



CITY OF BALLWIN

14811 Manchester Road, Ballwin, MO 63011

BILL NO. 3831

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 MUNICIPAL AND MAINTENANCE AGREEMENTS WITH MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR CERTAIN PROJECTS ALONG MANCHESTER ROAD.

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 execute the Municipal and Maintenance Agreements, attached hereto, with Missouri Highways and Transportation Commission for certain projects along Manchester Road.

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 All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict repealed.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 _____, 2014.

TIM POGUE, MAYOR

APPROVED this _____ day of _____, 2014.

TIM POGUE, MAYOR

ATTEST: _____
ROBERT KUNTZ, CITY ADMINISTRATOR

CCO Form: DE11
Approved: 04/93 (CEH)
Revised: 02/14 (AR)
Modified:

Municipal Agreement
Route: 100
County: St. Louis
Job No.: 6S2429

**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 Ballwin, 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 100, St. Louis County, Job No. 6S2429 shall consist of multi-use trails, sidewalk, raised medians, bus stop, signal/lighting/signing improvements and landscaping.

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

Beginning at Route 100 approximate Station 596+25 where the centerline of Route 100 intersects the west city limits, then eastward along Route 100 to Station 714+00 at Maple Lane. Length of improvement within city is approximately 2.2 miles.

(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) RIGHT-OF-WAY ACQUISITION:

No acquisition of additional right-of-way is anticipated in connection with Job No. 6S2429 or contemplated by this Agreement.

(8) UTILITY RELOCATION:

(A) The Commission and the City shall cooperate to secure the temporary or permanent removal, relocation, or adjustment of public utilities or private lines, poles, wires, conduits, and pipes located on the right-of-way of existing public ways as necessary for construction of the improvement and the cost shall be borne by such public utilities or the owners of the facilities except where the City is by existing franchise or agreement obligated to pay all or a portion of such cost, in which case the City will pay its obligated portion of the cost.

(B) 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.

(C) 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 performed under a supplemental agreement covering the subject, and in accordance with Commission policy then in effect on division of costs for adjustment of utility facilities.

(D) In cases of public utilities owned by the City which must be moved, adjusted, or altered to accommodate construction of this improvement, and such city-owned utilities, poles, wires, conduits, and pipes are located within the present city limits and located on an existing city street, not state highway right-of-way, but being taken over by the Commission as a part of its highway right-of-way, the City will perform the necessary removal, adjustment, alterations and relocation, and the Commission will reimburse the City except as otherwise provided. The City shall perform the removal, adjustment, alterations and relocation in accordance with the detail plans, estimates of costs and bills of materials prepared by the City in accordance with Federal Aid Policy Guide, Title 23 CFR Subchapter G, Part 645, Subpart A (FAPG 23 CFR 645A), dated December 9, 1991 and any revision of it, and approved by the Commission's district engineer, and shall perform all work and keep the records of the costs in accordance with FAPG 23 CFR 645A and its revisions. Upon the completion of any such work and on receipt by the Commission of the original and four copies of a bill for the actual costs

incurred by the City in making any such removal, adjustment, alteration and relocation, the Commission shall reimburse the City for the actual cost necessitated by construction of this public improvement. The Commission's obligation toward the cost of any such removal, adjustment, alteration and relocation shall extend only to those costs incurred in accordance with FAPG 23 CFR 645A and its revisions.

(E) 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 Subsection.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) COMMENCEMENT OF WORK: 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. 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.

(14) 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, 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 City shall inspect and maintain the sidewalks constructed by this project in a condition reasonably safe to the public and, to the extent allowed or imposed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalks.

(15) 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.

(16) 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.

(17) 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 Section.

(18) 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.

(19) 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.

(20) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

(1) To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$500,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(21) 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.

(22) 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.

(23) CITY REPRESENTATIVE: The City's City Administrator 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.

(24) 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:

Robert Kuntz
City Administrator
14811 Manchester Road
Ballwin, MO 63011

Facsimile No: (636)207-2320

(B) To the Commission:

Greg Horn
MoDOT St. Louis District Engineer
1590 Woodlake Drive
Chesterfield, MO 63017

Facsimile No: (573)522-6475

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.

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

(26) 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.

(27) 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.

(28) 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.

(29) 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.

(30) 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.

[remainder of page intentionally left blank]

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 BALLWIN

By: _____

By: _____

Title: _____

Title: _____

ATTEST:

ATTEST:

Secretary to the Commission

By: _____

Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Commission Counsel

By: _____

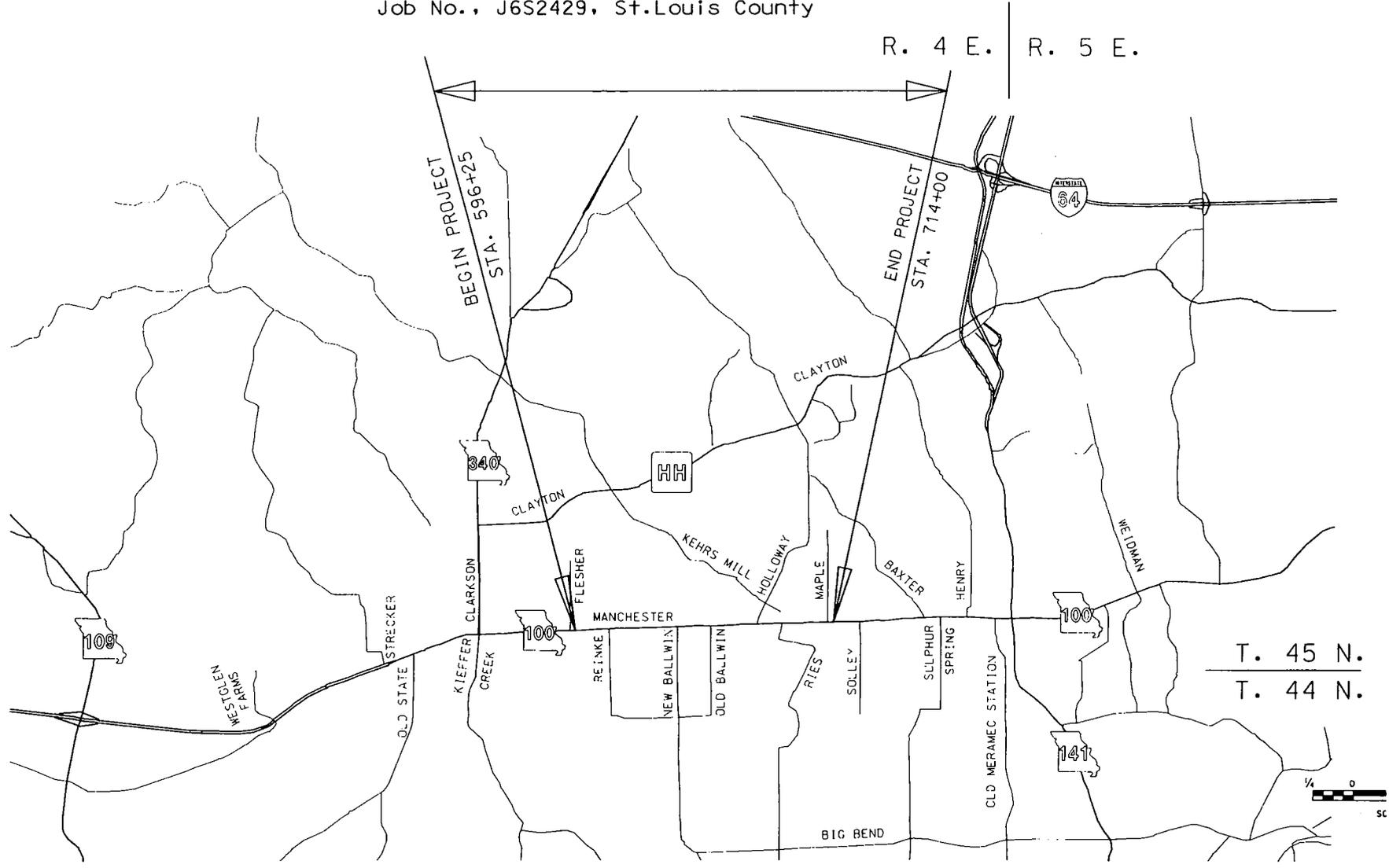
Title: _____

Ordinance Number _____

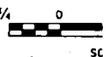
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

EXHIBIT A

Municipal Agreement Between
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
-and-
CITY OF BALLWIN, MISSOURI
Job No., J6S2429, St. Louis County



T. 45 N.
T. 44 N.



CCO Form: MT02
Approved: 10/96 (DPP)
Revised: 02/10 (ASB)
Modified: 02/14 (BDG)

Maintenance Agreement
Route: 100
County: St. Louis
Job No. 6S2429

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION MAINTENANCE AGREEMENT

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

WITNESSETH:

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

(1) PURPOSE: The purpose of this Agreement is to designate maintenance responsibilities for certain roadway features constructed by Commissions project 6S2429 .

(2) LOCATION: The roadway features which are the subject of this Agreement are located along Route 100 from just east of Flesher Drive to Maple Lane shown on **EXHIBIT A** attached hereto and made a part of this Agreement.

(3) MAINTENANCE:

A. Multi-Use Trail & Sidewalks

The City shall maintain all sidewalks including retaining walls built for the sidewalks or drainage structures that cross the sidewalk, and any fencing along the sidewalks.

B. Lighted Street Name Signs

(i) The Commission shall be responsible for all maintenance and traffic control devices at New Ballwin Road, Holloway Road, Ball Park Drive, Seven Trails / Ries Road and Maple Lane along Route 100 in Ballwin, Missouri, with the exception of illuminated street name signs.

(ii) The City shall maintain, at the City's cost, the illuminated street name signs and power supply(ies). The illuminated street name signs shall be maintained in accordance with the Commission's policies.

(iii) The City shall be responsible for the cost of electrical current used for the operation of the illuminated street name signs. The illuminated street name

signs shall be connected to a separate power supply. If the signs or its support structures need to be replaced as a result of age, damage, or vandalism the City will be solely responsible for the cost to return the signs to their original condition. In such an event another agreement between the parties must be executed before any work to replace the signs or support structures begins. If a new agreement is not executed the signs in question will be permanently removed by the City at no cost to the Commission.

(iv) The City may have the maintenance work required pursuant to this Agreement performed by either its own maintenance personnel or by contract with qualified individuals or companies approved by the Commission to provide a fully functional illuminated street name sign system.

(v) The City shall respond to any emergency situation in which repair or maintenance of damage to the illuminated street name signs is required immediately to correct a dangerous condition or restore the safe, unobstructed flow of traffic on the improvement.

(vi) If the Commission in its sole discretion determines that the illuminated street name sign(s) should be removed or eliminated as part of a highway or transportation project, the Commission may remove the lighted street name signs.

(C) Traffic Signal / Sign Post Painting

(i) The painting of aluminum material, cabinets, or signal heads is not authorized by this Agreement.

(ii) All painted facilities within the state-owned Right-of-Way shall remain the Commission's property, and all future alterations, modifications, or maintenance thereof, excluding the paint system, will be the responsibility of the Commission.

(iii) The City shall provide proper maintenance of the paint coating at its cost for continuation of appearance of the unique color including the painting of any replacement equipment installed or replaced by the Commission. The method of maintenance shall be mutually agreeable between the City and the Commission's District Engineer. Should the City elect to not repaint the facilities, the Commission may terminate this Agreement and the Commission's District Engineer shall have full discretion on future coatings to any of the painted signals or facilities painted pursuant to this Agreement.

(iv) If any of the painted signal equipment or sign posts requires replacement by the Commission the city at its cost will be required to paint the new signal equipment or sign posts.

(D) Bus Shelters

(i) City shall maintain the bus shelter(s) and any components required for or to support the bus shelter including but not limited to the shelter structure and foundation, any retaining walls or curbing specifically required for the shelter, sidewalks and concrete flooring, and the electrical/lighting/power supply system. The City shall be responsible for the cost of electrical current supplied to the bus shelters.

(E) Wayfinding Signage and Address Markers

(i) The City shall maintain Wayfinding signs and address markers following the guidelines of the *Federal Manual on Uniform Traffic Control Devices* (MUTCD) and the Commission's *Engineering Policy Guide* for reflectivity, alignment, and placement. The Commission may request maintenance of the signs and markers by the City, at the City's expense, and the City shall promptly comply with the Commission's request for maintenance of the signs or markers. Failure by the City to complete requested maintenance within 14 calendar days from Commission's request shall be grounds for removal of all signs and markers located within Commission-owned right of way. Given the complexity of some Wayfinding signs, should a replacement sign(s) be part of the maintenance required additional time would be granted by the Commission to complete the repairs. However, any material or remains of the sign installation in question must be removed from the site to eliminate a hazard for the traveling public.

(ii) If the City fails to comply with the provisions stated herein regarding the maintenance responsibilities, the Commission may remove the sign(s) or markers.

(iii) If the Commission, in its sole discretion, determines that the sign(s) or markers are no longer justified, the Commission may remove the sign(s).

(iv) If the Commission, in its sole discretion, determines that the sign(s) or markers should be removed or eliminated as part of a highway or transportation project, the Commission may remove the sign(s) and markers.

(v) If the Commission, in its sole discretion, determines that the removal of the sign(s) or markers from the Commission's right of way is in the best interests of the state highway system, the Commission may remove the sign(s) and markers.

(vi) If the Commission removes the sign(s) or markers in accordance with any provision of this Agreement, the Commission will not reimburse the City for the cost or value of the sign(s) or markers.

(vii) The Commission may request the City to modify the sign(s) or markers when necessary to comply with changed standards that might be promulgated or adopted, at the City's cost. The Commission, at its sole discretion, may request the City to relocate the signs or markers to accommodate the install of additional highway signs the Commission deems more appropriate, at the City's cost. The Commission

may request the City to remove and relocate signs and markers, at the City's cost, to accommodate the construction of roadway improvements. Should the Commission make any of these requests, the City shall comply with the Commission's request within 14 calendar days. Given the complexity of some Wayfinding signs, should a sign need to be fabricated, additional time will be granted by the Commission to allow for that work to be completed.

(viii) Any additions or modifications to the Commission's Wayfinding signing plan, after execution of this agreement, will be reviewed by the Commission prior to said modifications.

(F) Decorative Lighting

(i) The Commission shall install decorative lighting within the raised medians along Route 100. The Commission will incur the installation expense of the decorative lighting. The Commission shall be responsible for all maintenance and traffic control devices on and along the roadway with the exception of the decorative lighting.

(ii) The City shall maintain, at the City's cost, all decorative lighting and all components of the lighting system including power supply within the Commission's right of way. The lighting shall be maintained in accordance with the Missouri Department of Transportation's Engineering Policy Guide. The City shall pay the cost of electrical current for the operation of the decorative lighting.

(ii) The City may have the maintenance work required pursuant to this Agreement performed by either its own maintenance personnel or by contract with qualified individuals or companies approved by the Commission to provide a fully functional and dependable lighting system.

(iv) The City shall respond to any emergency situation in which repair or maintenance of damage to the lighting is required immediately to correct a dangerous condition or restore the safe, unobstructed flow of traffic on the improvement.

(v) The Commission may request the City to remove and relocate decorative lighting, at the City's cost, to accommodate the construction of roadway improvements. Should the Commission make any of these requests, the City shall comply with the Commission's request within 14 calendar days.

(G) Landscaping/Irrigation

(i) City shall be responsible for maintaining any landscaping and/or irrigation systems and controller power supply, and shall be responsible for the cost of the water supplied to the areas of irrigation and the electrical current supplied to the irrigation controller. Should the Commission make any future revisions to Commission-owned right of way in which the additional landscaping and/or irrigation systems are

impacted, it will be the City's responsibility and at the City's cost to remove or relocate any such landscaping and/or irrigation system.

(4) PERMIT: Before beginning any maintenance on the above aforementioned roadway features, the City shall secure from the Commission's District Engineer a permit for the proposed maintenance work and give a minimum one week notice prior to performing any intended maintenance activity. The City may provide written authority to the Commission's District Engineer enabling its contractor to obtain the permit as an agent for the City. Future maintenance shall be covered by separate permit. The City shall comply with any additional condition placed upon the issuance of the permit.

(5) APPEARANCE: The City shall maintain these items in accordance with the Commission's Engineering Policy Guide and in an aesthetically pleasing condition that will be safe to the general public. In the event the Commission determines that the City is not properly maintaining these items, the Commission will send a notice to the City describing the nature of the condition that needs to be remediated. If the safety function of the roadway features are in any way deemed by the Commission to present an unsafe condition to vehicular or pedestrian traffic the City shall make immediate accommodations to address the unsafe condition.

(6) TERMINATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations or for convenience by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(7) INDEMNIFICATION:

(A) To the extent allowed or required by law the City shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

(1) To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of

Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$500,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

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

(9) COMMISSION REPRESENTATIVE: The Commission's district engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement.

(10) CITY REPRESENTATIVE: The City's City Administrator is designated as the City representative for the purpose of administering the provisions of this Agreement. The City 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.

(11) 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:

Robert Kuntz
City Administrator
14811 Manchester Road
Ballwin, MO 63011

Facsimile No (636)207-2320

(B) To the Commission:

Greg Horn
MoDOT St Louis District Engineer
1590 Woodlake Drive
Chesterfield, MO 63017

Facsimile No: (573)522-6475

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.

(12) 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 state and federal laws and regulations relating to the performance of this Agreement.

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

(14) 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.

(15) CONTINUING DURATION: The term of this Agreement will be of a continuing duration until terminated pursuant to the terms of this Agreement or by mutual consent of the parties.

(16) NO ADVERSE INFERENCE: This Agreement shall not be construed more strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

(17) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

(18) NO INTEREST: By contributing to the cost of the maintenance of this roadway, the City gains no property interest in the roadway features or roadway whatsoever. The Commission shall not be obligated to keep the constructed roadway features or roadway in place if the Commission, in its sole discretion, determines removal or modification of the roadway is in the best interests of the state highway system or the Commission.

(19) NON-LIABILITY OF COMMISSION PERSONNEL: Neither the commissioners, nor any other officer, official, employee, or agent of the Commission or Missouri Department of Transportation shall be *personally* responsible for any liability arising under or growing out of this Agreement.

(20) NOT A JOINT VENTURE: Nothing contained in this Agreement shall be deemed to constitute the Commission and City as partners in a partnership or joint venture for any purpose whatsoever.

(21) 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.

(22) 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.

(23) SUCCESSORS AND ASSIGNS: The provisions of this Agreement shall apply to and be binding upon the parties executing this Agreement, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including officers, employees, agents, servants, corporations, and any persons acting under, through, or for the parties agreeing hereto.

(24) 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.

(25) FHWA APPROVAL: This agreement is entered into subject to the approval of the Federal Highway Administration.

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 BALLWIN

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

By _____

Title _____

City Ordinance: _____

