tax. The City may monitor all supplies purchased, used, and consumed in fulfilling the project.

13.15.2 Contractors will be give a project exemption certificate.

13.15.3 Contractors must provide a copy of the City's exemption letter and the project exemption certificate to suppliers when purchasing materials and supplies to be consumed in the project.

13.15.4 Contractors are not exempt from sales tax on the purchase of machinery, equipment or tools used in fulfilling these contracts.

13.15.5 Suppliers shall render to the contractor invoices bearing the name of the City and the project identification number. These invoices must be retained by the purchasing contractor for a period of five (5) years.

13.15.6 Contractors must file a sales tax return for all excess re-saleable materials and supplies that are not returned to the supplier. This return must be filed and paid not later than the due date of the contractor's sales tax return following the month in which the contractor determines that the materials were not used in the project.

13.15.7 An exempt organization that fails to revise the project exemption certificate expiration date as necessary to complete any work required by the contract will be liable for any sales tax due as determined by an audit of the contractor.

### **13.16 TESTING**

13.16.1 Materials Testing and Inspection Service: City may employ and pay for a qualified independent materials and geotechnical testing laboratory to perform testing and inspection service during construction operations. Contractor to coordinate all work.

13.16.2 The Contractor shall bear all costs of any inspections, tests, or approvals required under any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction.

13.16.3 The City will provide any special inspection and testing services to verify the Work is performed in accordance with the Contract. The City will provide the Contractor with a listing of tests to be performed and approximate location or frequency. The Contractor will be required to notify the City forty-eight (48) hours prior to the time the Contractor will be ready for specific tests required by the City. If such special inspection or testing reveals failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear the cost of the City's inspection and re-testing and such cost shall be deducted then or thereafter due Contractor. In all other cases, the City shall bear such costs.

### **13.17 SEWER SPECIFICATIONS**

13.17.1 The Metropolitan St. Louis Sewer District Specifications (MSD Specifications), shall govern the Project, unless otherwise superseded by the Technical Specifications and Job Special Provisions.

### **13.18 CONTROL OF MATERIAL**

13.18.1 All tickets will be collected to verify the quantity of each item in their original form only. Photocopies or facsimiles will not be accepted. All tickets shall be submitted on the day of delivery, either to the City personnel or the Public Works office or they will not be accepted for payment.

13.18.2 Contractors and subcontractors will be required to produce letters of certification or certified test reports from material producers and suppliers in order to determine compliance with specifications for designated materials prior to the incorporation thereof into the work.

13.18.3 The City will determine which materials are to be tested. The form and content of these test reports shall be in accordance with recognized standards and practices for this work or as otherwise determined by the City.

13.18.4 No direct payment will be made for this work.

### **13.19 MEASUREMENT OF QUANTITIES**

13.19.1 Unless otherwise directed within the Technical Specifications, the quantities for which payment will be made will be those shown in the Agreement for the various items, provided the Project is constructed essentially to the lines and grades shown on the plans. Contract quantities will be used for final payment except when:

- a) Errors are formed in the original computations in excess of 15% of the contract quantities.
- b) An original cross section is found to have an average deviation from the true elevation in excess of one foot.
- c) An authorized change in grade, slope or typical section is made.
- d) Unauthorized deviations decrease the quantities on the plans.

When the above conditions are encountered, the correction or revisions will be computed and added to or deducted from the contract quantity.

13.19.2 When the plans have been altered or when disagreement exists between the Contractor and the City as to the accuracy of the plan quantities of any balance, or the entire project, either party shall have the right to request a re-computation of contract quantities within any area, by hand calculation of the average-end-area method for cubic yard quantities, and standard measurement methods for other quantities, by written notice to the other party. The written notice shall contain evidence that an error exists in the original groundline elevation or in the original computations which will affect the final payment quantity in excess of 15%. When

such final measurement is required, it will be made from the latest available ground surface and the design section.

13.19.3 These specifications require that the Contractor must furnish the representative of the City, on the job site, with original weight certificates on a daily basis signed by a bonded weighmaster for all materials supplied by the Contractor that are incorporated into this work, which payment therefore is based on weight.

### **13.20 WORKMANSHIP**

13.20.1 The Contractor shall at all times employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by these specifications. All workmen shall have sufficient skill and experience to perform properly the work assigned to them.

13.20.2 The labor provided by the Contractor shall be directed to be of a workmanlike character with respect to the methods of construction and quality of completed work; and, shall not encumber the premises or adjacent property or streets with materials and/or equipment.

13.20.3 "Removal" shall be defined as removal and disposal off the site unless otherwise specified or directed by the engineer.

## **ARTICLE 14 - EQUAL OPPORTUNITY AND NON-DISCRIMINATION**

### **14.1 EQUAL OPPORTUNITY**

14.1.1 The contractor, with regard to the work performed by it after award and prior to completion of the Work, will not discriminate on the basis of race, age, color, religion, sex, national origin or disability in the selection and retention of subcontractors. The contractor will comply with Title VII of the Civil Rights Act of 1964, as the same has been or may be amended from time to time. In all solicitation either by competitive bidding or negotiations made by the contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified of the contractor's obligations under this contract and the regulations relative to nondiscrimination on the ground of race, color, age, religion, sex, national origin or disability.

14.1.2 The contractor will take action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, sex, national origin or disability. Such action shall include, but not be limited to the employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor agrees to post notices pertaining to the foregoing in conspicuous places available to employees and applicants for employment.

14.1.3 The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, national origin or disability.

14.1.4 The contractor will comply with all provisions of federal, state and local codes, ordinances and regulations governing the regulation of Equal Employment Opportunity and Non-Discrimination.

## **14.2 NON-DISCRIMINATION**

14.2.1 During performance of the obligations set forth in this Agreement, Contractor agrees that it shall not discriminate against any employee or applicant for employment in the terms or conditions of employment including but not limited to: recruitment, selection, training, upgrading, promotion, demotion, transfer, layoff, or termination due to said person's race, religion, creed, color, sex, age, national origin, handicap, or disability.

## **14.3 GENERAL**

14.3.1 In the event that any or all of the provision(s) of the foregoing paragraphs conflict with federal, state or other local laws, ordinances or regulations, then the requirements of such federal, state or local laws, ordinances, or regulations shall prevail. Compliance with the foregoing provisions shall not relieve the contractor from adherence to any and all additional requirements regarding equal employment or non-discrimination set forth in such federal, state or other local laws, ordinances or regulations.

## **ARTICLE 15 - CONFLICTS OF INTEREST**

15.1.1 The parties agree to abide by all applicable federal, state and local laws, ordinances and regulations relating to conflicts of interest. Additionally, but not in limitation of the foregoing, no elected official or other official of Clayton having any power of review or approval of any of the undertakings contemplated by this Agreement, shall knowingly participate in any decision(s) relating thereto which affect his or her personal interests or those of his/her immediate family, or those of any corporation or partnership in which he or she or a member of his/her immediate family is directly or indirectly interested.

15.1.2 Clayton shall not knowingly, after due inquiry, employ or contract with any person if a member of his or her immediate family is a member of the Clayton Board of Aldermen, or is employed by Clayton in an administrative capacity (i.e., those who have selection, hiring or supervisory or operational responsibility for the work to be performed pursuant to this Agreement); provided, however, that the foregoing shall not apply to temporary or seasonal employment. Clayton shall not knowingly, after due inquiry, employ or contract with any corporation or partnership if an elected official of Clayton or a person employed by Clayton in an administrative capacity (as defined in the foregoing sentence), or a member of the immediate family of such elected official or person employed in an administrative capacity shall have an interest, directly or indirectly, therein.

15.1.3 For the purposes of this section "immediate family" includes: husband, wife, son, daughter, father, mother, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, uncle, aunt, nephew, niece, step-parent and step-child.

15.1.4 For purposes of this section, a person shall be deemed to have an interest in a corporation or partnership if he or she, or any member of his/her immediate family shall own, whether singularly or collectively, directly or indirectly, ten percent (10%) more of any

corporation or partnership, or shall own an interest having a value of ten thousand dollars (\$10,000) or more therein, or an individual or a member of his/her immediate family shall receive, whether singularly or collectively, directly or indirectly, of a salary, gratuity, or other compensation or remuneration of five thousand dollars (\$5,000) or more per year therefrom.

15.1.5 In the event that any or all of the foregoing provision(s) shall conflict with federal, state or other local laws, ordinances or regulations, then the requirements of such federal, state or local laws, ordinances, or regulations shall prevail. Compliance with the foregoing provisions shall not relieve parties contracting with the City of Clayton from adherence to any and all additional requirements regarding conflicts of interest set forth in such federal, state or other local laws, ordinances or regulations.

## **ARTICLE 16 – ALIEN REGISTRATION, COMPLIANCE AND ENFORCEMENT**

### **16.1 DEFINITIONS**

16.1.1 "Business entity", any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business entity" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "business entity" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "business entity" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo;

16.1.2 "Contractor", a person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity;

16.1.3 "Employee", any person performing work or service of any kind or character for hire within the state of Missouri;

16.1.4 "Employer", any person or entity employing any person for hire within the state of Missouri, including a public employer. Where there are two or more putative employers, any person or entity taking a business tax deduction for the employee in question shall be considered an employer of that person for purposes of this section;

16.1.5 "Employment", the act of employing or state of being employed, engaged, or hired to perform work or service of any kind or character within the state of Missouri;

16.1.6 "Federal work authorization program", any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L.99-603;

- 16.1.7 "Knowingly", a person acts knowingly or with knowledge,  
(a) With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or  
(b) With respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result;

16.1.8 "Municipality", the City of Clayton, Missouri.

16.1.9 "Public employer", every department, agency, or instrumentality of the state of Missouri or any political subdivision of the state of Missouri;

16.1.10 "Unauthorized alien", an alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3);

16.1.11 "Work", any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected or due, including but not limited to all activities conducted by business entities.

## **16.2 ILLEGAL ACTS**

16.2.1 No business entity or employer may knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the municipality.

16.2.2. Accordingly, if the amount to be paid pursuant to this contract or grant exceeds five thousand dollars by the municipality the contracting or grant recipient business entity shall, as a condition of the award of contract or grant, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. No such business entity or employer shall violate subsection 16.2.1 of this section.

16.2.3 The affidavit shall be approved as to form by the municipal attorney.

16.2.4 An employer may enroll and participate in a federal work authorization program and shall verify the employment eligibility of every employee in the employer's hire whose employment commences after the employer enrolls in a federal work authorization program. The employer shall retain a copy of the dated verification report received from the federal government. Any business entity that participates in such program shall have an affirmative defense that such business entity has not violated subsection 16.2.1 of this section.

16.2.5 A general contractor or subcontractor of any tier shall not be liable under subsection 16.2.1 of this section when such general contractor or subcontractor contracts with its direct subcontractor who violates subsection 16.2.1 of this section, if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 16.2.1 of this section and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.

16.2.6 The determination of whether a worker is an unauthorized alien shall be made by the federal government. A determination of such status of an individual by the federal government shall create a rebuttable presumption as to that individual's status in any judicial proceedings brought under this section.

## **ARTICLE 17 – SAFETY PROGRAMS, COMPLIANCE AND PENALTIES**

### **17.1 DEFINITIONS**

17.1.1 "Construction", construction, reconstruction, demolition, painting and decorating, or major repair;

17.1.2 "Department", the Missouri department of labor and industrial relations;

17.1.3 "Person", any natural person, joint venture, partnership, corporation, or other business or legal entity;

17.1.4 "Municipality", the City of Clayton, Missouri;

17.1.5 "Public works", all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds.

### **17.2 OSHA 10-HOUR TRAINING**

17.2.1 Any person signing a contract to work on the construction of public works for the municipality shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work on such construction project.

### **17.3 DOCUMENTATION**

17.3.1 Any employee found on a worksite subject to this section without documentation of the successful completion of the course required under subsection 17.2.1 of this Article shall be afforded twenty days to produce such documentation before being subject to removal from the project.

### **17.4 PENALTIES**

17.4.1 The contractor to whom the contract is awarded and any subcontractor under such contractor shall require all on-site employees to complete the ten-hour training program required under subsection 2 of this section. The contractor shall forfeit as a penalty to the municipality, two thousand five hundred dollars plus one hundred dollars for each employee employed by the contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the time period in subsections 2 and 3 of this section have elapsed. The municipality shall withhold and retain therefrom, all sums and amounts due and owing as a result of any violation of this section when making payments to the contractor under the contract. The contractor may withhold from any subcontractor, sufficient sums to cover any penalties the public body has withheld from the

contractor resulting from the subcontractor's failure to comply with the terms of this section. If the payment has been made to the subcontractor without withholding, the contractor may recover the amount of the penalty resulting from the fault of the subcontractor.

### **17.5 INVESTIGATION**

17.5.1 In determining whether a violation of this section has occurred, and whether the penalty under subsection 4 of this section shall be imposed, the department shall investigate any claim of violation. Upon completing such investigation, the department shall notify the municipality and any party found to be in violation of this section of its findings and whether a penalty shall be assessed. Determinations under this section may be appealed in the Circuit Court of St. Louis County.

### **17.6 ENFORCEMENT**

17.6.1 If the contractor or subcontractor fails to pay the penalty within forty-five days following notification by the department, the department shall pursue an enforcement action to enforce the monetary penalty provisions of subsection 4 of this section against the contractor or subcontractor found to be in violation of this section. If the court orders payment of the penalties as prescribed under subsection 4 of this section, the department shall be entitled to recover its actual cost of enforcement in addition to such penalty amount.

## **ARTICLE 18 - TRANSIENT EMPLOYERS**

### **18.1 REQUIREMENTS**

18.1.1 Per RSMo section 285.234, every transient employer, as defined in section 285.230 shall post in a prominent and easily accessible place at the work site a clearly legible copy of the following:

18.1.1.1 The notice of registration for employer withholding issued to such transient employer by the director of revenue;

18.1.1.2 Proof of coverage for workers' compensation insurance or self-insurance signed by the transient employer and verified by the department of revenue through the records of the division of workers' compensation; and

18.1.1.3 The notice of registration for unemployment insurance issued to such transient employer by the division of employment security.

### **18.2 ENFORCEMENT**

18.2.1 Any transient employer failing to comply with the provisions of this section shall be liable for a penalty of five hundred dollars per day until the notices required by this section are posted as provided by this section.



**CONTRACTOR’S AFFIDAVIT FOR PUBLIC CONSTRUCTION PROJECTS**

The undersigned, being duly sworn, does state and depose as follows:

1. I am the \_\_\_\_\_(title) of \_\_\_\_\_(company) which is a contractor on the \_\_\_\_\_ Project, and authorized to sign this Affidavit on the Company’s behalf.

2. I have verified the information set forth in this Affidavit for the Contractor. If any subcontractors have been retained on the Project, I have also verified the information as to any subcontractor.

3. The Contractor and its subcontractors have Workers’ Compensation Insurance that covers its employees working on the Project and such insurance meets or exceeds the requirements established by law.

4. The Contractor and its subcontractors have verified the U.S. citizenship or lawful status of all workers employed on the Project and do not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

5. The Contractor and its subcontractors have been informed by the City of the requirements to pay prevailing wage and will pay the prevailing wages to all workers employed on the Project as established by the applicable Annual Wage Order for the County where the Project occurs.

6. The Contractor and its subcontractors are in compliance with federal law requiring an accredited apprenticeship program, if applicable.

7. The Contractor and its subcontractors are enrolled and participate in a federal work authorization program with respect to employees working in connection with the contracted services.

Further Affiant sayeth naught.

\_\_\_\_\_  
Authorized Officer of Contractor

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:\_\_\_\_\_



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

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## REQUEST FOR BOARD ACTION

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**TO:** MAYOR HARRIS; BOARD OF ALDERMEN  
**FROM:** DAVID GIPSON, CITY MANAGER  
MATT MALICK, P.E., INTERIM DIRECTOR OF PUBLIC WORKS  
**DATE:** APRIL 14, 2020  
**SUBJECT:** ORDINANCE - AMENDING THE CLAYTON CITY CODE RELATING TO  
PARKING METER REGULATIONS

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This amendment to the Clayton city code is proposed to clean up existing language pertaining to parking meter rental. The current code references “a rate proportionate to the rates charged for parking within the particular parking meter zone” and does not account for administrative costs. The amended code is an effort to identify not only the associated hourly meter fees, but additional impacts that could be considered by the Director of Public Works in establishing a daily meter rental fee for a rental request such as the time and length of rental, the parking demand at the location, the inconvenience caused to the public and businesses, and administrative costs.

**STAFF RECOMMENDATION:** To approve the ordinance amending the city code relating to parking meter regulations.

**BILL NO. 6790**

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

**AN ORDINANCE AMENDING THE CLAYTON CITY CODE RELATING TO PARKING METER REGULATIONS**

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**WHEREAS**, from time to time it serves the public interest to allow private parties to rent and occupy parking spaces provided by the City in order to facilitate construction and reinvestment in the City, enhance civic gatherings and events that enliven the City, etc.; and

**WHEREAS**, the Board of Aldermen wishes to amend the regulations governing such rentals in order to adopt reasonable procedures and rates pertaining thereto;

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

**Section 1.** Section 350.180 of Article III of Chapter 350 of the Code of Ordinances of the City of Clayton, Missouri, is hereby repealed and a new Section 350.180 is hereby enacted in lieu thereof to read as follows:

**Chapter 350. Parking Regulations**

**Article III. Parking Meters**

**Section 350.180 Parking Time Limits and Fees.**

- A. Within the parking meter zones described in Section **350.190**, the City Manager shall establish from time to time, the maximum time limits for parking within which any given vehicle may be parked within each parking meter zone and the rates for parking within each parking meter zone. Time limitations established by the City Manager shall not be less than two (2) hours nor more than ten (10) hours. The Director of Public Works may authorize daily meter rental at a rate fixed by the Director taking into consideration the timing and length of the rental arrangement, demand for parking at the location in question, the revenue associated with meters in similar locations, the inconvenience caused to the public and other businesses by the reduction in available public parking, administrative costs associated with the arrangement and other factors considered relevant by the Director.
- B. In establishing the maximum time limits for parking within a parking meter zone, the City Manager shall consider the following factors:
  - 1. The demand for parking within the particular parking meter zone so as to accommodate the needs of motorists patronizing businesses in the vicinity, but also ensuring availability of spaces for access by a greater number of motorists;
  - 2. The land uses within the parking meter zone and the reasonable time required to conduct business within such zone; and
  - 3. Availability of other parking alternatives within or near the parking meter zone.
- C. In establishing the rates for parking within each parking meter zone, the City Manager shall consider the City's costs in providing, monitoring and maintaining the parking meter zone and rates of other parking facilities, public or private, in the vicinity and in cities with similar parking demands. The City Manager may establish a separate rate for parking for residents provided that such differing rates can be supported by the approved payment system with sufficient

safeguards to prevent fraud or abuse.

- D. The maximum time limit and the parking rates established for a parking meter zone shall be applied throughout the parking meter zone. Depending on the parking demands, traffic conditions and other conditions within a particular parking meter zone, the City Manager may designate certain parking meter zones to be "park once" zones. In such zones, the maximum time limit shall apply to all parking meter spaces throughout the parking meter zone and a vehicle may not park within a parking meter zone for a longer period of time during any calendar day simply by moving the vehicle to a different parking meter space within the same parking meter zone. The City Manager may establish maximum time limits within a "park once" zone as: (i) a single, continuous time limit for the entire calendar day; or (ii) time limit intervals for the calendar day requiring removal of the vehicle from the zone for a specified period of time between intervals.
- E. The parking meters shall be operated in parking meter zones every day between the hours of 8:00 A.M. and 5:00 P.M., except weekends and holidays; provided, however, within the meaning of this Article, the term "holidays" shall include the following days only: the first day of January, the last Monday in May, the fourth day of July, the first Monday in September, the fourth Thursday in November and the twenty-fifth day of December.

**Section 2.** The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered by the codification company servicing the Municipal Code of the City of Clayton upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations, the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

**Section 3.** It is hereby declared to be the intention of the Board of Aldermen that the sections, paragraphs, sentences, clauses, phrases and words of this ordinance are severable, and if any section, paragraph, sentence, clause, phrase or word(s) of this ordinance shall be declared unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, phrases and words of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid portion of the ordinance.

**Section 4.** This Ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

Passed by the Board of Aldermen this 14th day April 2020.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

## Section 350.180 Parking Time Limits and Fees.

- A. ~~A.~~—Within the parking meter zones described in Section **350.190**, the City Manager shall establish from time to time, the maximum time limits for parking within which any given vehicle may be parked within each parking meter zone and the rates for parking within each parking meter zone. Time limitations established by the City Manager shall not be less than two (2) hours nor more than ten (10) hours. The Director of Public Works may authorize daily meter rental at a rate ~~proportionate to the rates charged for parking within the particular parking meter zone.~~ fixed by the Director taking into consideration the timing and length of the rental arrangement, demand for parking at the location in question, the revenue associated with meters in similar locations, the inconvenience caused to the public and other businesses by the reduction in available public parking, administrative costs associated with the arrangement and other factors considered relevant by the Director.
- B. ~~B.~~—In establishing the maximum time limits for parking within a parking meter zone, the City Manager shall consider the following factors:
1. The demand for parking within the particular parking meter zone so as to accommodate the needs of motorists patronizing businesses in the vicinity, but also ensuring availability of spaces for access by a greater number of motorists;
  2. The land uses within the parking meter zone and the reasonable time required to conduct business within such zone; and
  3. Availability of other parking alternatives within or near the parking meter zone.
- C. ~~C.~~—In establishing the rates for parking within each parking meter zone, the City Manager shall consider the City's costs in providing, monitoring and maintaining the parking meter zone and rates of other parking facilities, public or private, in the vicinity and in cities with similar parking demands. The City Manager may establish a separate rate for parking for residents provided that such differing rates can be supported by the approved payment system with sufficient safeguards to prevent fraud or abuse.
- D. ~~D.~~—The maximum time limit and the parking rates established for a parking meter zone shall be applied throughout the parking meter zone. Depending on the parking demands, traffic conditions and other conditions within a particular parking meter zone, the City Manager may designate certain parking meter zones to be "park once" zones. In such zones, the maximum time limit shall apply to all parking meter spaces throughout the parking meter zone and a vehicle may not park within a parking meter zone for a longer period of time during any calendar day simply by moving the vehicle to a different parking meter space within the same parking meter zone. The City Manager may establish maximum time limits within a "park once" zone as: (i) a single, continuous time limit for the entire calendar day; or (ii) time limit intervals for the calendar day requiring removal of the vehicle from the zone for a specified period of time between intervals.
- E. The parking meters shall be operated in parking meter zones every day between the hours of 8:00 A.M. and 5:00 P.M., except weekends and holidays; provided, however, within the meaning of this Article, the term "holidays" shall include the following days only: the first day of January, the last Monday in May, the fourth day of July, the first

Monday in September, the fourth Thursday in November and the twenty-fifth day of December.



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

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## REQUEST FOR BOARD ACTION

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**TO:** MAYOR HARRIS; BOARD OF ALDERMEN  
**FROM:** DAVID GIPSON, CITY MANAGER  
MATT MALICK, P.E., INTERIM DIRECTOR OF PUBLIC WORKS  
**DATE:** APRIL 14, 2020  
**SUBJECT:** ORDINANCE - AN EASEMENT AGREEMENT TO FACILITATE  
CONSTRUCTION OF CERTAIN IMPROVEMENTS RELATED TO THE  
US CAPITAL REDEVELOPMENT PROJECT

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Brentwood-Forsyth Partners 1, LLC and Commerce Bank have requested both aerial and subsurface easements to facilitate construction of US Capital's new development adjacent to City rights-of-way. The easements are: (a) temporary aerial easements for construction cranes within the site with an operational radius that extends into air space above our rights-of-way, and (b) permanent subsurface easements for the placement of tieback and shoring walls. These easements are illustrated in the attached exhibits in the Easement Agreement.

Both Public Works and the City Attorney have reviewed and approved the attached easement titled Tieback and Crane Easement Agreement.

**STAFF RECOMMENDATION:** To approve the ordinance authorizing the City Manager to execute the aerial and subsurface easement agreement with Brentwood-Forsyth Partners 1, LLC and Commerce Bank.

BILL NO. 6791

ORDINANCE NO.

ORDINANCE APPROVING AN EASEMENT AGREEMENT TO FACILITATE CONSTRUCTION OF CERTAIN IMPROVEMENTS RELATED TO THE US CAPITAL REDEVELOPMENT PROJECT

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**WHEREAS**, the Board of Aldermen finds that temporary tower crane and permanent subsurface tiebacks will not directly interfere with existing utility rights-of-way users as well as the City of Clayton use of the rights-of-way; and

**WHEREAS**, these features will be located, in part, over and beneath rights-of-way and property owned by the City of Clayton, and it is desired that the City enter into the Easement Agreement hereinafter referenced in order to allow such construction devices to be constructed and maintained as hereinafter provided;

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

**Section 1.**

The Board of Aldermen hereby approves and authorizes execution, on behalf of the City of Clayton, an Easement Agreement to allow construction, installation and maintenance of temporary tower cranes and permanent subsurface tiebacks in association with the US Capital and Commerce Bank Redevelopment Project, said agreement to be in substantial conformity with the agreement attached hereto, including Exhibits A, B-1, B-2, & C incorporated herein by this reference.

**Section 2.**

This Ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

Passed this 14th day of April 2020.

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Mayor

ATTEST:

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City Clerk

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Space Above for Recorder's Use Only

DOCUMENT COVER SHEET

TITLE OF DOCUMENT: Tieback and Crane Easement Agreement

DATE OF DOCUMENT: \_\_\_\_\_, 2020

Grantor: City of Clayton, Missouri

Mailing Address: 10 N. Bemiston  
Clayton, Missouri 63105

Grantee: Brentwood-Forsyth Partners 1, LLC, a Missouri limited liability  
company, and Commerce Bank, a Missouri state bank and trust  
company

Mailing Address: 7911 Forsyth Blvd., Suite 200  
St. Louis, Missouri 63105

LEGAL DESCRIPTION: See Attached Exhibits A and B

REFERENCE BOOK & PAGE: N/A

## TIEBACK AND CRANE EASEMENT AGREEMENT

THIS TIEBACK AND CRANE EASEMENT AGREEMENT (“Agreement”) is made as of \_\_\_\_\_, 2020 (“Effective Date”), by and among City of Clayton, Missouri (“Tract 1 Owner”), Brentwood-Forsyth Partners 1, LLC, a Missouri limited liability company; and Commerce Bank, a Missouri state bank and trust company (collectively, “Tract 2 Owner”).

### RECITALS

A. Tract 1 Owner is the owner of the following public roadways located in the City of Clayton, Missouri that have been dedicated for public use: Meramec Ave., Forsyth Blvd., Brentwood Blvd., and two alleyways located within the block bounded by Forsyth Blvd., Meramec Ave., Maryland Ave., and Brentwood Blvd. (collectively, the “Tract 1”).

B. Tract 2 Owner is the owner of that certain real property legally described on Exhibit A attached hereto and made a part hereof (“Tract 2”).

C. Tract 2 Owner intends to develop improvements on Tract 2 (the “Project”).

D. In accordance with the proposed development of the Project, Tract 2 Owner anticipates that a construction crane or cranes (the “Cranes”) will be operated within the airspace located above a portion of Tract 1.

E. Tract 2 Owner desires to receive from Tract 1 Owner (i) a non-exclusive easement appurtenant to Tract 2 to, through and within the airspace above a portion of Tract 1, at an elevation beginning not less than ten feet (10’) above the highest improvements located on Tract 1 (“Air Rights Easement Area”), shown as cross-hatched and depicted on Exhibit B-1 attached hereto for the purpose of operating the Cranes in connection with the construction of the Project, and (ii) a non-exclusive tieback and shoring wall easement appurtenant to Tract 2 under and within that portion of Tract 1 (“Tieback and Shoring Wall Easement Area”) shown as cross-hatched and depicted on Exhibit B-2 attached hereto and made a part hereof for the purpose of constructing shoring walls through the use of below-grade tiebacks, soil anchors, or similar construction techniques in connection with construction of the Project.

F. Tract 1 Owner is willing to grant the foregoing easements, all upon and subject to the conditions and limitations herein contained.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tract 1 Owner and Tract 2 Owner hereby agree as follows:

1. Easement Grants.

(a) *Air Rights.* Tract 1 Owner hereby declares and grants for the benefit of Tract 2 Owner, a temporary non-exclusive easement appurtenant to Tract 2 to, through and within the Air Rights Easement Area for the purpose of operating Cranes for the construction of the Project. Tract 2 Owner shall comply with all applicable laws relating in any manner whatsoever to the Cranes and the operation thereof.

(b) *Tieback and Shoring Wall.* Tract 1 Owner hereby declares and grants for the benefit of Tract 2 Owner, a non-exclusive tieback and shoring wall easement appurtenant to Tract 2 under and

within the Tieback and Shoring Wall Easement Area for the purpose of constructing, in connection with construction of the Project, shoring walls through the use of tiebacks, soil anchors, or similar construction techniques (“Tieback Anchors”) located below-grade within the Tieback and Shoring Wall Easement Area. The Tract 2 Owner may also install the foundation for any Crane within the Tieback and Shoring Wall Easement Area (“Crane Foundation”).

2. Duration. The following duration provisions shall apply hereunder.

(a) Except as set forth below, the easements, covenants, conditions and restrictions contained in herein shall be perpetual and shall create mutual benefits and covenants running with the land, and shall be binding upon any owner, tenant or occupant of Tract 1 and Tract 2 and their respective legal representatives, heirs, successors and assigns; provided, however, the easement granted in Section 1(a) herein shall expire upon the earlier to occur of (i) completion of the Project, and (ii) December 31, 2023 (“Term”), and provided further that the easement granted in Section 1(b) herein shall expire at the earlier of (i) when they are no longer necessary to support the improvements constructed as part of the Project and, (ii) when and if the improvements constructed on Tract 2 as part of the Project which are supported by the Tieback Anchors are demolished or removed for any reason or by any means.

(b) The Tieback Anchors installed in the Tieback and Shoring Wall Easement Area during the Term may remain in place permanently, provided that the structural integrity of Tract 1 shall be restored as much as practicable to the condition it was in prior to the constructions activities of Tract 2 Owner hereunder.

3. Construction of Improvements. Tract 1 Owner covenants and agrees that during the Term of this Agreement, no improvements shall be constructed upon Tract 1, other than improvements that would not materially and adversely affect Tract 2 Owner’s use and enjoyment of the rights granted herein; provided, however, that after the completion of the improvements on Tract 2, the Tieback Anchors will remain in the subsurface of Tract 1 permanently. Tract 1 Owner agrees that the Tract 2 Owner may leave portions of the Crane Foundation underneath the surface of Tieback and Shoring Wall Easement Area permanently after restoring the surface of such Area as required hereunder. After the completion of the improvements on Tract 2, Tract 2 Owner shall (i) repair any damage caused to Tract 1 in the exercise of Tract 2 Owner’s easement rights hereunder, and (ii) restore Tract 1 as much as practicable to the condition it was in prior to the construction activities or repair activities by or on behalf of Tract 2 Owner hereunder (other than leaving the Tieback Anchors and any subsurface Crane Foundation in place permanently, provided the structural integrity of Tract 1 is restored in connection therewith).

4. Indemnification. Tract 2 Owner agrees to indemnify, defend and hold harmless Tract 1 Owner, its officials, officers, employees, agents and representatives, and the utility companies benefited by any utility easement within the Tieback and Shoring Wall Easement Area (“Indemnified Parties”) from and against any loss, claim, suit, cost or expense (including reasonable attorneys’ fees) for death or bodily injury to persons and for damage to property to the extent caused, in connection with the exercise of the easement rights granted herein, by the acts or omissions of Tract 2 Owner or its agents, representatives, employees, contractors or subcontractors, including any such acts or omissions for which Tract 1 Owner may be liable, regardless whether caused in whole or in part by Tract 1 Owner’s negligence, provided that the Indemnified Party tenders defense of any claim or suit indemnified hereunder to Tract 2 Owner in sufficient time to avoid prejudice, and Tract 2 Owner shall be entitled to defend the same with counsel of its selection and reasonably acceptable to the Indemnified Party. The provisions of this Section 4 shall survive the termination of this Agreement and continue in effect indefinitely.

5. Sole Agreement. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by all parties. This Agreement constitutes the entire agreement between the parties with respect to the subject matter set forth herein and supersedes all prior negotiations, discussions, writing and agreements between them in connection therewith.

6. Not a Public Dedication. Nothing herein contained shall be deemed to be a grant or dedication of any portion of Tract 1 to or for the general public or for any public purposes whatsoever, it being the intention of Tract 1 Owner that this Agreement shall be strictly limited to and for the purposes herein expressed.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. Tract 1 Owner and Tract 2 Owner hereby agree that for any litigation arising from this Agreement the venue for such litigation shall be the Circuit Court of St. Louis County, Missouri.

9. Partial Invalidity. Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless as a result the purpose and intent of this Agreement shall thereby be substantially and essentially impaired. In such event, the parties shall diligently proceed to revise this Agreement in order to rememoralize such purpose and intent.

10. Notices. Any notice required or permitted to be given by any party upon the other shall be given by certified mail, return receipt requested, by nationally recognized overnight courier, or by personal delivery addressed as follows:

If to Tract 2 Owner:                      Brentwood-Forsyth Partners 1, LLC  
7911 Forsyth Blvd., Suite 200  
Clayton, Missouri 63105  
Attn: James G. Koman

With a copies to:                      Husch Blackwell LLP  
190 Carondelet Plaza, Suite 600  
Clayton, Missouri 63105  
Attn: Frans J. von Kaenel

and    Commerce Bank  
  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Tract 1 Owner:                      City of Clayton, Missouri  
10 N. Bemiston Avenue  
Clayton, Missouri 63105  
Attn: City Manager

With a copy to:

Curtis, Heinz, Garrett & O'Keefe, P.C.  
130 S. Bemiston, Suite 200  
Clayton, Missouri 63105  
Attn: Kevin O'Keefe

All notices shall be deemed given three (3) business days following deposit in the United States mail with respect to certified or registered letters, one (1) business day following deposit if delivered to any overnight courier guaranteeing next day delivery, and on the same day if sent by personal delivery. Attorneys for each party shall be authorized to give notices for each such party. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

11. Miscellaneous. The following miscellaneous provisions shall apply hereunder.

(a) Whenever a transfer occurs in the ownership of Tract 2, the transferor shall have no further liability for any breach of a covenant herein that occurs thereafter.

(b) During any period when any work is being conducted in the Air Rights Easement Area or the Tieback and Shoring Wall Easement Area, Tract 2 Owner shall have in full force and effect, at its own expense, the insurance coverages described in Exhibit C ("Insurance Coverages"). Certificates of Insurance showing the Insurance Coverages shall be provided to Tract 1 Owner prior to the commencement of any such work. In addition, Tract 2 Owner shall furnish certificates of insurance at the request of Tract 1 Owner from time-to-time. The certificates of insurance will state that at least thirty days' prior written notice will be given to Tract 1 Owner before any policy is canceled. Tract 2 Owner will give written notice to Tract 1 Owner as soon as it receives written notice of cancellation from any of its insurance carriers. Each certificate of insurance must clearly designate the name of the project.

[Signature Page Follows]

IN WITNESS WHEREOF, Tract 1 Owner and Tract 2 Owner have caused this Agreement to be executed as of the Effective Date.

Tract 2 Owner:

Brentwood-Forsyth Partners 1, LLC  
a Missouri limited liability company

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

Name: \_\_\_\_\_

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

STATE OF MISSOURI        )  
  )        SS.  
COUNTY OF ST. LOUIS    )

On this     day of \_\_\_\_\_, 2020, before me appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did say that he is \_\_\_\_\_ of Brentwood-Forsyth Partners 1, LLC, a Missouri limited liability company, and that said instrument was signed in behalf of said limited liability company; and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the city or county and State aforesaid, the day and year first above written.

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

COMMERCE BANK, a Missouri state bank and trust company

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

Name: \_\_\_\_\_

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

STATE OF MISSOURI )

)

COUNTY OF ST. LOUIS )

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2020, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is the \_\_\_\_\_ of COMMERCE BANK, a Missouri state bank and trust company, and that said instrument was signed in behalf of said bank, by authority of its board of directors; and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

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

My Commission Expires:

Tract 1 Owner:

The City of Clayton, Missouri

By: \_\_\_\_\_  
David Gipson, City Manager

Attest: \_\_\_\_\_  
June Frazier, City Clerk

STATE OF MISSOURI        )  
  )        SS.  
COUNTY OF ST. LOUIS    )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me appeared David Gipson and June Frazier, respectively, to me personally known, who, being by me duly sworn, did say that the said David Gipson is the duly appointed and acting City Manager of the City of Clayton, Missouri, and that the said June Frazier is the duly appointed and acting City Clerk of the City of Clayton, Missouri, and the said Janet Watson and June Frazier acknowledged said instrument to be their free acts and deeds, and the free act and deed of the City of Clayton, Missouri.

IN WITNESS WHEREOF, I have here unto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My commission expires:

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



EXHIBIT B-1

Air Rights Easement Area

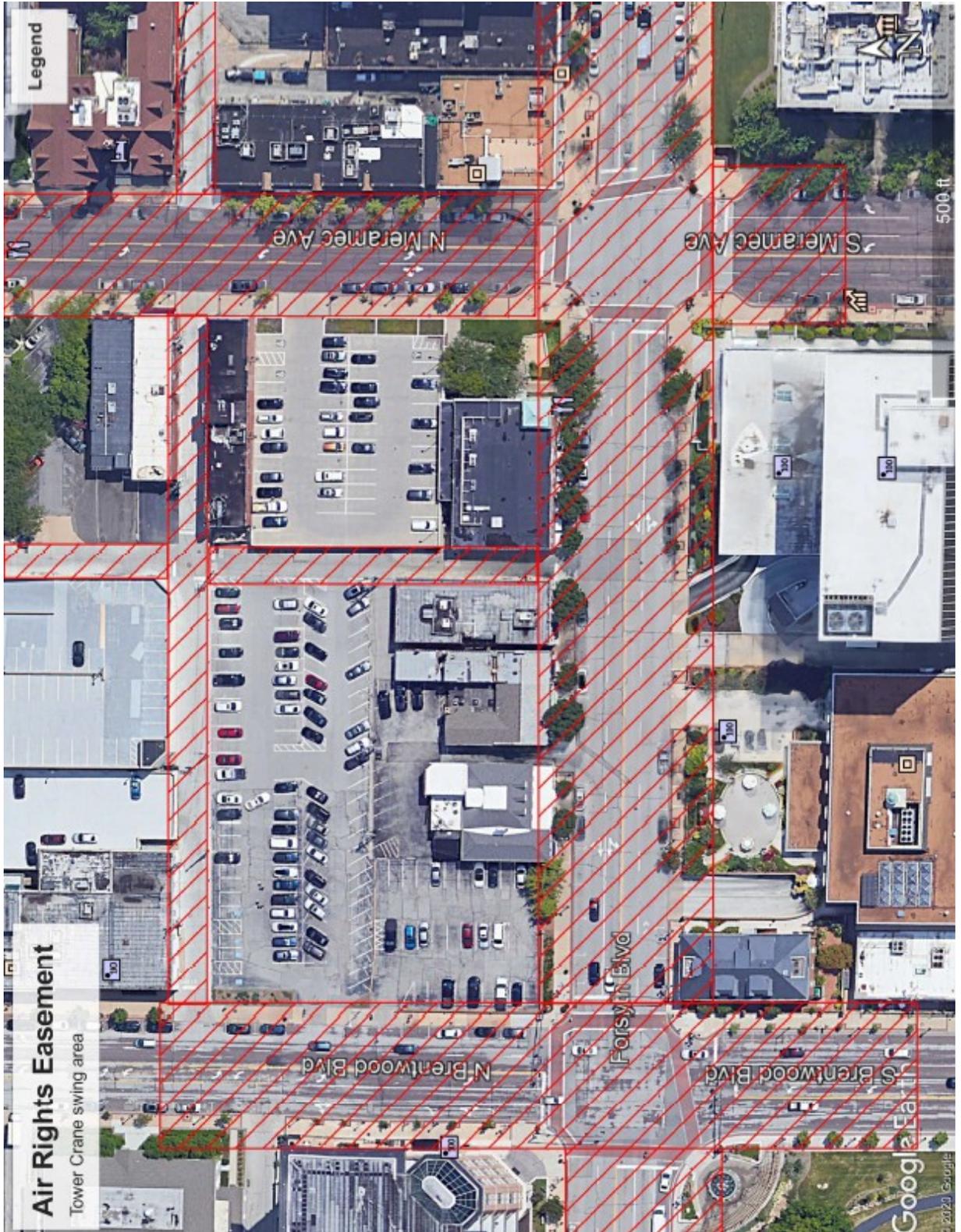


EXHIBIT B-2

Tie Back Easement Area

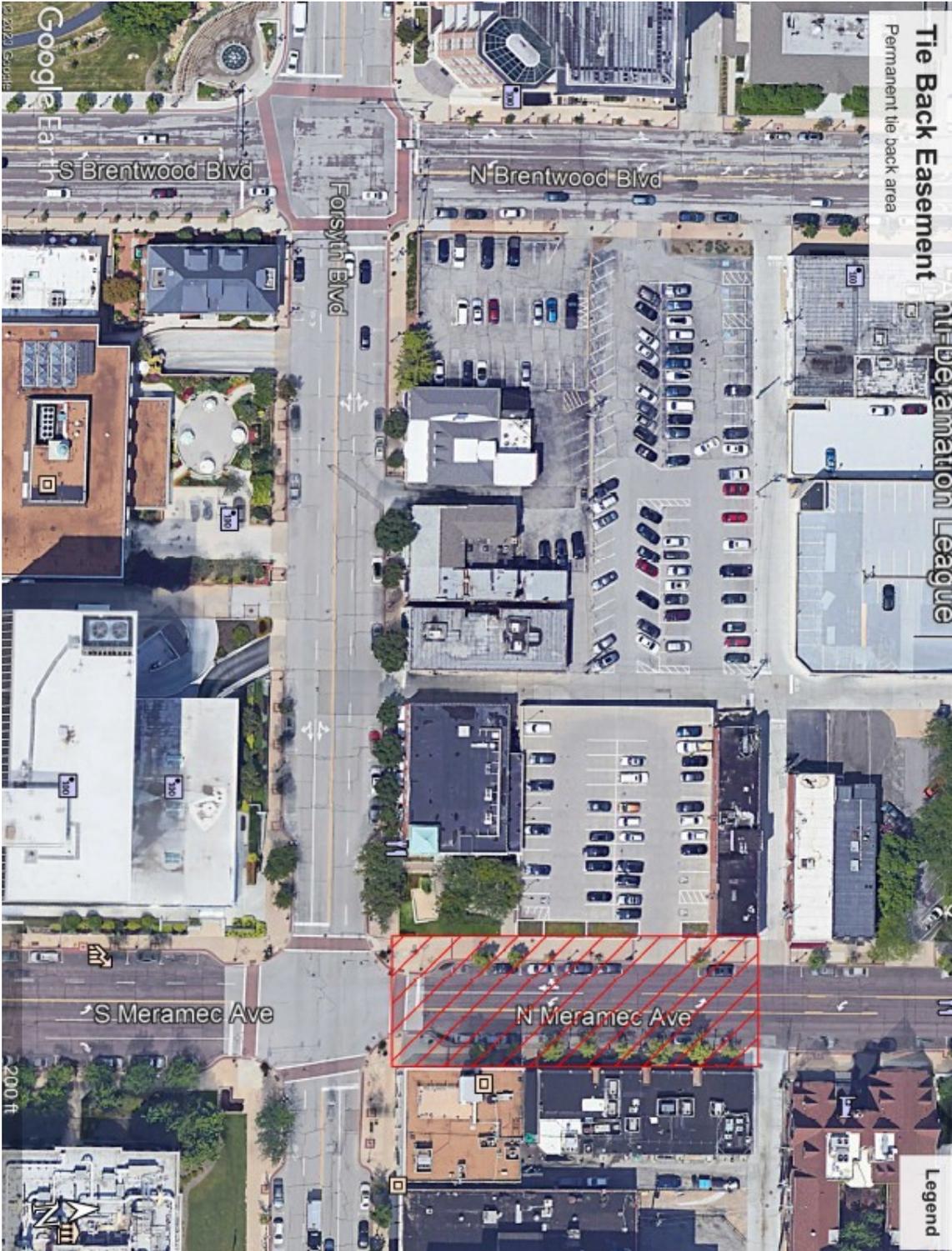


EXHIBIT C

INSURANCE COVERAGES

(A) The Insurance Coverages to be maintained by Tract 2 Owner shall be provided by insurance companies reasonably acceptable to Tract 1 Owner, and such insurance companies shall be licensed to conduct insurance business within the state of Missouri. The Insurance Coverages to be maintained by Tract 2 Owner shall consist of the following:

1. Workers' Compensation Insurance in full compliance with workers' compensation laws of the State of Missouri, together with Employer's Liability Coverage with minimum limits of liability in the amount of \$2,700,000.00 for each accident and each disease.

2. Commercial Automobile Liability Insurance under Form CA 00 01, covering all owned hired, and non-owned vehicles, with minimum combined single limits of liability of \$2,000,000 for each accident.

3. Commercial General Liability Insurance, and, if necessary, excess liability insurance on a "true following-form" basis, all of which is written on an occurrence basis, with the following minimum limits of liability:

General Aggregate	\$2,900,000 00
Products/completed operations aggregate	\$2,900,000.00
Personal and advertising injury	\$5,000,000.00
Each occurrence	\$2,900,000 00
Fire damage legal liability	\$2,900,000.00
Medical expenses	\$ 5,000.00

4. Owner's and Contractor's Protective Liability Policy, including Death \$5,000,000.00 each occurrence; Property Damage \$2,900,000.00 each occurrence, \$2,900,000.00 aggregate.

(B) The Commercial General Liability and the Commercial Automobile Liability Insurance coverages and their respective limits set forth above are being explicitly required and obtained to insure the indemnity obligations set forth in Section 4 of the Agreement to meet the requirements of §434.100.2(8) R.S.Mo. The parties further acknowledge that the cost of these Insurance Coverages is included in the considerations provided in the Agreement and that the limits and coverages afforded by such Coverages is Tract 2 Owner's total aggregate liability under the indemnity obligations set forth in Section 4.

(C) The Commercial General Liability and Commercial Automobile Liability policies — and any excess policies necessary to meet the required limits — will include contractual liability coverage. Tract 1 Owner, and its officers, boards, board members, commissions, commissioners, agents, and employees, will be named as an additional insureds on the Commercial General Liability policy by using ISO Additional Insured Endorsement (Form B), CG 20 10 11 85. The Commercial General Liability, Commercial Automobile Liability and required excess policies will include a severability or cross-liability clause and such insurance will be endorsed to make such insurance primary with respect to any applicable insurance maintained by the City. The Contractor's Workers' Compensation and Employer's Liability policy will include Tract 1 Owner as an alternate employer by using ISO Alternate Employer WC 00 03 01A.



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

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## REQUEST FOR BOARD ACTION

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TO: MAYOR HARRIS; BOARD OF ALDERMEN  
FROM: DAVID GIPSON, CITY MANAGER (DG)  
PATTY DEFORREST, DIRECTOR OF PARKS & RECREATION  
DATE: APRIL 14, 2020  
RE: ORDINANCE - A PERMANENT AMEREN EASEMENT FOR ELECTRICAL SERVICE  
RELATED TO THE SHAW PARK ALL-SEASON RECREATION PROJECT.

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The proposed Ordinance would approve an easement to be granted to the Union Electric Company d/b/a Ameren Missouri ("Ameren") for the purpose of allowing Ameren to maintain electrical improvements and other related appurtenances and improvements, within Shaw Park as shown on Exhibit A. These improvements are part of the Shaw Park All-Season Recreation Complex and will serve the electric needs of the entire park. Currently, all electric service for the park is in the rink building itself. This will move that service to a separate substation indicated on the exhibit. Ameren requires that they have access to these improvements for future maintenance purposes.

As can be seen in Exhibit A, the easement covers a portion of the eastern edge of Shaw Park, near fields 1 and 2, where the new electrical services are being located.

The Parks & Recreation Department and the City Attorney have reviewed and approved the easement and agreement documents.

**STAFF RECOMMENDATION:** To approve the ordinance authorizing an easement to Ameren Missouri.

**BILL NO. 6792**

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

**AN ORDINANCE APPROVING A PERMANENT AMEREN ELECTRIC EASEMENT FOR ELECTRICAL SERVICE RELATED TO SHAW PARK**

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**WHEREAS**, the Board of Aldermen finds that improvements to the electrical system serving Shaw Park enhance Ameren’s ability to provide a safe and reliable electrical service now and in the future; and

**WHEREAS**, portions of these electrical facilities will be located upon and under property owned by the City of Clayton and it is desired that the City enter into an easement as hereinafter referenced in order to allow such enhancements to be constructed and maintained on the City’s property as hereinafter provided;

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

**Section 1.** The Board of Aldermen hereby approves and authorizes execution on behalf of the City of Clayton an Easement Agreement to allow Ameren Missouri to construct, reconstruct, install, use, operate and maintain underground electric line or lines in substantial conformity with Exhibit A, attached hereto and incorporated herein by this reference. The Mayor, City Manager and other appropriate City officials are hereby authorized to execute such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

**Section 2.** This Ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

Passed by the Board of Aldermen this 14<sup>th</sup> day of April 2020.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk



SCALE: 1"=300'

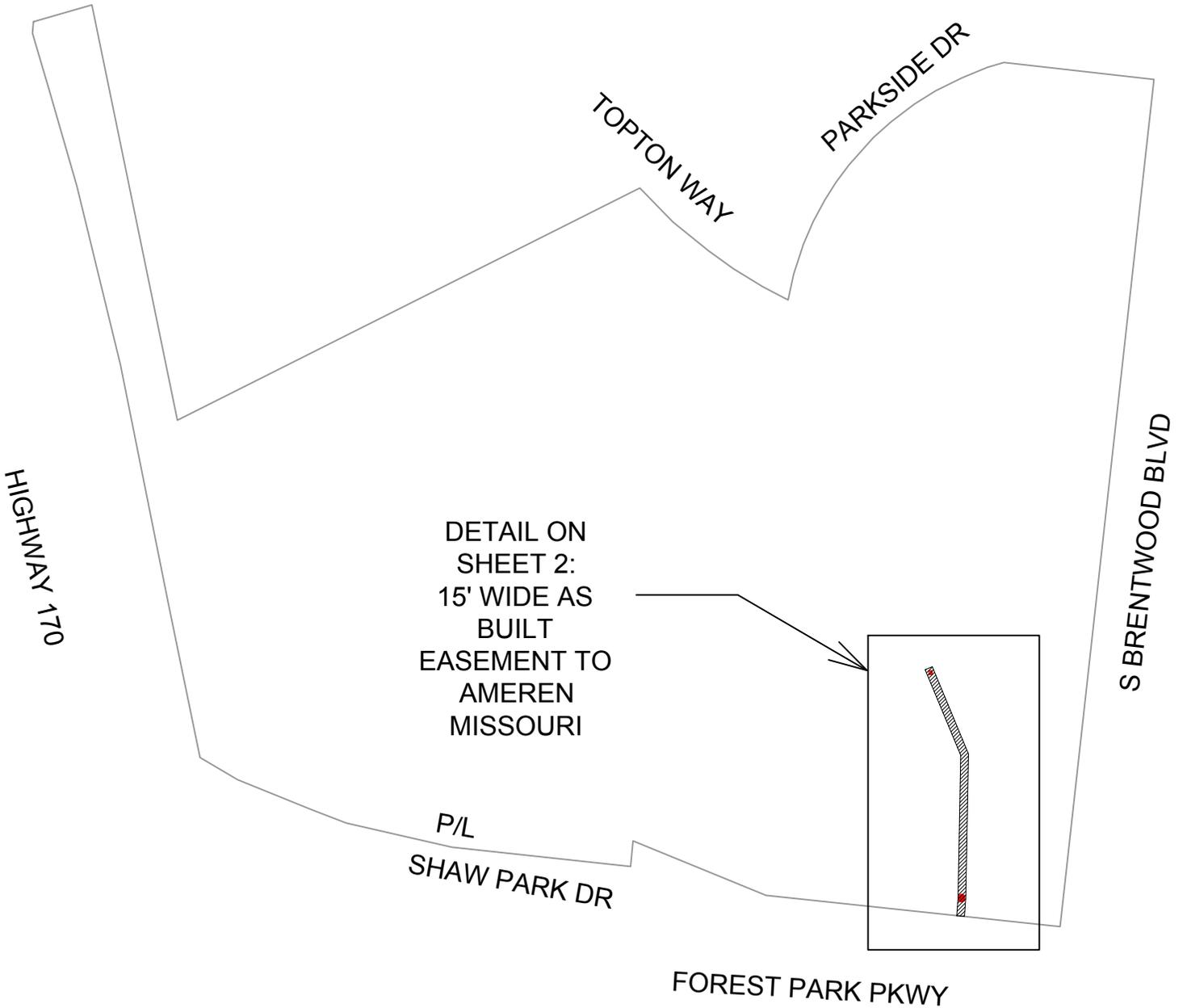
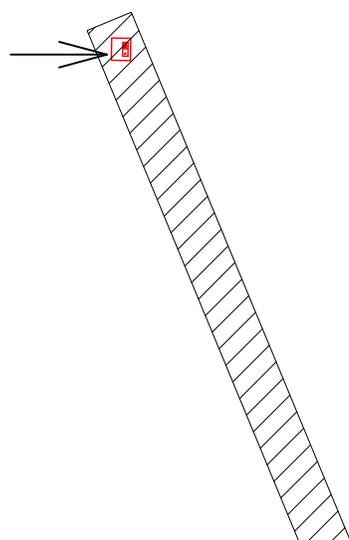


EXHIBIT A  
W/R# 683659  
27 S BRENTWOOD BLVD

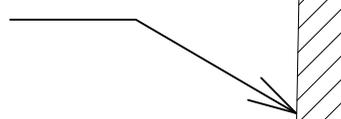
# SHEET 2 OF 2

EXISTING  
TRANSFORMER



SCALE: 1"=60'

15' WIDE AS  
BUILT  
EASEMENT TO  
AMEREN  
MISSOURI



S BRENTWOOD BLVD

EXISTING  
SWITCHGEAR



P/L

15'



SHAW PARK DR

## EXHIBIT A

### W/R# 683659

### 27 S BRENTWOOD BLVD

**Underground Electric Easement**

**REMS INFORMATION**

Agreement ID: UEC-201802-9834

Project ID: 17877

**EASEMENT**

(Underground Electric)

27 S. Brentwood Blvd.  
St. Louis County  
Geraldine District

KNOW ALL MEN BY THESE PRESENTS, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that CITY OF CLAYTON, a Municipal corporation of the State of Missouri, its successors, and assigns, whether one or more and whether an individual, individuals, a corporation, or other legal entity (hereinafter "Grantor"), for and in consideration of the sum of One and No/100ths Dollars (\$1.00) and other valuable consideration in hand paid, the receipt of which is hereby acknowledged, does hereby grant unto UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI, a Missouri corporation, its successors, and assigns (hereinafter "Grantee"), a perpetual Easement with the right, privilege, and authority of Grantee, its agents, contractors, and subcontractors to survey, stake, construct, reconstruct, replace, use, operate, maintain, inspect, protect, repair, modify, add to the number of and remove underground electric and communication line or lines, cables, fixtures, appliances, and equipment appurtenant thereto, including above-ground transformers, cabinets, and pedestals (all above-ground facilities and equipment to be at locations approved by Grantor), upon, over, across, and under the following described land, in St. Louis County, Missouri to-wit:

A fifteen (15) foot wide strip of land being part of a tract of land in U.S. Survey 1919, Township 45 North, Range 6 East, St. Louis County, Missouri; as described by deed thereof recorded in Book 6744 Page 2285 of the St. Louis County, Missouri Records.

The strip of land where the Grantee's facilities shall be located hereunder ("Easement Strip") shall be fifteen (15) feet wide, the centerline of which shall be the centerline of Grantee's facilities, as actually installed. Said location shall be, generally and as nearly practicable as shown illustrated on the drawing marked Exhibit A hereto attached and made a part hereof.

Locator No. 19K540063

together with all rights and privileges for the exercise and enjoyment of said Easement rights; that the Easement granted hereby shall terminate when and if Grantor abandons or ceases to use the lines, facilities, equipment or other items installed in or on such Easement area for the transmission of electricity and, upon such termination, Grantee will remove all items in the Easement area and restore the same to its pre-removal condition.

Grantor also conveys the right of ingress and egress to and over the above-described Easement area and premises of Grantor adjoining the same at locations designated by Grantor, for all purposes herein stated; together with the right to trim, control the growth, cut and remove or cause to be removed at any time and by any means, any and all brush, bushes, saplings, trees, roots, undergrowth, rock, and other obstructions upon, over, and under the surface of said Easement area deemed by Grantee to interfere with the exercise and enjoyment of Grantee's rights hereunder, endanger the safety of said facilities, or in order for Grantee to maintain compliance with the minimum clearance requirements of the National Electric Safety Code.

Grantee shall be responsible for actual damages (except the cutting and trimming of trees and other vegetation) occurring on the herein described property as a result of the construction, operation, maintenance, or repair of Grantee's facilities and shall reimburse the owner thereof for such loss or damages and indemnify and hold Grantor harmless from any injury, damage or claim of any kind or nature, including attorney fees and costs of defense, directly arising from Grantee's use of the Easement granted hereby.

Grantor represents to Grantee that Grantor believes, (1) that Grantor is the owner of the above-described land and has the full right and authority to grant this Easement, (2) that Grantee may quietly enjoy the premises for the purposes herein stated, and (3) that Grantor will not create or permit any building or other obstruction or condition of any kind or character upon Grantor's premises that will interfere with the Grantee's exercise and enjoyment of the Easement rights hereinabove conveyed.

IN WITNESS WHEREOF, the said Grantor has hereunto caused this Easement to be signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF CLAYTON

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**ALL PURPOSE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, AD. 20\_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared.

\_\_\_\_\_

PRINT/TYPE NAME

\_\_\_\_\_

PRINT/TYPE NAME

\_\_\_\_\_

PRINT/TYPE NAME

to me personally known

or

provided to me on the basis of satisfactory evidence

to be the persons(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

NOTARY PUBLIC \_\_\_\_\_

(Sign in Ink)

\_\_\_\_\_

(Print/type name)

Notary Public in and for the State of \_\_\_\_\_

YTA  
21MT683659  
3/12/2020

Approved by Ameren Legal Services  
August 2018

**CAPACITY CLAIMED BY SIGNER**

INDIVIDUAL

CORPORATE

Title(s) of Corporate Officers(s):

\_\_\_\_\_

\_\_\_\_\_

Corporate Seal N/A

Corporate Seal is affixed

PARTNER(s)

Limited Partnership

General Partnership

ATTORNEY-IN-FACT

EXECUTOR(s),

ADMINISTRATOR(s),

or TRUSTEE(s):

LLC

Member/Manager

\_\_\_\_\_

\_\_\_\_\_

GUARDIAN(s)

or CONSERVATOR(s)

OTHER



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

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## REQUEST FOR BOARD ACTION

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**TO:** MAYOR HARRIS; BOARD OF ALDERMEN  
**FROM:** DAVID GIPSON, CITY MANAGER (DG)  
PATTY DEFORREST, DIRECTOR OF PARKS & RECREATION  
**DATE:** APRIL 14, 2020  
**SUBJECT:** ORDINANCE – APPROVING A PLEDGE AGREEMENT BETWEEN THE CENTENE CHARITABLE FOUNDATION, THE CLAYTON COMMUNITY FOUNDATION AND THE CITY OF CLAYTON FOR CONTRIBUTIONS TO FUND IMPROVEMENTS TO THE RECREATION COMPLEX THAT INCLUDES AN ICE RINK IN SHAW PARK, A PRIORITY PROJECT IDENTIFIED IN THE SHAW PARK MASTER PLAN

---

Before you tonight is a Pledge Agreement intended to provide the City with the funds to make improvements to the Recreation Complex that will serve as an Ice Rink in the winter and athletic and event venue the remainder of the year in Shaw Park. This project has been identified as a priority project by both the Board of Aldermen and Clayton Community Foundation and has been on the approved project list since 2010. The parties to the agreement include the Centene Charitable Foundation (“Centene”), the Clayton Community Foundation (the “Foundation”), and the City of Clayton (the “City”). The agreement outlines the following terms:

- Centene will make annual gifts to the Foundation totaling \$2,000,000 to be paid in five equal installments, commencing on April 1, 2020.
- The Foundation will make gifts to the City within thirty days (30) of receipt of the funds for costs associated with the project.
- The City agrees to name the project “Centene Commons at Shaw Park” for a period of twenty-five years (25) from the date the facility opens to the public.
- The Foundation will seek approval from the City of Clayton to identify the project as “Centene Commons at Shaw Park” using signage acceptable to the City.
- Additional sections related to publicity, change of circumstances, etc. are included.

If approved by all parties, the City will continue working towards beginning construction in 2020. It is anticipated that the duration of construction will be sixteen (16) months once underway.

**STAFF RECOMMENDATION:** To approve the Pledge Agreement between Centene, CCF and the City for improvements to the Recreation Complex in Shaw Park as submitted.

BILL NO. 6793

ORDINANCE NO.

AN ORDINANCE APPROVING A PLEDGE AGREEMENT BETWEEN THE CENTENE CHARITABLE FOUNDATION, THE CLAYTON COMMUNITY FOUNDATION AND THE CITY OF CLATYON FOR CONTRIBUTIONS TO FUND IMPROVEMENTS TO THE RECREATION COMPLEX THAT INCLUDES AN ICE RINK IN SHAW PARK, A PRIORITY PROJECT IDENTIFIED IN THE SHAW PARK MASTER PLAN

---

**WHEREAS**, the City wishes to make improvements to the Ice Rink in Shaw Park as identified in the Shaw Park Master Plan; and

**WHEREAS**, the Clayton Community Foundation wishes to help fund this project; and

**WHEREAS**, the Centene Charitable Foundation wish to donate funds to the Clayton Community Foundation that will be used for construction costs associated with this project;

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

Section 1. The Board of Aldermen approves on behalf of the City a Charitable Pledge Agreement with the Centene Charitable Foundation and the Clayton Century Foundation regarding the Shaw Park All-Season Recreation Complex in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Manager and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

Section 2. This ordinance shall be in full force and effect from and after its passage by the Board of Aldermen.

Passed this 14<sup>th</sup> day of April 2020.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**CHARITABLE PLEDGE AGREEMENT****Between****THE CENTENE CHARITABLE FOUNDATION  
THE CLAYTON COMMUNITY FOUNDATION****and****THE CITY OF CLAYTON, MISSOURI****The Parties:**

1. The Centene Charitable Foundation (“Centene Foundation”) is a non-profit entity that provides charitable support for community initiatives that improve the quality of life and health in communities in which Centene Corporation (“Centene”) operates, such as the City of Clayton, Missouri (the “City”).
2. The Clayton Community Foundation (“CCF”), which was previously known as the Clayton Century Foundation, is a Missouri non-profit organization that partners with the City to support Clayton history, arts, parks and sustainability.
3. The City is a municipality in St. Louis County, Missouri.

**The Project:**

4. The City is undertaking the replacement of its existing, open-air, ice skating rink and supportive ancillary building in City-owned Shaw Park. Due to age and obsolescence, the rink no longer adequately serves the community. The replacement facility, as approved by the City, will provide for the installation of a totally new facility (the “Project”). That new facility will maintain the open air nature of the rink/sports/community venue. However, with a full-sized roof and alternative surfaces when ice is not appropriate, the facility will allow for year-round, full-season recreational use. The facility will provide not only for various youth-oriented sports but also numerous other community gatherings. The projected cost of the Project is \$14 million of which a maximum of \$10.2 million is available through City funds which have been allocated to the completion of the Project by the City. The City is, however, not able to fund with public dollars any of the approximate \$4 million cost shortfall (the “Project Shortfall”).

**The CCF Goal:**

5. CCF has agreed to undertake a fundraising effort (the “CCF Campaign”) to address the Project Shortfall through a public/private partnership in which the Project Shortfall would be funded through private sector donations.

**The Centene Foundation Gift:**

6. The full charitable gift from the Centene Foundation to CCF (the “Centene Gift”) will be Two Million Dollars (\$2,000,000) to be paid to CCF in five (5) equal payments of \$400,000 each, commencing on April 1, 2020 and annually thereafter on the first day of April, through and including April 1, 2024. CCF will, no later than thirty (30) days following receipt of each such payment, deliver and grant to City the same such amount for deposit in a City account set aside to fund the Project. The Centene Gift is not specifically limited to any particular aspect of the Project. Gifted/granted payments made are used by the City in its reasonable discretion, to address any cost element of the Project improvements.

Name Recognition:

7. The City agrees that, consistent with its naming policy for City-owned properties, the Board of the Aldermen of the City have approved the naming of the overall Project area as the “Centene Commons at Shaw Park” for a period of twenty-five (25) years from the date the facility first opens to the public (the “Naming Period”). Such naming is solely in consideration of the full Centene Gift being made to CCF by the Centene Foundation and the further delivery of same, by grant, to the City by CCF. Notwithstanding the installment payment nature of the Centene Gift, the naming will be immediately effectuated upon the opening to the public of the new facility which is anticipated to occur during calendar year 2021 (the “Public Opening Date”).

Extended Name Recognition:

8. No later than twenty-four (24) years from the Public Opening Date, the City and/or CCF shall provide the Centene Foundation with a written report as to the status of the facility resulting from age, normal wear and tear and any functional obsolescence. The report will include a projection of costs involved with the refurbishment/expansion required to sustain the continued viability of the facility into the future. In addition, the report will indicate the extent of City funding reasonably available for the projected costs as well as the private gifting similarly required of the Centene Foundation for the refurbishment/expansion program. Within a sixty (60) day period following the receipt of this report by the Centene Foundation, the parties shall endeavor in good faith to negotiate and execute a new Charitable Pledge Agreement. Such agreement would provide (i) that the Centene Foundation commits to additional gifting in a manner and amount satisfactory to the parties; and (ii) the existing name of Centene Commons at Shaw Park is to be extended for an additional twenty-five (25) year period beyond the initial Naming Period. Should no such new agreement be reached, the City and CCF may seek other private funding, coupled with a new naming opportunity for the facility being made available to an alternative donor.

Signage:

9. Major signage, including the name “Centene Commons at Shaw Park” will be provided in a manner mutually agreeable to the City and Centene Foundation at

the facility's major entranceways. A "conceptual-only" graphic depicting signage is affixed hereto as Attachment "A". The naming recognition provided Centene Foundation is not intended to be exclusive in nature. The parties understand and expect that other different naming opportunities within the Project area will be afforded to reflect additional charitable support for the Project.

Publicity for the CCF Campaign:

10. CCF, may with prior approval of Centene Foundation and the City, publicly announce the Centene Gift as the lead donation in its CCF Campaign to fully fund the Project. Centene Foundation further authorizes CCF to directly publicize the Centene Gift in connection with solicitation of other potential donors.

Change of Circumstances:

11. Centene Foundation may, at any time, request removal of its name from any commemorative signage.
12. The City may also withdraw or modify name recognition if, in its reasonable judgment, Centene or the Centene Foundation becomes the subject of public disrepute or scandal that would make inappropriate continued association of a public property with Centene's or Centene Foundation's name. Such action can, in any event, only be considered after written notice and substantial discussion with the City, CCF, Centene and Centene Foundation. Any decision shall be accompanied by a written statement, detailing the factors reasonably considered in making such a judgment and concluding that the events that have occurred under this Section 10 would reasonably be expected to cause public opprobrium, criticism or other adverse public reaction by reason of continuing to so acknowledge a public property.

Miscellaneous:

13. Authority: Each party represents and warrants that: (i) they have the power and authority to enter into and perform their obligations under this Agreement; (ii) upon signature the Agreement is a valid and binding agreement between the parties; and (iii) performance hereunder will not violate any applicable law, regulation or ordinance.
14. Responsibility: The City acknowledges that neither Centene Foundation nor Centene will be responsible in any way for the actual day-to-day maintenance or repair of the Centene Commons at Shaw Park. Neither Centene Foundation nor Centene will have any direct control over how the Centene Commons is used. In the event of any claim regarding the Centene Commons at Shaw Park being made by a third party against Centene Foundation or Centene relating to or arising out of, or in connection with (i) the negligent, wrongful, tortious or criminal acts or omissions of the City or of its respective directors, officers, employees and/or agents; or (ii) the failure of the City to provide maintenance and regular upkeep or to provide adequate insurance, the City, as part of any defense thereto, will

reaffirm in writing the lack of involvement by either Centene Foundation or Centene in providing physical maintenance, repair or control of the Centene Commons at Shaw Park.

15. Notices: Any notices or other communications under this Agreement shall be in writing and delivered to the addresses listed below unless otherwise specified in written notice by either party to the other:

If to Centene Foundation:      Marcela Manjarriz Hawn  
Centene Charitable Foundation  
7700 Forsyth Boulevard  
Clayton, MO 63105

With a copy to:                      General Counsel  
Centene Charitable Foundation  
7700 Forsyth Boulevard  
Clayton, MO 63105

If to CCF:                              Clayton Community Foundation, President  
10 N. Bemiston Avenue  
St. Louis, MO 63105

If to City:                              City Manager  
City of Clayton  
10 N. Bemiston Avenue  
Clayton, MO 63105

With copy to:                         City of Clayton  
Parks & Recreation Director  
50 Gay Avenue  
Clayton, MO 63105

16. Assignments/Amendments: This Agreement and all other terms and conditions contained herein or in any other schedule or attachment hereto, may be amended, modified or supplemented only in writing signed by each party hereto. Except as otherwise noted, no party may assign, transfer or delegate any of its rights or obligations under this Agreement, and any attempt to do so shall be null and void.
17. Counterparts/Facsimiles: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile or electronic copies hereof shall be deemed to be originals.
18. Entire Agreement: This Agreement, including any attachment hereto, sets forth the entire understanding between the parties with respect to the subject matter, and supersedes all prior or contemporaneous understandings, communications or agreements, whether written or oral, regarding such subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the last date written below.

**THE CENTENE CHARITABLE  
FOUNDATION**, a Missouri 501(c)(3) non-  
profit entity

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: March \_\_\_\_\_, 2020

**CLAYTON COMMUNITY  
FOUNDATION**, a Missouri 501(c)(3) non-  
profit entity

By: \_\_\_\_\_  
Becky Sinnett, President

Date: March \_\_\_\_\_, 2020

**CITY OF CLAYTON, MISSOURI**

By: \_\_\_\_\_  
David Gipson, City Manager

Date: March \_\_\_\_\_, 2020

**ATTACHMENT "A"**

