



**CITY OF BALLWIN**

14811 Manchester Road, Ballwin, MO 63011

BILL NO. 3815

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

INTRODUCED BY

ALDERMEN TERBROCK, FINLEY, HARDER, DOGAN, FLEMING, LEAHY, KERLAGON, BOLAND

**AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF BALLWIN, MISSOURI, ON BEHALF OF THE CITY, TO EXECUTE AN AGREEMENT WITH ST. LOUIS COUNTY, REGARDING MAINTENANCE OF LANDSCAPED MEDIANS ON CLAYTON ROAD WITHIN THE CITY LIMITS.**

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

Section 1. The Mayor of the City of Ballwin, Missouri, is hereby authorized to sign the agreement attached hereto as Exhibit 1 which together are incorporated herein by reference, with respect to the maintenance of landscaped medians on Clayton Road, within the city limits of the City of Ballwin.

Section 2. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict repealed.

Section 3. This Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
*TIM POGUE, MAYOR*

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
*TIM POGUE, MAYOR*

ATTEST:

\_\_\_\_\_  
*ROBERT KUNTZ, CITY ADMINISTRATOR*

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

THIS AGREEMENT is entered into by the City of Ballwin ("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.

- b. Within a reasonable time after execution of this Agreement, CITY shall provide an updated copy of the landscape improvement plans and irrigation improvement plans containing locations of all underground improvements to the COUNTY Department of Highways & Traffic and Public Works, Operations Division. CITY shall locate these underground improvements when requested by COUNTY.
- (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 -- 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 \_\_\_\_\_ 2013

Executed by the COUNTY this \_\_\_\_\_ day of \_\_\_\_\_ 2013

**CITY OF BALLWIN**

**ATTEST:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
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