

BILL NO. 2970

ORDINANCE NO. 2787

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT WITH ST. LOUIS COUNTY REGARDING MAINTENANCE OF LANDSCAPED MEDIANS ON CLAYTON ROAD WITHIN CHESTERFIELD CITY LIMITS.

WHEREAS, the Missouri Highways and Transportation Commission divested Clayton Road (Route HH) within the City limits of Chesterfield, and;

WHEREAS, St. Louis County will maintain the Clayton Road (Route HH) right of way formerly maintained by the Missouri Highways and Transportation Commission, and;

WHEREAS, the municipal agreement between the City of Chesterfield and the Missouri Highways and Transportation Commission which provided for maintenance of the landscaped medians and sidewalks along Clayton Road (Route HH) has terminated, and;

WHEREAS, St. Louis County and the City of Chesterfield are mutually desirous of providing for the ongoing maintenance of the landscaped medians and sidewalks along Clayton Road (Route HH) within the City of Chesterfield, and;

WHEREAS, St. Louis County and the City of Chesterfield wish to enter into an Agreement reflecting their respective rights and obligations as they relate to the Clayton Road (Route HH) right of way within the City of Chesterfield;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHESTERFIELD, MISSOURI, AS FOLLOWS:

Section 1. The City Administrator of the City of Chesterfield is authorized to enter into this Maintenance Agreement with St. Louis County.

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

Passed and approved this 23rd day of April, 2014.

Bob Ration
Mayor

ATTEST: Vickie Hass
City Clerk

First reading: 3/17/14

**AN AGREEMENT BETWEEN ST. LOUIS COUNTY
AND THE CITY OF CHESTERFIELD
REGARDING MAINTENANCE OF LANDSCAPED MEDIANS ON
CLAYTON ROAD WITHIN CHESTERFIELD CITY LIMITS**

THIS AGREEMENT is entered into by the City of Chesterfield ("CITY") and St. Louis County ("COUNTY").

WITNESSETH:

WHEREAS, the Missouri Highways Transportation Commission (MHTC) divested Clayton Road (Route HH) within the limits of the CITY to COUNTY; and

WHEREAS, pursuant to such divestiture, COUNTY intends to maintain the right-of-way formerly maintained by MHTC (with the exception of the CITY IMPROVEMENTS defined herein) as part of COUNTY's Arterial Road System (ARS); and

WHEREAS, the 2006 MHTC MUNICIPAL AGREEMENT, executed by MHTC and CITY, pursuant to MoDOT Job No. J6U0808, has terminated; and

WHEREAS, as part of the MHTC MUNICIPAL AGREEMENT, MHTC constructed raised medians for landscaping (MEDIANS), water supply lines to irrigate the medians (IRRIGATION), landscaping in the medians (LANDSCAPING), and all sidewalks adjacent to Clayton Road within the limits of the CITY (SIDEWALKS), herein collectively referred to as "CITY IMPROVEMENTS"; and

WHEREAS, the CITY and the COUNTY wish to enter into an Agreement reflecting their respective rights and obligations as they relate to the right-of-way and the CITY IMPROVEMENTS; and

WHEREAS, the CITY is authorized to enter into this Agreement by Ordinance No. _____, and the COUNTY is authorized to enter into this Agreement by Ordinance No. _____;

NOW THEREFORE, in consideration of the premises, and the promises and covenants hereafter, CITY and COUNTY agree as follows:

- (1) SCOPE OF WORK – The CITY IMPROVEMENTS which are the subject of this Agreement are located on, in or along Clayton Road within the limits of the CITY.
- (2) CITY RESPONSIBILITY – The CITY shall perform the following obligations:
 - a. MAINTENANCE OF AREAS – The CITY shall maintain the CITY IMPROVEMENTS. If COUNTY determines that an unsafe condition, sight hazard, pollution, water or air quality concern, or trip hazard concern exists that is caused by planting, established flora, grading, erosion, irrigation, persistently wet pavement as result of irrigation, pavement upheaval or maintenance operation, related to the CITY IMPROVEMENTS, the CITY shall correct such condition within a reasonable amount of time after notification by the COUNTY. If the CITY does not correct the designated condition within a reasonable amount of time, the COUNTY reserves the right to take such action necessary to correct the problem and charge the CITY for the full cost of labor, equipment, and materials

necessary to perform the corrective work. The CITY shall immediately repair or replace any pavement deterioration or road hazard caused by failure, breakage, leak or misuse of the IRRIGATION. CITY shall obtain a COUNTY permit for such repair or replacement work.

- (3) COUNTY RESPONSIBILITY - COUNTY shall maintain the right-of-way divested to COUNTY by MHTC, and all improvements therein, in the same manner it maintains other ARS rights-of-way and any walls, fences and drainage facilities on easements granted to MHTC.
- (4) TERMINATION --This Agreement shall terminate 20 years after its effective date, at which time the parties agree to attempt in good faith to renew on mutually agreeable terms. Provided however, that either party may terminate this Agreement, with or without cause, upon giving the other party 90 days prior written notice.
- (5) INDEMNIFICATION – CITY, to the extent allowed or imposed by law, shall indemnify, hold harmless and defend COUNTY, its officers and employees, from all demands, claims and causes of action for personal injury and property damage, relating to CITY's actions pursuant to this Agreement.
- (6) FEDERAL, STATE, AND COUNTY LAWS – This Agreement shall not be construed so as to conflict with or supersede or otherwise limit any applicable law, rule, or regulation of the government of the United States, State of Missouri, or the COUNTY.
- (7) SEVERABILITY – The captions included in this Agreement are used for the purposes of convenience only and shall not be construed as limiting or otherwise affecting the Agreement itself. In the event any portion of this Agreement shall for any reason be declared invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof.
- (8) ASSIGNMENT - Neither party shall assign, delegate, or transfer any interest in this agreement to another entity without prior written approval from the other party.
- (9) VENUE - In the event that any actions or proceedings are initiated with respect to this Agreement, the parties agree that the venue thereof shall be St. Louis County, Missouri, and that this Agreement shall be governed by the laws of the State of Missouri.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of each party and shall be operative and in effect as to each party as of the date last written below.

IN WITNESS WHEREOF, the parties have entered into this Contract on the date last written below:

Executed by the CITY this _____ day of _____ 2014

Executed by the COUNTY this _____ day of _____ 2014

CITY OF CHESTERFIELD

City Administrator

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM

City Attorney

ST. LOUIS COUNTY, MISSOURI

County Executive

ATTEST:

Administrative Director

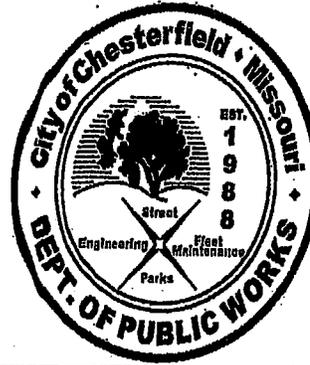
APPROVED:

Director, Department of Highways &
Traffic/Public Works

APPROVED AS TO LEGAL FORM

County Counselor

DATE: December 9, 2005
TO: Mike Herring, CA
FROM: Mike Geisel, DPWICE



SUBJECT: Clayton Road Municipal Agreement

Attached hereto is a proposed Municipal agreement for the Missouri Highways and Transportation Commission, related to the upcoming reconstruction of Clayton Road west of Baxter Road. The section of Clayton Road between Baxter and Kehrs Mill is predominantly within Chesterfield's corporate limits. As you also know, we've met with staff members of the City of Ballwin, and have mutually agreed to pursue sidewalk lighting and landscaping wherever possible and feasible along this section of roadway, and to share in the resultant operation and maintenance costs. The Missouri Department of Transportation has agreed to construct sidewalks along both sides of this roadway and to construct grassed islands where possible, which could later be landscaped by the Cities of Ballwin and Chesterfield. As we have also discussed, it is our intent to submit a future cooperative grant proposal for the landscaping and lighting facilities to enhance this section of roadway.

City Staff has reviewed the proposed agreement and it has been modified to address our concerns. The original agreement was also reviewed by then City Attorney Doug Beach. The final draft requires final review by current City Attorney, Rob Heggie. Attached is a proposed ordinance authorizing you, as the City Administrator, to execute said Municipal Agreement. **I recommend that the proposed ordinance and agreement be forwarded to the Public Works\Parks Committee for review and consideration, such that City Council can take initial action on the ordinance at its first meeting in January.**

If you need additional information, please advise.

Attachment

Cc City Attorney, Rob Heggie
Brian McGownd, Deputy Director of PW\Asst. City Engineer
Bonnie Hubert, Superintendent of Engineering Operations
Darren Dunkle, Superintendent of Parks, Recreation and Arts

Geisel
12/9/05

CCO Form: DE11
Approved: 04/93 (CEH)
Revised: 01/05 (BDG)
Modified:

Route HH, St. Louis County
Job No. J6U0808
City of Chesterfield
Municipal Agreement

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
MUNICIPAL AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Chesterfield, Missouri, a municipal corporation (hereinafter, "City").

WITNESSETH:

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

(1) **IMPROVEMENT DESIGNATION:** The public improvement designated as Route HH, St. Louis County, Job No. 6U0808 shall consist of the reconstruction and widening of Clayton Road from two to three lanes, providing a continuous center turn lane, shoulders and sidewalks from Baxter Road to Clarkson Road.

(2) **IMPROVEMENT WITHIN CITY:** The improvement within the City is located as follows:

Beginning at Station 86+37, a point approximately 700 feet west of Princeton Gate Drive, running east along Route HH to Station 135+12, a point where the centerline of Route HH intersects the city limits, approximately 400 feet west of Baxter Road.

(3) **EXTENT OF AGREEMENT:** This Agreement shall apply only to the portion of the improvement lying within the city limits as they exist on the date this Agreement is executed by the City.

(4) **LOCATION:** The general location of the public improvement is shown on an attached sketch marked "Exhibit A" and made a part of this Agreement. The detailed location of the improvement is shown on the plans prepared by the Commission for the above-designated route and project.

(5) **PURPOSE:** It is the intent of this Agreement that the Commission shall provide without cost to the City, except as otherwise provided in this Agreement, a highway for traffic in the City and the Commission shall so design and construct the highway to serve operating necessities and requirements of local and through traffic.

(6) **RIGHT-OF-WAY USE:** The City grants the right to use the right-of-way of public roads, streets, and alleys as necessary for construction and maintenance of said public improvement.

(7) **CLOSE AND VACATE STREETS:** The City shall vacate all city streets or roads, or parts thereof, which may be necessary to permit the construction of the project in accordance with the detailed plans. Whenever the Commission deems it necessary to close any street or road temporarily during construction, the City shall be advised. Direct or alternate access will be provided to all residential streets throughout the duration of construction.

(8) **RIGHT-OF-WAY ACQUISITION:**

(A) Upon approval of all agreements, plans and specifications by the Commission and the Federal Highway Administration (FHWA), the Commission will file copies of the plans with the city clerk of the City and the county clerk of the county and proceed to acquire at its expense, at no cost or expense to the City, any necessary right-of-way required for the construction of the improvement.

(9) **UTILITY RELOCATION:**

(A) The Commission shall secure the removal, relocation, or adjustment of any public or private utilities located upon private easements and shall pay any costs incurred therein.

(B) It is understood and agreed by the parties to this Agreement that no city-owned utility facilities will require relocation or adjustment in connection with this improvement, but that should utility facilities be discovered at any time during development or construction of this improvement, relocation or adjustment of the same will be done and the Commission shall pay costs incurred therein.

(C) The City agrees that any installation, removal, relocation, maintenance, or repair of public or private utilities involving work within highway right-of-way included in this project shall be done only in accordance with the general rules and regulations of the Commission and after a permit for the particular work has been obtained from the Commission's district engineer or his authorized representative. Similarly, the City will allow no work on the highway right-of-way involving excavation or alteration in any manner of the highway as constructed, including but not limited to driveway connections, except in accordance with the rules and regulations of the Commission and only after a permit for the specific work has been obtained from the Commission's district engineer or his authorized representative. The City shall take whatever actions that are necessary to assure compliance with this paragraph.

(10) LIGHTING: The Commission will, at its cost and expense, install, operate, and maintain basic highway intersection or interchange lighting at warranted locations on the improvement. The construction, installation, and maintenance of any other or further lighting system on the public improvement covered by this Agreement shall be only in accordance with the Commission's policy on highway lighting in effect, and to the extent deemed warranted by the Commission, at the time of any such installation. No lighting system shall be installed or maintained by the City on the improvement without approval of the Commission.

(11) TRAFFIC CONTROL DEVICES: The installation, operation and maintenance of all traffic signals, pavement markings, signs, and devices on the improvement, including those between the highway and intersecting streets shall be under the exclusive jurisdiction and at the cost of the Commission. The City shall not install, operate, or maintain any traffic signals, signs or other traffic control devices on the highway or on streets and highways at any point where they intersect this highway without approval of the Commission.

(12) DRAINAGE: The Commission will construct drainage facilities along the improvement and may use any existing storm and surface water drainage facilities now in existence in the area. It is understood by and between the parties that the area of the improvement is within the jurisdiction of the St. Louis Metropolitan Sewer District.

(13) PERMITS: The Commission shall secure any necessary approvals or permits from the Surface Transportation Board, the Public Service Commission of Missouri, or any other state or federal regulating authority required to permit the construction and maintenance of the highway.

(14) COMMENCEMENT OF WORK: After acquisition of the necessary right-of-way, the Commission shall construct the highway in accordance with final detailed plans approved by the Federal Highway Administration (or as they may be changed from time to time by the Commission with the approval of the FHWA) at such time as federal and state funds are allocated to the public improvement in an amount sufficient to pay for the federal and state government's proportionate share of construction and right-of-way costs. The obligation of the Commission toward the actual construction of the public improvement shall be dependent upon the completion of plans in time to obligate federal funds for such construction, upon approval of the plans by the FHWA, upon the award by the Commission of the contract for the construction, and upon the approval of the award by the FHWA.

(15) MAINTENANCE:

(A) Except as provided in this Agreement, upon completion of the public improvement, the Commission will maintain all portions of the improvement within the Commission owned right-of-way. Maintenance by the Commission shall not in any case include maintenance or repair of sidewalks whether new or used in place,

raised medians constructed for landscaping, water supply lines, sanitary or storm sewers (except those storm sewers constructed by the Commission to drain the highway), city-owned utilities within the right-of-way or the removal of snow other than the machine or chemical removal from the traveled portion of the highway.

(B) When it is necessary to revise or adjust city streets, the right-of-way acquired for these adjustments and connections will be deeded to the City.

(C) The Commission will inspect the construction of all sidewalks and upon completion and full release of the Commission's contractor from further obligations, the City shall maintain the sidewalks constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalks.

(D) The Commission will inspect the construction of the raised medians including the placement of conduit for future water supply lines and the placement of topsoil and sod within the medians. Upon completion and full release of the Commission's contractor from further obligations, the city shall provide landscaping for the raised medians and shall maintain the medians and landscaping in a condition safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said raised medians. City shall provide a landscaping plan to Commission for approval and shall obtain a permit prior to the placement of any water lines or landscaping.

(16) POLICE POWERS: It is the intent of the parties to this Agreement that the City shall retain its police powers with respect to the regulation of traffic upon the improvement contemplated. However, the City will enact, keep in force, and enforce only such ordinances relating to traffic movement and parking restrictions as may be approved by the Commission and as are not in conflict with any regulations for federal aid. The Commission shall not arbitrarily withhold approval of reasonable traffic regulations, signs, and markings which will permit the movement of traffic in accordance with accepted traffic regulation practices.

(17) RESTRICTION OF PARKING: Since the improvement is being designed and constructed to accommodate a maximum amount of traffic with a minimum amount of right-of-way, the City shall take whatever actions that are necessary to prevent parking upon the highway or any part of the area of the highway right-of-way within the limits of the improvement.

(18) OUTDOOR ADVERTISING: No billboards or other advertising signs or devices or vending or sale of merchandise will be permitted within the right-of-way limits of the project and the City shall take whatever actions that are necessary to enforce this paragraph.

(19) WITHHOLDING OF FUNDS: In the event that the City fails, neglects, or refuses to enact, keep in force or enforce ordinances specified or enacts ordinances contrary to the provisions in this Agreement, or in any other manner fails, neglects or refuses to perform any of the obligations assumed by it under this Agreement, the Commission may, after serving written request upon the City for compliance and the City's failure to comply, withhold the expenditure of further funds for maintenance, improvement, construction, or reconstruction of the state highway system in the City.

(20) FEDERAL HIGHWAY ADMINISTRATION: This Agreement is entered into subject to approval by the Federal Highway Administration, and is further subject to the availability of federal and state funds for this construction.

(21) INDEMNIFICATION: To the extent allowed by law, the City shall be responsible for injury or damages as a result of any services and/or goods rendered by or through the City under the terms and conditions of this Agreement. In addition to the liability imposed upon the City on the account of personal injury, bodily injury, including death, or property damage, suffered as a result of the City's performance under this Agreement, the City assumes the obligation to save harmless the Commission, including its agents, employees and assigns, and, to the extent allowed by law, to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission, including legal fees. The City also agrees to hold harmless the Commission, including its agents, employees and assigns, from any wrongful or negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the City for any purpose under this Agreement, and, to the extent allowed by law, to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission.

(22) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved on or between the duly authorized representatives of the City and Commission.

(23) COMMISSION REPRESENTATIVE: The Commission's District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(24) CITY REPRESENTATIVE: The City's Director of Public Works is designated as the City's representative for the purpose of administering the provisions of this Agreement. The City's representative may designate by written notice other persons having the authority to act on behalf of the City in furtherance of the performance of this Agreement.

(25) **NOTICES:** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

(A) To the City:
Michael G. Herring
City Administrator
City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, Missouri 63017
Telefax No.: 636-537-4798
Telephone No.: 636-537-4000

(B) To the Commission:
Edward Hassinger
District Engineer
Missouri Department of Transportation
1590 Woodlake
Chesterfield, Missouri 63017-5712
Telefax No.: 314-340-4186
Telephone No.: 314-340-4100

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(26) **ASSIGNMENT:** The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(27) **LAW OF MISSOURI TO GOVERN:** This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of the contract.

(28) **VENUE:** It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(29) **SOLE BENEFICIARY:** This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the City.

(30) **AUTHORITY TO EXECUTE:** The signers of this Agreement warrant that

they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(31) **SECTION HEADINGS:** All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this ____ day of _____, 20__.

Executed by the Commission this ____ day of _____, 20__.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF _____

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title _____

Ordinance Number _____