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AND VIRTUALLY VIA ZOOM (link is below).

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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 ifrazier@claytonmo.gov. All comments received will be distributed to the entire Board before the meeting.

CITY OF CLAYTON BOARD OF ALDERMEN
DISCUSSION SESSION – 6:30 P.M.
TUESDAY, MARCH 28, 2023
CLAYTON, MO 63105

1. Presentation on Flock LPR Cameras

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.

CITY OF CLAYTON BOARD OF ALDERMEN
TUESDAY, MARCH 28, 2023 – 7:00 P.M.
CITY HALL COUNCIL CHAMBERS, 2ND FL
10 N. BEMISTON AVENUE

ROLL CALL

PUBLIC REQUESTS & PETITION

PUBLIC HEARING

1. Ordinance – Text amendments to Chapter 405 (Zoning Regulations) and Chapter 410 (Overlay and Urban Design Zoning Districts) related to Marijuana Facilities. (Bill No. 6961)
2. Resolution – A Conditional Use Permit for Hertz Rental Car located at 7730 Bonhomme Avenue. (Res. No. 2023-11)

CONSENT AGENDA

1. Minutes – March 14, 2023

CITY MANAGER REPORT

1. Clayton Equity Commission Annual Report.
2. Resolution – Clayton Equity Commission Municipal Court recommendations. (Res. No. 2023-12)
3. Ordinance – Readopting Uniformed Employees’ Retirement Fund pension enhancements and plan restatement with corrections and amending Ordinance No. 6801. (Bill No. 6962)
4. Ordinance – A contract with Bone Dry Roofing for a pavilion roof at Oak Knoll Park. (Bill No. 6963)
5. Ordinance – A contract with McConnell and Associates for the tennis court resurfacing project at Shaw Park. (Bill No. 6964)
6. Ordinance – A contract with Kingsland Concrete Contractor, LLC for the FY2023 ADA Improvements project. (Bill No. 6965)

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 (9)(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.

Agenda topics may be added or deleted at any time prior to the Board of Aldermen meeting without further notice. To inquire about the status of agenda topics, call 290.8469. Individuals who require an accommodation (i.e., sign language, interpreter, listening devices, etc.) to participate in the meeting should contact the City Clerk at 290.8469 or Relay Missouri at 1.800.735.2966 (TDD) at least two working days prior to the meeting.



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN

FROM: DAVID GIPSON, CITY MANAGER
ANNA KRANE, AICP, DIRECTOR OF PLANNING & DEV. SERVICES

DATE: MARCH 28, 2023

SUBJECT: PUBLIC HEARING AND ORDINANCE - TEXT AMENDMENTS TO CHAPTER 405 (ZONING REGULATIONS) AND CHAPTER 410 (OVERLAY AND URBAN DESIGN ZONING DISTRICTS) RELATED TO MARIJUANA FACILITIES

This is a public hearing to consider amending multiple sections of Chapter 405 Zoning Regulations and Chapter 410 Overlay and Urban Design Zoning Districts to address the recently approved constitutional amendment to Article XIV of the Missouri Constitution.

In November of 2018 Missouri voters passed a constitutional amendment to allow cultivation, production, transportation, and sale of marijuana for medical purposes. Shortly following the adoption of the State regulations, the City adopted local medical marijuana regulations in June of 2019. The local regulations included provisions for the location of medical marijuana facilities, operational standards, and permitting/licensing requirements.

In November of 2022 Missouri voters passed another constitutional amendment to Article XIV of the Missouri Constitution to allow cultivation, sale, and use of marijuana for recreational purposes. In addition to allowing recreational marijuana, the amendment also established standard definitions and calculations that apply across the state and a local retail sales tax that could be assessed with voter approval. In January of 2023, the Board of Aldermen voted to add Prop M to the April ballot for voters to consider adding a 3% tax on retail sales of adult marijuana. In an effort to align the City's local regulations with the Missouri Constitution, staff completed an audit of the existing local regulations and is recommending a series of amendments.

The existing regulations clearly reference medical marijuana and do not address cultivation, production or sale of marijuana for recreational purposes. To align with Article XIV of the Missouri Constitution, the majority of the changes proposed by staff are removing the term medical to allow the regulations to apply to both medical and recreational marijuana. In addition, the definitions and buffer location requirements are updated to conform with the State calculations.

The current City regulations require the operational plans to be submitted and reviewed as part of a Business License and under a Conditional Use Permit. The proposed amendment alters this process to remove operational characteristics from the Business License review to align with the current timeline and review practices of the City for other licenses and permits.

Currently, there are marijuana uses allowed with a Conditional Use Permit in the C-2, HDC, and S-1 Zoning Districts. The City has many overlay districts, some of which restrict the allowed uses from the base zoning district. The Northeast Downtown Overlay District and the Clayton Road Urban Design District (CR-UDD) both restrict uses by containing their own allowed use sections, which supersede the base zoning. Based on review of location regulations, existing land use patterns, and past inquiries from interested businesses, the areas of the Northeast Downtown Overlay and the CR-UDD could be ideal locations for a marijuana dispensary. The current regulations would prohibit a dispensary in those locations and therefore, staff has recommended modifying the allowed uses.

The Plan Commission considered this request at its meeting on March 6, 2023, and voted unanimously to recommend approval.

STAFF RECOMMENDATION: To approve the amendment as proposed.

BILL NO. 6961

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 405 (ZONING REGULATIONS) AND CHAPTER 410 (OVERLAY AND URBAN DESIGN ZONING DISTRICTS) RELATED TO MARIJUANA USES

WHEREAS, the City completed an audit of existing land use regulations related to marijuana uses in light of the Missouri Constitutional Amendment to Article XIV passed by voters in November of 2022 and drafted proposed amendments; and

WHEREAS, on March 6, 2023, the Plan Commission held a public hearing after due notice and, by a vote of 6–0, voted to recommend approval of the proposed amendments to the Board of Aldermen; and

WHEREAS, on March 28, 2023, the Board of Aldermen held a public hearing to consider the merits of this Ordinance, after satisfying all publication and notice requirements established by law, and all persons present at such hearings were given an opportunity to be heard and were heard.

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

Section 1: Section 405.350 of Article II of Chapter 405 of the Code of Ordinances of the City of Clayton, Missouri, is hereby repealed and a new Section 405.350 is hereby enacted in lieu thereof to read as follows:

Chapter 405 Zoning Regulations

Article II General Regulations,

Section 405.350 Performance Standards and Regulations Relating to Marijuana Facilities

The purpose of this division is to regulate the placement and licensing of facilities for the dispensing, selling, storing, and testing of marijuana and marijuana-infused products, to the extent permitted by the Missouri Constitution, applicable statutes enacted by the General Assembly, and regulations promulgated by the Missouri Department of Health and Senior Services, and to protect the health, safety, and welfare of the residents, businesses, and property owners in the City.

- A. For the purposes of this Section, “church” shall mean a permanent building primarily and regularly used as a place of religious worship, and “daycare” shall mean a child-care facility as defined by Section 210.201, RSMo., or successor provisions, that is licensed by the state of Missouri.
- B. No marijuana related use, activity or facility shall emit an odor or in any way cause a public nuisance per Chapter 220 of this Code. Appropriate ventilation systems to prevent any odor of marijuana or fumes from leaving the premises or other changes to the facilities can be required if a public nuisance violation occurs.

- C. No more than a total of three (3) Marijuana Dispensary Facilities will be allowed within the City Limits.
- D. Each Marijuana Testing or Marijuana Dispensary Facility shall be located on properties that meet the following distance requirements:
 - 1. No marijuana related uses shall be initially sited within five hundred (500) feet of any then-existing elementary or secondary school, child day-care, or church.
 - 2. No marijuana related uses shall be operated or maintained within five hundred (500) feet of another marijuana related use except when marijuana sales represent less than five percent (5%) of the dollar volume of business in a state or federally licensed pharmacy. Marijuana related uses under the same ownership and on the same property are exempt from this requirement.
 - 3. The distances described in this Section shall be computed as follows:
 - a. Measurements shall be made along the shortest path between the demarcation points that can be lawfully traveled by foot.
 - b. In the case of a freestanding facility, the distance between the facility and the school, daycare, or church shall be measured from the external wall of the facility structure closest in proximity to the school, daycare, or church to the closest point of the property line of the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility.
 - c. In the case of a facility that is part of a larger structure, such as an office building or strip mall, the distance between the facility and the school, daycare, or church shall be measured from the property line of the school, daycare, or church to the facility's entrance or exit closest in proximity to the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility.
- E. Each Marijuana Cultivation Facility or Marijuana-Infused Products Manufacturing Facility shall be located on properties that meet the following distance requirements and are subject to the following land area requirements:
 - 1. No marijuana related cultivation or manufacturing uses shall be originally sited within seven hundred and fifty (750) feet of any then existing elementary or secondary school, child day-care, or church.
 - 2. No marijuana related cultivation or manufacturing facility shall be operated or maintained within one thousand five hundred (1,500) feet of another marijuana related use. Marijuana related uses under the same ownership and on the same property are exempt from this requirement.
 - 3. The distances described in this section shall be computed as follows:
 - a. Measurements shall be made along the shortest path between the demarcation points that can be lawfully traveled by foot.

- b. In the case of a freestanding facility, the distance between the facility and the school, daycare, or church shall be measured from the external wall of the facility structure closest in proximity to the school, daycare, or church to the closest point of the property line of the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility.
 - c. In the case of a facility that is part of a larger structure, such as an office building or strip mall, the distance between the facility and the school, daycare, or church shall be measured from the property line of the school, daycare, or church to the facility's entrance or exit closest in proximity to the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility.
 - 4. No marijuana related cultivation or manufacturing facility shall be located, operated or maintained on property that is less than seven (7) acres in size.
- F. The waiting area and the area of a Marijuana Dispensary Facility where marijuana or marijuana-infused products are physically delivered to a consumer, as defined in Article XIV of the Missouri Constitution, shall be separated by a solid wall and solid door so that persons in the waiting area are obstructed from observing the delivery of the marijuana or marijuana infused products. No loitering will be permitted at any facility.
- G. No marijuana or marijuana-infused product shall be displayed to be visible through glass, windows, or doors by a person of normal visual acuity standing at the outside perimeter of a Facility.
- H. "Drug Paraphernalia" as referenced in Section 215.540, and as defined in Section 195.010(18) [excluding subsection (f)], RSMo., as may be amended, may be lawfully sold at a Marijuana Dispensary Facility. Such items may not be publicly displayed.
- I. The sale or consumption of alcohol within a Facility is prohibited.
- J. No person under the age of eighteen (18) shall be allowed in any portion of a Marijuana Testing Facility, Cultivation Facility or Products Manufacturing Facility. The entrance to a Facility shall be clearly and legibly posted with notice indicating that persons under the age of eighteen (18) are precluded from entering the premises.
- K. A Marijuana Dispensary Facility shall not dispense more than four (4) ounces of a usable form of marijuana per patient in a thirty-day period, except as otherwise allowed by law [Art. 2, sec 3(13)]. All marijuana sold or otherwise distributed shall be in a sealed container. Such packaging shall have a label that indicates

the quantity and advises the purchaser that the marijuana is intended for use solely by the patient, and that any resale or redistribution to any third person is a criminal violation.

- L. The consumption, inhalation or other personal use of marijuana or marijuana-infused products on or within the premises of a Marijuana Testing Facility, Marijuana Dispensary Facility, Marijuana Cultivation Facility or Marijuana-Infused Products Manufacturing Facility is prohibited, except that a Marijuana Testing Facility may consume marijuana during the testing process and only as the consumption relates to the testing process.

- M. Security Plans. Marijuana Testing Facilities, Marijuana Cultivation Facilities, Marijuana Infused Products Manufacturing Facility and Marijuana Dispensary Facilities shall provide adequate security on the premises including, but not limited to, the following:
 - 1. Surveillance. Security surveillance cameras installed to monitor each entrance to the Facility along with the interior and exterior of the premises to discourage and to facilitate the reporting and investigation of criminal acts and nuisance activities occurring at the premises. Security video shall be preserved for at least ninety (90) days and be made available to law enforcement officers upon demand.
 - 2. Inventory. All salable inventory of marijuana must be kept and stored in a secured, locked manner.
 - 3. Safe. A locking safe or secure vault permanently affixed or built into the premises to store any currency on site.
 - 4. Alarm System. Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition within the Facility at all times.
 - 5. Emergency Contact. Each Facility shall provide the chief of police with the name, cellular telephone number, electronic mail address, and facsimile number of an on-site Facility employee to whom the City may provide notice of any operating problems associated with the Facility. It shall be the responsibility of the Licensee to keep up to date the contact information of the Facility employee.

- N. Operating Plans. As a condition of processing of a Conditional Use Permit application, a Facility operator shall provide at the time of filing the business license application a detailed operations plan and, upon issuance of a license, shall operate the Facility in accordance with the plan. Such plan shall include:
 - 1. Floor Plan. A plan showing the layout of the Facility and the principal uses of the floor area depicted. A Marijuana Dispensary Facility shall have a lobby waiting area at the entrance to the center to receive clients, and a separate and secure designated area for dispensing marijuana. The primary entrance of any stand-alone facility shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways. All storage areas shall be shown and labeled.
 - 2. Odor Controls. A Facility shall provide a plan for the mitigation and

control of odors and other environmental impacts which may emanate from a Facility. Such plan shall describe the ventilation system for the premises. Appropriate ventilation systems to prevent any odor of marijuana or fumes from leaving the premises of a Facility or other changes to a Facility may be required to abate a public nuisance.

- O. Each Facility shall at all times possess a current City business license. By obtaining a City business license, the Facility Licensee irrevocably consents to the immediate closure and cessation of operation of the Facility in addition to all other penalties or remedies available by law for the failure to possess a current City business license.
- P. It shall be unlawful for any person to distribute, transmit, give, dispense or otherwise provide marijuana as a home occupation.
- Q. No marijuana dispensary facility, marijuana testing facility, marijuana cultivation facility or marijuana infused products manufacturing facility shall be operated within the City without a valid license issued by the Missouri Department of Health and Senior Services. No marijuana or marijuana-infused products shall be acquired, certified, delivered, processed, sold, stored, tested, or transported within the City, except by persons or entities licensed for such purposes by the Missouri Department of Health and Senior Services.
- R. Application Review Process:
 - 1. Site review permit. This preliminary permit reviews the proposed marijuana related use for compliance with the City's zoning and location standards prior to issuance of State license. A draft of proposed security and floor plans should also be provided. Site review approval shall expire, and be of no effect, one (1) year after the date of issuance thereof.
 - 2. Conditional Use Permit. Once State licensing has been received, the Conditional Use Permit shall include all relevant State approvals and approved operating plans and security plans.
 - 3. Occupancy permit. Once a Conditional Use Permit and site review permit is obtained, the applicant shall apply for an occupancy permit.
 - 4. Business license. Once an occupancy permit is obtained, the applicant shall apply for a business license.

Section 2: Subsection (B) of Section 405.390 of Article III of Chapter 405 of the Code of Ordinances of the City of Clayton, Missouri, is hereby amended, to read as follows:

Chapter 405. Zoning Regulations

Article III. Definitions

Section 405.390. Definitions

[B. Definitions. As used in this Chapter, unless the context otherwise indicates, the following terms mean:]

[**NOTE:** Subsection (A) and the other definitions in Subsection (B) are not altered, amended or affected in any way by this amendment and remain in full force and effect. For that reason these materials are not set forth here in full.]

“Marijuana” or “Marihuana” *Cannabis indica, Cannabis sativa, and Cannabis ruderalis*, hybrids of such species, and any other strains commonly understood within the scientific community to constitute marijuana, as well as resin extracted from the plant and marijuana- infused products. “Marijuana” or “Marihuana” do not include industrial hemp, as defined by Missouri statute, or commodities or products manufactured from industrial hemp.

Marijuana Cultivation Facility, Includes any “medical marijuana cultivation facility” and “comprehensive marijuana cultivation facility”, as those terms are defined in Article XIV of the Missouri Constitution.

Marijuana Dispensary Facility, Includes any “medical marijuana dispensary facility”, “comprehensive marijuana dispensary facility”, “marijuana microbusiness facility” and “microbusiness dispensary facility”, as those terms are defined in Article XIV of the Missouri Constitution, licensed by the State of Missouri.

Marijuana Facility, Includes any “medical marijuana cultivation facility”, “medical marijuana dispensary facility”, “medical marijuana-infused products manufacturing facility”, “comprehensive marijuana cultivation facility”, “comprehensive marijuana dispensary facility”, “marijuana testing facility”, “comprehensive marijuana-infused products manufacturing facility”, “microbusiness dispensary facility”, as those terms are defined in Article XIV of the Missouri Constitution, and any other type of marijuana-related facility or business licensed or certified by the State of Missouri.

Marijuana-Infused Products, Products that are infused, dipped, coated, sprayed, or mixed with marijuana or an extract thereof, including, but not limited to, products that are able to be vaporized or smoked, edible products, ingestible products, topical products, suppositories, and infused pre-rolls.

Marijuana-Infused Products Manufacturing Facility, Includes any “medical marijuana-infused products manufacturing facility” and “comprehensive marijuana-infused products manufacturing facility”, as those terms are defined in Article XIV of the Missouri Constitution, licensed or certified by the State of Missouri.

Marijuana Testing Facility, A facility certified by the Missouri Department of Health and Senior Services to acquire, test, certify, and transport marijuana.

Section 3: Section 405.3120 of Article XX of Chapter 405 of the Code of Ordinances of the City of Clayton, Missouri, is hereby repealed and a new Section 405.3120 is hereby enacted in lieu thereof, to read as follows:

Chapter 405. Zoning Regulations

Article XX. "C-2" General Commercial District

Section 405.3120. Permitted Uses For The "C-2" Commercial District

PERMITTED USES FOR THE "C-2" ZONING DISTRICT	"C-2"
Accessory uses and buildings incidental to permitted uses.	P
Amateur radio, home antennas and associated equipment (subject to Article <u>XXVI</u>).	P
Art gallery or studio.	P
Bakeries limited to the processing of bakery goods for sale only on the premises and consumption off the premises.	P
Banks, savings and loans, credit unions and other financial institutions.	P
Commercial antennas (subject to Article <u>XXVI</u>).	P
Kiosk (subject to the provisions of Article <u>II</u> , Section <u>405.310</u>).	P
Medical or dental clinic.	P
Messenger and telephone exchange building.	P
Offices--Business or professional.	P
Package liquor store.	C
Parking lots and multi-level parking structures.	P
Personal care services.	P
Pharmacies.	P
Place of religious worship.	P
Recreation building or structure or grounds.	P
Retail establishments.	P
Academy (including dancing, painting, theater, karate and similar disciplines).	C
Automobile agencies.	C
Banquet facilities.	C
Car wash establishments.	C
Catering establishment.	C
Church spires, belfries, monuments, ornamental towers and spires and chimneys exceeding the maximum height in the zoning district may be erected to such height authorized by the Board of Aldermen of the City by conditional use permit or general ordinance.	C
Day care, nursery, pre-kindergarten, play and special schools and kindergarten.	C
Drive-through establishments for financial institutions.	C
Drive-through establishments for pharmacies, subject to the Rules, Standards, Guidelines and Mandatory Design Criteria for Drive-through Facilities.	C
Facilities (subject to Article <u>XXVII</u>)	P
Funeral homes, mortuaries and undertaking establishments.	C
Gasoline and oil service stations.	C
Grocery stores.	C
Health clubs.	C
Hotel.	C

Institution--Public buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 110 feet if the building is set back from each yard line at least 1 foot for each foot of additional building height above the height limit otherwise permitted in the district in which the building is built.	C
Lodge hall or club.	C
Microbreweries.	C
Marijuana dispensary facility (subject to the performance standards set forth in Section 405.350).	C
Marijuana testing facility (subject to the performance standards set forth in Section 405.350).	C
Mixed use buildings including the use of a portion of the building for residential occupancy providing that each residential unit contain a floor area no less than 750 square feet.	C
Nursing and convalescent home.	C
Public buildings erected or used by any department of the City, County, State or Federal Government. Public buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 110 feet if the building is set back from each yard line at least 1 foot for each foot of additional building height above the height limit otherwise permitted in the district in which the building is built.	C
Public interest signs.	C
Restaurants, including carry-out, self-seating, full-service, and wine bars (subject to the cumulative numeric limitation on wine bars found in Section 600.035 of this Code of Ordinances), and prepared food dispensing uses.	C
Schools for business, professional and technical training, but not including outdoor areas for driving or heavy equipment training.	C
Solar energy systems, building-mounted (subject to the provisions of Article XXVIII)	P
Solar energy systems, ground-mounted (subject to the provisions of Article XXVIII)	C
Theaters, both live performance and movies.	C
Utility, utility station or substation.	C
Veterinary Hospital/Clinic	C
Wind energy systems, building-mounted (subject to the provisions of Article XXVIII)	C
P = Permitted by right C = Permitted with conditional use permit Note: Uses not appearing in this table are prohibited	

Section 4: Section 405.3290 of Article XXI of Chapter 405 of the Code of Ordinances of the City of Clayton, Missouri, is hereby repealed and a new Section 405.3290 is hereby enacted in lieu thereof, to read as follows:

Chapter 405. Zoning Regulations

Article XXI. "HDC" High Density Commercial District

Section 405.3290. Permitted Uses For The "HDC" Zoning District

PERMITTED USES FOR THE "HDC" ZONING DISTRICT	"HDC"
Academy (including dancing, painting, theater, karate and similar disciplines).	C
Accessory uses and buildings incidental to permitted uses.	P

Amateur radio, home antennas and associated equipment (subject to Article XXVI).	P
Art gallery or studio.	P
Automobile agencies.	C
Bakeries limited to the processing of bakery goods for sale only on the premises and consumption off the premises.	P
Banks, savings and loans, credit unions and other financial institutions.	P
Banquet facilities.	C
Car wash establishments.	C
Catering establishment.	C
Church spires, belfries, monuments, ornamental towers and spires and chimneys exceeding the maximum height in the zoning district may be erected to such height authorized by the Board of Aldermen of the City by conditional use permit or general ordinance.	C
Commercial antennas.	P
Day care, nursery, pre-kindergarten, play and special schools and kindergarten.	C
Drive-through establishments for financial institutions.	C
Facilities (subject to Article XXVII).	P
Funeral homes, mortuaries and undertaking establishments.	C
Gasoline and oil service stations.	C
Grocery stores.	C
Health clubs.	C
Hospital.	C
Hotel.	C
Institution.	C
Kiosk (subject to the provisions of Article II , Section 405.310).	P
Lodge hall or club.	C
Marijuana cultivation facility entirely within an enclosed building (subject to performance standards set forth in Section 405.350).	C
Marijuana dispensary facility (subject to the performance standards set forth in Section 405.350).	C
Marijuana-infused products manufacturing facility (subject to performance standards set forth in Section 405.350).	C
Marijuana testing facility (subject to the performance standards set forth in Section 405.350).	C
Medical or dental clinic.	P
Messenger or telegraph service station and telephone exchange building.	P
Microbreweries.	C
Mixed use buildings including the use of a portion of the building for residential occupancy providing that each residential unit contain a floor area no less than 750 square feet.	C
Nursing and convalescent home.	C
Package liquor store.	C
Offices--Business or professional.	P
Paintless dent removal (automotive).	C
Personal care services.	P
Parking lots and multi-level parking structures.	P

Pharmacies.	P
Place of religious worship.	P
Public buildings erected or used by any department of the City, County, State or Federal Government.	C
Public interest signs.	C
Radio and broadcast stations.	C
Recreation building or structure or grounds.	P
Restaurants, including carry-out, self-seating, full-service, and wine bars (subject to the cumulative numeric limitation on wine bars found in Section 600.035 of this Code of Ordinances), and prepared food dispensing uses.	C
Retail establishments.	P
Schools for business, professional and technical training, but not including outdoor areas for driving or heavy equipment training.	C
Solar energy systems, building-mounted (subject to the provisions of Article XXVIII).	P
Solar energy systems, ground-mounted (subject to the provisions of Article XXVIII).	C
Theaters, both live performance and movies.	C
Utility, utility station or substation.	C
Veterinary Hospital/Clinic	C
Wind energy systems, building-mounted (subject to the provisions of Article XXVIII).	C
P = Permitted by right C = Permitted with conditional use permit Note: Uses not appearing in this table are prohibited.	

Section 5: Section 405.3430 of Article XXII of Chapter 405 of the Code of Ordinances of the City of Clayton, Missouri, is hereby repealed and a new Section 405.3430 is hereby enacted in lieu thereof, to read as follows:

Chapter 405. Zoning Regulations

Article XXII. "S-1" Service District

Section 405.3430. Permitted Uses For The "S-1" Service District

PERMITTED USES FOR THE "S-1" ZONING DISTRICT	"S-1"
Academy (including dancing, painting, theater, karate and similar disciplines).	C
Accessory uses and buildings incidental to permitted uses.	P
Adult entertainment--No adult use may be located within 200 feet of any school or church or any other existing adult use.	C
Amateur radio, home antennas and associated equipment (subject to Article XXVI).	P
Art gallery or studio.	P
Automobile agencies.	C
Automotive repair shops.	C

Bakeries limited to the processing of bakery goods for sale only on the premises and consumption off the premises.	P
Banks, savings and loans, credit unions and other financial institutions.	P
Car wash establishments.	C
Catering establishment.	C
Church spires, belfries, monuments, ornamental towers and spires and chimneys exceeding the maximum height in the zoning district may be erected to such height authorized by the Board of Aldermen of the City by conditional use permit or general ordinance.	C
Commercial antennas (subject to Article XXVI).	P
Day care, nursery, pre-kindergarten, play and special schools and kindergarten.	C
Drive-through establishments for financial institutions.	C
Drug rehabilitation facility--Inpatient or outpatient facilities for the treatment of alcohol and other drug abuse, to be operated and located as stand-alone building(s) only. The exterior appearance of the facility must be approved by the Architectural Review Board to ascertain that it is consistent and compatible with its surroundings.	C
Facilities (subject to Article XXVII).	P
Gasoline and oil service stations.	P
Grocery stores.	C
Hospital--Public buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 110 feet if the building is set back from each yard line at least 1 foot for each foot of additional building height above the height limit otherwise permitted in the district in which the building is built.	C
Hotel.	C
Institution--Public buildings, hospitals, institutions or schools when permitted in a district, may be erected to a height not exceeding 110 feet if the building is set back from each yard line at least 1 foot for each foot of additional building height above the height limit otherwise permitted in the district in which the building is built.	C
Kiosk (subject to the provisions of Article II , Section 405.310).	P
Lodge hall or club.	P
Marijuana cultivation facility entirely within an enclosed building (subject to the performance standards set forth in Section 405.350).	C
Marijuana dispensary facility (subject to the performance standards set forth in Section 405.350).	C
Marijuana-infused products manufacturing facility (subject to performance standards set forth in Section 405.350).	C
Marijuana testing facility (subject to performance standards set forth in Section 405.350).	C
Medical or dental clinic.	P
Messenger or telegraph service station and telephone exchange building.	P
Mixed use buildings including the use of a portion of the building for residential occupancy providing that each residential unit contain a floor area no less than 750 square feet.	C
Nursery or greenhouse.	P
Offices--Business or professional.	P
Package liquor store.	C
Parking lots and multi-level parking structures.	P
Personal care services.	P
Pharmacies.	P

Places of religious worship--Places of religious worship may be erected to a height not exceeding 75 feet if the building is set back from each yard line at least 1 foot for each foot of additional building height above the height limit otherwise permitted in the district in which the building is built.	P
Public buildings erected or used by any department of the City, County, State or Federal Government. Public buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 110 feet if the building is set back from each yard line at least 1 foot for each foot of additional building height above the height limit otherwise permitted in the district in which the building is built.	C
Public interest signs.	C
Recreation building or structure or grounds.	P
Research or testing laboratory.	P
Restaurants, including carry-out, self-seating, full-service, and wine bars (subject to the cumulative numeric limitation on wine bars found in Section 600.035 of this Code of Ordinances), and prepared food dispensing uses.	C
Retail establishments.	P
Schools for business, professional and technical training, but not including outdoor areas for driving or heavy equipment training.	C
Solar energy systems, building-mounted (subject to the provisions of Article XXVIII).	P
Solar energy systems, ground-mounted (subject to the provisions of Article XXVIII).	C
Theaters, both live performance and movies.	C
Utility, utility station or substation.	C
Wind energy systems, building-mounted (subject to the provisions of Article XXVIII).	C
P = Permitted by right C = Permitted with conditional use permit Note: Uses not appearing in this table are prohibited.	

Section 6: Subsection (13) of Subsection (A) of Section 405.3620 of Article XXV of Chapter 405 of the Code of Ordinances of the City of Clayton, Missouri, is hereby repealed and a new Section 405.3620(A)(13) is hereby enacted in lieu thereof, to read as follows:

Chapter 405 Zoning Regulations

Article XXV. Off-Street Parking and Loading Regulations

Section 405.3620. Off-Street Parking Requirements

A. All buildings shall provide off-street parking in accordance with the following requirements:

[**NOTE:** The rest of Subsection (A) is not altered, amended or affected in any way by this amendment and remain in full force and effect. For that reason these materials are not set forth here in full.]

13. Commercial, business, office, service and industrial buildings except for medical office as defined in Subsection (12).

- a. Off-street parking—required. Commercial, business, office, service and industrial buildings must provide one (1) parking space for each three hundred (300) square feet of gross floor area within the building or structure. Office buildings in excess of thirty thousand (30,000) square feet not occupying more than forty percent (40%) of the site or office buildings erected in multi-building developments in which not more than forty percent (40%) of the total site is occupied with buildings and office buildings with desired development features approved under the site plan review procedure may provide parking at the rate of one (1) parking space per four hundred (400) square feet of floor area.
- b. Off-street parking—exempt. Retail establishments not exceeding three thousand (3,000) square feet of floor area, excluding permanent storage areas, in downtown Clayton with the exception of the properties facing the north side of Maryland Avenue west of Forsyth Boulevard to the west City limits.
- c. Marijuana dispensary facility shall provide one (1) space per three hundred (300) square feet.
- d. Marijuana testing facility shall provide one (1) space per four hundred (400) square feet.
- e. Marijuana cultivation facility shall provide one (1) space per one thousand (1,000) square feet.
- f. Marijuana-infused products facility shall provide one (1) space per five hundred (500) square feet.

Section 7: Section 410.163 of Article III of Chapter 410 of the Code of Ordinances of the City of Clayton, Missouri, is hereby repealed and a new Section 410.163 is hereby enacted in lieu thereof, to read as follows:

Chapter 410. Overlay and Urban Design Zoning Districts

Article III. Northeast Downtown Overlay Zoning District

Section 410.163. Northeast Downtown Overlay Use Table

Chapter 410, Article III: Northeast Downtown Overlay Use Table			
	Ground Floor	Ground Floor, North Central Avenue	Upper Floor(s)
Entertainment/Dining			
Bakeries limited to the processing of bakery goods for sale only on the premises and consumption off the premises	P	P	
Microbreweries	P	P	
Restaurants, including carry-out, self-seating, full-service, and wine bars (subject to the cumulative numeric limitation on wine bars found in Section 600.035 of this Code of Ordinances), and prepared food dispensing uses	P	P	
Theaters, both live performance and movies	P	P	
Primary Retail			

Chapter 410, Article III: Northeast Downtown Overlay Use Table

	Ground Floor	Ground Floor, North Central Avenue	Upper Floor(s)
Art gallery or studio	P	C	
Grocery stores	P	C	
Marijuana Dispensary Facility (subject to the performance standards set forth in Section 405.350)	C	C	C
Retail establishments	P	C	
Secondary Retail/Service			
Academy (including dancing, painting, theater, karate and similar disciplines)			P
Banks, savings and loans, credit unions and other financial institutions			P
Banquet facilities			P
Medical or dental clinic			P
Personal care service			P
Pharmacies			P
Office			
Offices — business or professional			P
Residential			
Residential — multi-family dwellings			P

Section 8: Section 410.755 of Article XII of Chapter 410 of the Code of Ordinances of the City of Clayton, Missouri, is hereby repealed and a new Section 410.755 is hereby enacted in lieu thereof, to read as follows:

Chapter 410. Overlay and Urban Design Zoning Districts

Article XII. Clayton Road (“C-2”) Urban Design Zoning District

Section 410.755. Permitted Uses For “CR-UDD”

PERMITTED USES FOR "CR-UDD"	
Accessory uses and buildings incidental to permitted uses.	P
Amateur radio, home antennas and associated equipment (subject to Article XXVI of Chapter 405).	P
Art gallery or studio.	P
Bakeries limited to the processing of bakery goods for sale only on the premises and consumption off the premises.	C
Banks, savings and loans, credit unions and other financial institutions.	P
Commercial antennas (subject to Article XXVI of Chapter 405).	P
Dry cleaning and dyeing establishment.	P
Kiosk (subject to the provisions of Article II , Section 405.310).	P
Laundry shop--either drop-off or self-service providing no more than 30 machines.	P
Medical or dental clinic.	P

Messenger and telephone exchange building.	P
Mixed-use developments (per definition in Section 410.695).	P
Offices--Business or professional.	P
Pharmacies.	P
Place of religious worship.	P
Recreation building or structure or grounds.	P
Retail establishments.	P
Academy (including dancing, painting, theater, karate and similar disciplines).	P
Automobile agencies.	P
Banquet facilities.	P
Catering establishment.	P
Church spires, belfries, monuments, ornamental towers and spires and chimneys exceeding the maximum height in the zoning district may be erected to such height authorized by the Board of Aldermen of the City by conditional use permit or general ordinance.	P
Day care, nursery, pre-kindergarten, play and special schools and kindergarten.	C
Drive-through establishments for financial institutions.	C
Funeral homes, mortuaries and undertaking establishments.	C
Grocery stores.	C
Health clubs.	C
Hotel.	C
Institution--Public buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 110 feet if the building is set back from each yard line at least 1 foot for each foot of additional building height above the height limit otherwise permitted in the district in which the building is built.	C
Live/work unit (per definition in Section 410.695).	C
Lodge hall or club.	C
Marijuana Dispensary Facility (subject to the performance standards set forth in Section 405.350)	C
Marijuana Testing Facility (subject to the performance standards set forth in Section 405.350)	C
Microbreweries.	P
Nursing and convalescent home.	C
Public buildings erected or used by any department of the City, County, State or Federal Government. Public buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 110 feet if the building is set back from each yard line at least 1 foot for each foot of additional building height above the height limit otherwise permitted in the district in which the building is built.	C
Public interest signs.	C
Residential--multi-family residential development or town home development.	C
Restaurants (including carry-out, self-seating and full-service) and prepared food dispensing uses.	C
Schools for business, professional and technical training, but not including outdoor areas for driving or heavy equipment training.	C
Theaters, both live performance and movies.	C

P = Permitted by right
C = Permitted with conditional use permit
Note: Uses not appearing in this table are prohibited.

Section 9: Editorial Discretion

The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered in the process of recodifying or servicing the City's Code of Ordinances 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 10: Severability

It is hereby declared to be the intention of the Clayton Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

Section 11: Effective Date

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 28th day of March 2023

Mayor

Attest:

City Clerk



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN

FROM: DAVID GIPSON, CITY MANAGER
ANNA KRANE, AICP, DIRECTOR, PLANNING & DEV. SERVICES

DATE: MARCH 28, 2023

SUBJECT: PUBLIC HEARING AND RESOLUTION - A CONDITIONAL USE PERMIT FOR 7730 BONHOMME AVENUE, HERTZ RENTAL CAR AGENCY LOCATED AT 7730 BONHOMME AVENUE

This is a public hearing to consider an application for a Conditional Use Permit submitted by Heather Mosher of The Hertz Corporation, d/b/a Hertz, to allow for the operation of a 450 square foot rental car office and parking.

Hertz will be open Monday through Friday from 8:00 a.m. until 5:00 p.m. The rental car agency will operate out of Le Meridian hotel, utilizing an existing vestibule adjacent to the parking entrance for office purposes and parking vehicles in assigned spaces in the garage. Hertz intends to cater to a combination of local and out-of-town customers. The hotel is surrounded by office, retail, and restaurant uses which are compatible with the rental car use.

Hertz has reached an agreement with the property owner for 30 dedicated parking spaces for parking of rental vehicles. The use of the existing parking garage will benefit the operation of the rental car agency as well as the public by providing an area out of the right-of-way for rental operations.

The Plan Commission considered this request at its meeting on March 20, 2023, and voted unanimously to recommend approval as requested. A copy of the Plan Commission staff report and application are attached.

STAFF RECOMMENDATION: To approve a Conditional Use Permit for the operation of Hertz located at 7730 Bonhomme Avenue per the conditions outlined in the Resolution.

RESOLUTION NO. 2023-11

WHEREAS, on February 27, 2023, the City received an application and letter from Heather Mosher of The Hertz Corporation, d/b/a Hertz, requesting a Conditional Use Permit to allow for the operation of a rental car agency;

WHEREAS, the City Plan Commission considered this request at its March 20, 2023, meeting and voted to recommend approval to the Board of Aldermen; and

WHEREAS, the Board of Aldermen held a public hearing with regard to this Conditional Use Permit, after due notice as required by law, at their meeting of March 28, 2023;

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

Section 1. Pursuant to the authority of Article VII (Conditional Use Permit) of Chapter 405 (Zoning Regulations), of the Code of Ordinances of the City of Clayton, and subject to the terms and conditions set forth in Section 2, below, the approval of a Conditional Use Permit to The Hertz Corporation, to allow the operation of a rental car agency to be known as “Hertz” located at 7730 Bonhomme Avenue is hereby granted. Said property is more particularly described as follows:

LOTS 6 THROUGH 11 AND LOT PT 12 4 3 87, BLOCK 15
IN THE CITY OF CLAYTON, MISSOURI

Section 2. In addition to compliance with all Ordinances of the City of Clayton and Laws of the State of Missouri, the permitted uses shall be conducted so as to comply with the following stipulations and conditions at all times:

- (1) The permit shall be assigned to The Hertz Corporation, d/b/a Hertz (the “Permittee”) and shall not be further transferred or assigned without the prior written approval of the City of Clayton.
- (2) The property shall be improved, maintained and operated substantially in accordance with an application for a Conditional Use Permit received by the City of Clayton on February 27, 2023, and with plans and specifications as filed with and approved by the City of Clayton.
- (3) Permitted hours of operation are up to seven (7) days a week from no earlier than 7:00 a.m. until no later than 6:00 p.m.
- (4) Any exterior revisions, including signage, shall be approved by the City prior to such change.
- (5) That the Permittee is responsible for keeping the area inside and outside the establishment clean and free from litter and debris.

(6) No outdoor music or similar audio shall be permitted without the prior written approval of the City.

(7) No fueling, washing, or maintenance of vehicles shall be conducted on public streets or alleys.

(8) Rental operations including but not limited to delivering, exchanging, and returning of vehicles shall be conducted solely on private property.

(9) Use of Bonhomme Avenue right-of-way and public street parking shall not be used for temporary or extended rental vehicle parking or idling for rental operations.

(10) That the Permittee shall, within thirty (30) days of the adoption of the Resolution, notify the City Clerk of the City of Clayton in writing that the conditional use permit provided for is accepted and that the conditions set forth herein are understood and will be complied with.

(11) That Permittee's failure to comply with any of the conditions provided for in the Resolution may cause immediate termination of the permit.

Section 3. The City Manager of the City of Clayton is hereby authorized and directed to issue a Conditional Use Permit in accordance with the provisions of this Resolution. Said permit shall contain all the conditions and stipulations set out in Section 2 of this Resolution.

Adopted this 28th day of March 2023.

Mayor

ATTEST:

City Clerk

THE CITY OF CLAYTON

Board of Aldermen
In-Person and Virtual Meeting
March 14, 2023
7:00 p.m.

Minutes

The meeting was open to individuals to attend in-person and/or virtually via Zoom.

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

In-person: Rich Lintz, Bridget McAndrew, Susan Buse, Becky Patel, Gary Feder, and Mayor Harris.

Virtually: Alderman Berkowitz and City Clerk Frazier

Staff: City Manager Gipson, City Attorney O'Keefe, Assistant City Manager Muskopf, Anna Krane, Director of Planning

PUBLIC REQUESTS AND PETITIONS

None

PUBLIC HEARING AND AN ORDINANCE FOR A TEXT AMENDMENT TO ARTICLE XIV OF CHAPTER 405 (ZONING REGULATIONS) RELATED TO THE WILLIAMSBURG SHOPPES

Public hearing is open.

City Manager Gipson reported that this is a public hearing to consider a text amendment to Chapter 405 Zoning Regulations, Article XIV Maryland Gateway Overlay District related to a specific block known as the Williamsburg Shoppes.

Anna Krane, Director of Planning, was in attendance to answer questions.

Public hearing closed.

Alderman Lintz introduced Bill No. 6950, to approve an amendment to Chapter 405, Article XIV, Williamsburg Shoppes to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O'Keefe reads Bill No. 6950, first reading, an Ordinance Amending the Maryland Gateway Overlay District Regulations in Article XIV of Chapter 405 (Zoning Regulations) of the Clayton City Code Relating to the Williamsburg Shoppes Area on the North Side of Maryland Avenue by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6950 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6950, to approve an amendment to Chapter 405, Article XIV, Williamsburg Shoppes to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6950, second reading, an Ordinance Amending the Maryland Gateway Overlay District Regulations in Article XIV of Chapter 405 (Zoning Regulations) of the Clayton City Code Relating to the Williamsburg Shoppes Area on the North Side of Maryland Avenue by title only.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6816 of the City of Clayton.

A PUBLIC HEARING AND A RESOLUTION FOR A CONDITIONAL USE PERMIT FOR 33 N. CENTRAL AVENUE FOR A RESTAURANT D/B/A AS NATIVE FOODS

Public hearing opened with proof of publication.

City Manager Gipson reported that this is a public hearing to consider an application for a Conditional Use Permit submitted by Bridget Holton of BHD Licensing on behalf of NF Missouri LLC., d/b/a Native Foods, to allow for the operation of a 2,126 square foot restaurant.

Bridget Holton, applicant, was in attendance to answer questions.

Public hearing closed.

Motion made by Alderman Lintz to approve Resolution No. 2023-07, granting a Conditional Use Permit for Native Foods located at 25 N. Central Avenue. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

A PUBLIC HEARING AND AN ORDINANCE FOR A SUBDIVISION PLAT/LOT CONSOLIDATION FOR 7827 AND 7855 DAVIS DRIVE

Public hearing opened with proof of publication.

City Manager Gipson reported that this is a public hearing and subsequent ordinance to consider approving a subdivision plat for consolidation of two existing lots – 7827 and 7855 Davis Drive.

Tom Guignon, applicant, was in attendance to answer questions.

Public hearing closed.

Alderman Lintz introduced Bill No. 6956, to approve a subdivision plat and lot consolidation for 7827 and 7855 Davis Drive to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6956, first reading, an Ordinance Providing for the Approval of a Plat to Consolidate Certain Property Located in the City of Clayton, Missouri by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6956 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6956, to approve a subdivision plat and lot consolidation for 7827 and 7855 Davis Drive to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6956, second reading, an Ordinance Providing for the Approval of a Plat to Consolidate Certain Property Located in the City of Clayton, Missouri by title only.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6817 of the City of Clayton.

A PUBLIC HEARING AND AN ORDINANCE FOR A SUBDIVISION PLAT/LOT CONSOLIDATION FOR 21 AND 21A DARTFORD AVENUE

Public hearing opened with proof of publication.

City Manager Gipson reported that this is a public hearing and subsequent ordinance to consider approving a subdivision plat for consolidation of two existing lots – 21 and 21A Dartford Avenue.

Public hearing closed.

Alderman Lintz introduced Bill No. 6957, to approve a Subdivision Plat and Lot Consolidation for 21 Dartford Avenue to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6957, first reading, an ordinance Providing for the Approval of a Plat to Consolidate Certain Property Located in the City of Clayton, Missouri by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6957 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6957, to approve a Subdivision Plat and Lot Consolidation for 21 Dartford Avenue to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6957, second reading, an ordinance Providing for the Approval of a Plat to Consolidate Certain Property Located in the City of Clayton, Missouri by title only.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6818 of the City of Clayton.

RECOMMENDATIONS FROM THE CLAYTON COMMUNITY EQUITY COMMISSION

City Manager reported that the Clayton Community Equity Commission (CEC) has a subcommittee that discusses law enforcement and municipal courts. The subcommittee submitted recommendations to the CEC for consideration in January of 2023. The following recommendations are presented for consideration:

1. We recommend that principles of equity and transparency, consistent with the Ferguson reforms, be imbedded in the selection of Clayton’s judge.
2. We recommend that a member of this CEC be included in the selection committee to assist in the evaluation of applicants.

Stuart Berkowitz, CEC member, addressed the Board in support of the proposed recommendations.

Lauren Rodriquez-Goldstein, CEC member, addressed the Board in support of the proposed recommendations (*statement attached*)

Christine Schmitz, CEC member, addressed the Board in support of the proposed recommendations; statement included excerpts from *Forward Through Ferguson: A Path Toward Racial Equity (attached)*.

Francis Pires, member of the CEC, was present to answer questions.

Ben Uchitelle, member of the CEC, was present (virtually) to answer questions.

Motion made by Alderman Lintz to table the agenda item until the next meeting. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

CONSENT AGENDA

1. Minutes – February 28, 2023.
2. Liquor license for NF Missouri LLC d/b/a Native Foods.
3. Resolution No. 2023-09 – Hazardous Moving Violation Enforcement Grant application.
4. Resolution No. 2023-10 – Driving While Intoxicated Enforcement Grant application.

Motion made by Alderman Lintz to approve the Consent Agenda. Alderman Berkowitz seconded.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye.

AN ORDINANCE FOR PROCEDURES FOR ISSUANCE AND ENFORCEMENT OF SUBPOENAS

City Manager Gipson reported that the Charter of the City of Clayton authorizes the Board of Aldermen to “compel by the issuance of process the attendance of witnesses and the production of papers and records relating to any subjects under investigation in which the interest of the city is involved, call upon the proper officers of the city or county to execute such process, and administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal and civil jurisdiction under the laws of Missouri.”

The proposed ordinance establishes a procedure to issue and enforce subpoenas for matters of City interest under investigation by the Board of Aldermen.

Alderman Lintz introduced Bill No. 6958, to approve an amendment to Chapter 100, Article IV relating to Procedures for Issuance and Enforcement of Subpoenas to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6958, first reading, an Ordinance Relating to Procedures for Issuance and Enforcement of Subpoenas in Furtherance of Board of Aldermen Proceedings by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6958 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6958, to approve an amendment to Chapter 100, Article IV relating to Procedures for Issuance and Enforcement of Subpoenas to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6958, second reading, an Ordinance Relating to Procedures for Issuance and Enforcement of Subpoenas in Furtherance of Board of Aldermen Proceedings by title only.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6819 of the City of Clayton.

AN ORDINANCE FOR AN ON-CALL SERVICES CONTRACT FOR LANDSCAPE AND TREE PRESERVATION PROFESSIONAL SERVICES

City Manager Gipson reported that proposed ordinance for Board approval is an updated contract to continue engaging Christner Architects for consulting services.

Alderman Lintz introduced Bill No. 6959, to approve a contract with Christner Architects for on-call services for landscape & tree preservation to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6959, first reading, an Ordinance Approving a Contract with Christner for Professional Services for Landscape Architecture and Tree Preservation by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6959 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6959, to approve a contract with Christner Architects for on-call services for landscape & tree preservation to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6959, first reading, an Ordinance Approving a Contract with Christner for Professional Services for Landscape Architecture and Tree Preservation by title only.

The motion passed on a roll call vote: Alderman Lintz- Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6820 of the City of Clayton.

AN ORDINANCE FOR A CONTRACT WITH BYRNE AND JONES CONSTRUCTION FOR CONSTRUCTION OF A POCKET PARK AT 7811 MARYLAND AVENUE

City Manager Gipson reported that the proposed ordinance is for a contract with Byrne and Jones Construction for the construction of a pocket part at 7811 Maryland Avenue.

Alderman Lintz introduced Bill No. 6960, to approve a contract with Byrne and Jones Construction for construction of a pocket park at 7811 Maryland Avenue to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6960, first reading, an Ordinance Approving a Contract with Byrne and Jones Construction for Construction of a Pocket Park at 7811 Maryland Avenue by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6960 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6960, to approve a contract with Byrne and Jones Construction for construction of a pocket park at 7811 Maryland Avenue to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6960, second reading, an Ordinance Approving a Contract with Byrne and Jones Construction for Construction of a Pocket Park at 7811 Maryland Avenue by title only.

The motion passed on a roll call vote: Alderman Lintz- Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6821 of the City of Clayton.

Motion made by Alderman Feder that the Board adjourn to a closed meeting, with a closed vote and record, as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, and to discuss matters related to negotiation of a contract pursuant to Section 610.021(12), RSMo. and/or proprietary information pursuant to Sec. 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO. Alderman Buse seconded.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye.

There being no further regular business the meeting adjourned at 8:19 p.m.

Mayor

ATTEST:

City Clerk

CLAYTON
COMMUNITY EQUITY COMMISSION
2022 ANNUAL REPORT

OVERVIEW

The Community Equity Commission (**Bill No. 6759**) was established to provide the Mayor and Board of Aldermen with insight and guidance on matters of equity, diversity and inclusion.

The Ordinance creating the Commission provides it shall serve in an advisory role to the Mayor and Board of Aldermen on ways to:

1. *“Promote community awareness and education on the value of diversity to the community;*
2. *Promote equity on the basis of economic status, race, color, religion, gender, national origin, ancestry, marital status, lawful source of income, physical or mental disability, familial status, sexual orientation, and gender identity;*
3. *Evaluate and develop actionable equity recommendations to be used to examine and strengthen policies, practices, services and programs, which will establish the Commission as a community resource and regional leader;*
4. *Promote responsiveness of government to concerns of all minority groups and others that may be subject to bias or discrimination in the community; and*
5. *Encourage the creation and continuation of community equity, diversity and inclusion awareness efforts, programs, and activities that are available and accessible to all community members.”*

COMMISSION MEMBERS

The Ordinance provides for 7 Commissioners. During 2022 they were: Ben Uchitelle, Chair; Frances Pires, Stuart Berkowitz, Christine Schmiz, Ted Wheeler, Lauren Rodriguez-Goldstein, and Shantay Bolton.

Ex-Officio and Aldermanic Liaison Members

The Ordinance further provides for the appointment of Ex-Officio and Aldermanic Liaison Members. During 2022 Ex-Officio Members were Cameron Poole of the Clayton School District, JoAnna Schooler of Washington University, Rob Whitney of the Clayton Chamber of Commerce, and Kenneth Murdock of St. Louis County Government.

Alderwoman Susan Buse and Alderman Gary Feder were the Board of Aldermen Liaisons.

2022 Activities

* Continued the CEC reflection tradition: CEC opens its meetings with a land acknowledgment and reflection to give consideration and appreciation to individuals who contributed to equity and diversity and inclusion efforts throughout American history. In 2022 CEC recognized:

- Black History Month: The Resurrection of Henry “Box Brown”

- Women’s History Month: Marian Anderson
- AAPI History Month: Grace Lee Boggs, George Takei, Ang Lee, Jerry Yang, Kalpana Chawla
- Gay Pride Month: Harvey Milk, Martha P. Johnson, Miss Major Griffin-Gracy
- Transgender Day of Remembrance: Rita Hester
- International Day of Persons with Disabilities: Judy Heumann

* Neighborhood Indentures – A thorough review of all neighborhood Indentures in Clayton was conducted to remove racially restrictive language. Of the 39 neighborhoods in Clayton, nearly all included racial restrictions in their indentures. Although no longer legal, words matter and the fact that such hateful language was handed down unknowingly generation-to-generation in legal documents was untenable. Following a recommendation by the CEC, the Board of Aldermen adopted Ordinance No. 6783 on November 8, 2022. This ordinance declare invalid and void any declaration, indenture, or other governing document applicable to any dwelling or area in the City of Clayton that includes a discriminatory restrictive covenant or provision in violation of the City’s housing discrimination regulations.

* Preserving existing duplexes – A recommendation was made to the Board of Aldermen to allow existing duplexes that had been grandfathered in neighborhoods that has since been zoned single-family to enjoy the same right to be improved and replaced as single-family homes. The Board unanimously adopted the recommendation.

- Granny Flats- The CEC recommended and the BOA changed the use of the pejorative words “granny flats” in its housing ordinances to “Accessory Dwelling Units”. A seemingly small but important change in housing matters.

* Faith Based Meeting – In late 2022 the CEC invited Faith Based Leaders of the Clayton community to attend our regular Jan. 2023 meeting. The purpose was to learn from these Leaders what their houses of worship are undertaking in the areas of DEI.

*Affordable Housing – A Housing Subcommittee was established in 2022 to consider the many aspects and challenges of providing affordable housing in Clayton. Several CEC members attended the important Wash. Univ. program: “*Welcome Home: How Thoughtful Housing Policy Promotes Thriving Communities.*” The CEC shall continue to focus on these important areas of concern for our City.

- Clayton Connection – On a weekly basis the CEC provides important information for the Clayton Connection publication relating to areas of equity, diversity and inclusion in our community. The CEC also prepares and furnishes DEI articles and information to City Views and other media.
- Meeting with Kirkwood Human Rights Commission – The CEC hosted an informative meeting with members of the Kirkwood Human Rights

Commission to exchange mutual ideas and activities. From this meeting the CEC is starting work on recommending to the BOA an annual Essay and annual Person of the Year in the areas of DEI.

- Municipal Courts Subcommittee – During 2022 this Subcommittee spent considerable time studying Clayton’s Municipal Court system for handling the various traffic violations that are brought before it. In 2023 recommendations were made to the BOA to ensure that defendants continue to be treated on an equitable basis.

Working with Chief Smith – During 2022 Chief Smith continued to meet with and furnish helpful information to the CEC on his officers’ activities. In addition, the CEC continued to work with Chief Smith on traffic stop analysis to ensure that stops are based on objective standards. Chief Smith has been extremely helpful in all these activities.

* Citizen Survey: CEC continued to review and offer suggestions for the Clayton Citizen Survey for the residents to answer on the City’s ongoing equity efforts.

In summary, the activities of the Community Equity Commission are ongoing. We look forward in 2023 and the years ahead to continuing our efforts toward making Clayton a truly just and equitable community.

Respectfully Submitted

Clayton Community Equity Commission

Ben Uchitelle, Chair

Stuart Berkowitz, Frances Pires, Christine Schmiz, Ted Wheeler, Shantay Bolton and
Lauren Rodriguez-Goldstein.

And

Cameron Poole (Clayton School District), JoAnna Schooler (Washington University),
Rob Whitney (Clayton Chamber of Commerce) and Ken Murdock (St. Louis County).
Ex-Officio

And

Susan Buse and Gary Feder – Aldermanic Liaisons



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
DATE: MARCH 28, 2023
SUBJECT: RESOLUTION - ADOPTING A SELECTION PROCESS FOR MUNICIPAL JUDGE

On March 14, 2023, the Board of Aldermen discussed two Community Equity Commission (CEC) recommendations related to updating the selection process for the Municipal Judge, which was formalized and adopted by the Board of Aldermen on January 25, 2022. The attached Resolution will update the selection process currently in place and the Request for Qualifications (RFQ) will be used to solicit applications for the Municipal Judge position.

The key updates of the attached Resolution and RFQ are as follows:

Resolution

- Increasing the three-member panel to a four-member panel to be appointed by the Board of Aldermen and Mayor.
- The interview panel shall be comprised of an elected official, a member of the Clayton Community Equity Commission, and two others who have expertise in criminal justice and a demonstrated interest in equity issues such as public interest law, administration of justice, pro -bono, non- profit, or similar experience. (Lawyers preferred but not required). None of the panel members shall have, in the judgment of the Board of Aldermen and Mayor, either bias or a direct or indirect conflict of interest in serving on the interview panel.

RFQ

- Information on previous and current related experience and services provided, including municipal experience and application of the recommendations of the Missouri Supreme Court Commission on Racial and Ethnic Fairness standards, as well as principles of equity and transparency, consistent with the Ferguson reforms.

Staff recommends that the Board of Aldermen approve the attached Resolution to update the selection process for Municipal Judge.

RESOLUTION NO. 2023-12

**A RESOLUTION ADOPTING A SELECTION PROCESS FOR MUNICIPAL JUDGE
AND SUPERSEDING RESOLUTION 2022-05 ON THE SAME SUBJECT**

WHEREAS, the City of Clayton, Missouri Charter states that the municipal court shall be presided over by a Judge appointed by the Board of Aldermen for a term of two years.; and

WHEREAS, the Board of Aldermen desires to adopt a standard set of procedures for the selection of the Municipal Judge; and

WHEREAS, the Board of Aldermen has reviewed and considered recommendations from the Clayton Community Equity Commission relative to the selection process; and

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

- Section 1. A four-member panel will be appointed by the Board of Aldermen and Mayor to interview judge candidates and make its reasoned recommendation(s) to the Board of Aldermen and Mayor. A transcript of the interviews, RFQ submittals, and panel recommendations shall be submitted to the Board of Aldermen for review prior to formal selection.

- Section 2. : The interview panel shall be comprised of an elected official, a member of the Clayton Community Equity Commission, and two others who have expertise in criminal justice and a demonstrated interest in equity issues such as public interest law, administration of justice, pro -bono, non- profit, or similar experience. (Lawyers preferred but not required). None of the panel members shall have, in the judgment of the Board of Aldermen and Mayor, either bias or a direct or indirect conflict of interest in serving on the interview panel.

- Section 3. The attached Request for Qualifications (RFQ) shall be utilized to solicit applications for the Municipal Judge position.

- Section 4. The Board of Aldermen hereby adopts the selection process for Municipal Judge to supersede and replace the procedures set out in Resolution 2022-05 as adopted on January 25, 2022.

- Section 5. This Resolution 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 28th day of March 2023

Mayor

Attest:

City Clerk

RESOLUTION NO. ~~2022-05~~2023-12

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- Section 1. A ~~3~~four-member panel will be appointed by the Board of Aldermen and Mayor to interview judge candidates and make its reasoned recommendation(s) to the Board of Aldermen and Mayor. A transcript of the interviews, RFQ submittals, and panel recommendations shall be submitted to the Board of Aldermen for review prior to formal selection.

- Section 2. ~~The interview panel shall be comprised of an elected official, a member of the Clayton Community Equity Commission, and two others who have expertise in criminal justice and a demonstrated interest in equity issues such as public interest law , administration of justice, pro -bono, non- profit, or similar experience. (Lawyers preferred but not required). None of the panel members shall have, in the judgment of the Board of Aldermen and Mayor, either bias or a direct or indirect conflict of interest in serving on the interview panel. The interview panel shall be comprised of an elected official and 2 others who have no direct or indirect conflicts of interest and a demonstrated interest in equity issues (lawyers preferred but not required), such as public law interest, administration of justice, pro bono, non-profit or similar experience. In sum, the panel members should have some expertise in criminal justice with an equity lens.~~

- Section 3. The attached Request for Qualifications (RFQ) shall be utilized to solicit applications for the Municipal Judge position.

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- Section 5. This Resolution 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 this ~~25th~~28th day of ~~January 2022~~March 2023

Mayor

Attest:

City Clerk

**CITY OF CLAYTON
MUNICIPAL JUDGE
REQUEST FOR QUALIFICATIONS (RFQ)**

INTRODUCTION: The City of Clayton (City) is seeking a Municipal Judge to provide judicial services. Attorneys are invited to submit qualifications and proposals for the provision of these services. In order to be considered, proposals must address each of the concerns requested in this document.

BACKGROUND: The mission of Clayton city government is to foster a diverse and inclusive community with a vital balance of neighborhoods, businesses, commercial and government centers, educational institutions, and a healthy environment through an open, equitable, accessible and fiscally responsible government.

The City of Clayton Municipal Court averages 5 Alcohol and Drug related cases, 148 Traffic cases and 28 Non-Traffic cases per month.

Schedule:

1st and 3rd Wednesday of each month – 6:00 p.m. (Municipal Court)

2nd Thursday of each month – 9:00 a.m. (Housing Court)

Submission Deadline: All proposals must be received no later than 3:00 p.m., [INSERT DATE].

Per the City’s Charter, Article VI, Section 2:

The municipal court shall be presided over by a judge appointed by the board of aldermen for a term of two years. He shall be a resident and elector of the city, a licensed member of the bar of this state, and shall have been in active practice for at least three years. He shall be removable for cause at any time by a majority vote of the entire board of aldermen after a public hearing before the board. He shall receive compensation as determined by ordinance. Whenever the municipal judge is temporarily absent or unable to act, the mayor shall appoint an eligible person to act during such absence or disability. Whenever the office of municipal judge becomes vacant for any reason, the board of aldermen shall appoint an eligible person for the unexpired term.

REQUESTED INFORMATION: Individuals interested in the opportunity to work with the City will provide the following information:

1. Name and contact information, including e-mail and website address(es).
2. Affirm the City of Clayton residency.
3. Summary of qualifications, specializations, experience, professional affiliations, community service, special training, availability, and Missouri Bar license number(s).
4. Information on previous and current related experience and services provided, including municipal experience and application of the recommendations of the Missouri Supreme Court Commission on Racial and Ethnic Fairness standards, as well as principles of equity and transparency, consistent with the Ferguson reforms.
5. List of clients currently represented that could cause a conflict of interest with responsibilities listed in the scope of services above. Describe how you would resolve these or any future conflicts of interest.
6. If you have been involved in any litigation in the past five years in which the City or one of its employees was named as a party, please describe the case(s).
7. Other factors or special considerations which may influence the City’s selection.
8. List of references, contact information and services provided, including all current municipal clients.

OTHER TERMS AND CONDITIONS: The City reserves the right to reject any or all responses. The City reserves the right to waive any variances from original RFQ specifications in cases where the variances are considered to be, in the sole discretion of the City, in the best interests of the City.

All proposals submitted in response to this RFQ shall become the property of the City. The City retains the right to use any or all information presented in any proposal to the RFQ, whether amended or not. Selection or rejection of the proposal does not affect this right.

The position shall be awarded to the applicant determined to be best qualified to fulfill the responsibilities of the position while upholding the City's stated mission, with a mutually agreeable start date.

EVALUATION AND SELECTION CRITERIA: Selection of the Municipal Judge will be made by the Mayor and Board of Aldermen and include the consideration of the following criteria:

- General qualifications of the candidate for the position.
- Experience.
- References.
- Compliance with this Request for Qualifications.
- Other criteria which pertain to providing effective judicial services such as availability, timeliness, responsiveness and follow-through.

SUBMITTAL: Please provide an electronic copy of the proposal limiting it to five (5) pages, including signature. Questions and proposal submissions shall be directed to:

June Frazier, City Clerk
City of Clayton
(314) 290-8469
jfrazier@claytonmo.gov

**CITY OF CLAYTON
MUNICIPAL JUDGE
REQUEST FOR QUALIFICATIONS (RFQ)**

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June Frazier, City Clerk
City of Clayton
(314) 290-8469
jfrazier@claytonmo.gov



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
KAREN DILBER, FINANCE DIRECTOR
DATE: MARCH 28, 2023
SUBJECT: ORDINANCE - RE-ADOPTING UERF PENSION ENHANCEMENTS AND PLAN
RESTATEMENT WITH CORRECTIONS AND AMENDING ORDINANCE 6801

At the Board of Aldermen meeting on January 10, 2023, the Board approved ordinance number 6801, adopting the January 2023 Uniformed Employees' Pension Plan restatement as Exhibit A, in substantially the same form set forth therein and adding certain plan enhancements. The enhancements included a one-time back DROP (Deferred Retirement Option Program), a forward DROP and the purchase of military service credits.

At the time it was passed, Exhibit A misstated the effective date of the forward DROP. As stated in the multiple meetings regarding the implementation of the forward DROP, the intent was to have the forward DROP effective on January 1, 2023.

Recommendation: Staff recommends approval of the corrected UERF plan restatement to reflect the Board's intent to start the new forward DROP program on January 1, 2023.

BILL NO. 6962

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE 6801 AND RE-ADOPTING A CORRECTED CITY OF CLAYTON UNIFORMED EMPLOYEES' RETIREMENT PLAN AND TRUST RESTATEMENT

WHEREAS, The City of Clayton is a political subdivision and municipality of and in the State of Missouri;

WHEREAS, the Laws of the State of Missouri and the Charter and Section 125.070 of the Code of Ordinances of the City of Clayton authorize the Board of Aldermen to establish and, from time to time, amend and revise the programs to provide pensions for uniformed employees of the City; and

WHEREAS, the Board of Aldermen desires to maintain the Uniformed Employees' Pension Plan ("Plan") as a "qualified" plan under the Internal Revenue Code of 1986, as it has been and may be amended; and

WHEREAS, on January 10, 2023, the Board of Aldermen adopted Ordinance No. 6801 amending the Plan by including a one-time offering of a back deferred retirement option program, a forward deferred retirement option program, and the purchase of military service credits and approving a restatement of the pension document; and

WHEREAS, Exhibit A attached to Ordinance 6801, a copy of the amended and restated Plan in its entirety which was adopted in substantially the same form set forth therein, included a misstatement of the effective date of the forward deferred retirement option program, which date, if correct, would have been prior to the date of adoption of Ordinance 6801 and prior to the first day of the current Plan Year; and

WHEREAS, at the time of adoption of Ordinance 6801 it was the Board's intent that the forward deferred retirement option program would begin in the month when the Ordinance was adopted, to wit: January 2023, and that continues to be the Board's intent to this date; and

WHEREAS, it is in the best interest of the City and its employees for the Board of Aldermen to reincorporate as the Exhibit to Ordinance 6801 the amended and restated Plan document with the intended effective date of January 1, 2023, in order to reflect the Board's intent regarding the effective date of the forward deferred retirement option program added to the Plan to facilitate the administration of the Plan and maintain the Plan's tax-qualified status;

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 amends Ordinance 6801 as adopted on January 10, 2023, by repealing Exhibit A attached thereto and substituting in lieu thereof a new exhibit to be

denominated as Exhibit A-1, attached hereto and incorporated herein by this reference, and further hereby approves and re-adopts *The City of Clayton Uniformed Employees' Retirement Plan and Trust Total Restatement* dated January 2023, attached hereto. The Board of Aldermen authorizes and directs the City Manager, the Uniformed Employees' Pension Plan Board of Trustees, the Plan Administrator, and other duly authorized officials responsible for administration of such Plan to take such actions as may be necessary and appropriate to carry into effect the changes authorized hereby as required by law.

Section 2. This ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and the correction of the effective date of the forward deferred retirement option program shall be in full force and effect *nunc pro tunc* as of January 1, 2023.

Passed this 28th day of March 2023.

Mayor

ATTEST:

City Clerk

EXHIBIT A-1

1. Introduction.

1.1. Purpose.

The purpose of the City of Clayton Uniformed Pension Plan is to provide Retirement Income Benefits to assist eligible Employees in attaining Retirement security. The Plan and Trust established hereby are intended to qualify under sections 401(a) and 501(a), respectively, of the Internal Revenue Code of 1986, as amended, and all other applicable laws as are applicable to a local government Plan as defined in Section 414(d) of the Code. Except as otherwise provided this amendment shall be effective as of the first day of the first Plan Year beginning on or after July 1, 2022. This restatement shall supersede the provisions of this Plan to the extent those provisions are inconsistent with the provisions of this restatement.

1.2. Effective Date.

The original effective date of this Plan as amended is January 1, 1994. The Effective Date of the restatement of this Plan is January 1, 2023, or such date as may be specified herein with respect to certain portions hereof.

2. Definitions.

As used in this article, the following words and terms shall have the meaning ascribed thereto:

2.1. Administrator means the person or persons appointed pursuant to section 9.1 to administer the Plan.

2.2. Final Average Salary

- (1) The term “Final Average Salary” means the higher of: one-twelfth (1/12th) the maximum of the annual pay range of a police officer of the rank of patrol officer or a firefighter of the rank of firefighter; or the Employee's Average Monthly Compensation during the five (5) consecutive years within the last ten (10) consecutive years of Credited Service which yields the highest average. Final Average Salary specifically excludes without limitation such items as special duty pay, stipends, acting commander pay, overtime, or longevity pay. Final Average Salary, for purposes of determining Retirement Income Benefits, shall be determined as of the earlier of a Participant's date of Disability, date of Retirement or date of termination. Amounts in excess of the limit specified in Section 401(a)(17) of the Code shall be disregarded for all purposes.

Average Monthly Compensation: The Average Monthly Compensation paid to an Employee during the five (5) consecutive years within the last ten (10) consecutive years of Credited Service which yield the highest average, divided by the number of completed full months for which such Compensation was received. Provided, however, if Retirement occurs prior to the completion of five (5) years of Service, Average Monthly Compensation means the total Compensation paid to an Employee during the completed years of Credited Service divided by the number of completed full months for which such Compensation was received.

Compensation: The basic rate of remuneration paid to an Employee by the City for

the Employee's Service rendered during the Plan Year, including regular pay, and bonuses paid after July 1, 2000, but exclusive of special duty pay, stipends, acting commander pay, longevity pay, overtime pay, reimbursed expenses, holiday or sick pay, shift differential pay, any unusual Compensation, or any other amount which might be paid in addition to the basic rate of remuneration. Said Compensation shall include amounts which are to be paid by the City (i) under a procedure described in Section 414(h)(2) of the Code or (ii) pursuant to an election by the Employee described in Section 457 of the Code. Notwithstanding the above, Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includible in the gross income of the Employee under Sections 125, 402(e), 402(h) or 403(b) of the Code. In the case of an Employee whose employment terminates by reason of disability and who receives long term disability payments under the City's long term disability insurance coverage, his Compensation in effect at the time of the termination of employment shall be deemed to continue at the same rate during the period that he is receiving such long term disability payments.

- (2) For Plan Years beginning on or after January 1, 2002, the Compensation Limit has been increased as follows:

Increase in Limit. The annual Compensation of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001, shall not exceed \$200,000. Annual Compensation means Compensation during the Plan Year or such other consecutive 12-month period over which Compensation is otherwise determined under the Plan (the Determination Period). For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, Compensation for any prior Determination Period shall be \$200,000 for any Determination Period beginning before January 1, 1990; \$150,000 for any Determination Period beginning in 1990, 1991, 1992, 1993, 1994, 1995 or 1996; \$160,000 for any Determination Period beginning in 1997, 1998 or 1999; and \$170,000 for any Determination Period beginning in 2000 or 2001.

- (3) Cost of Living Adjustment. The \$200,000 limit on annual Compensation in paragraph (2) above shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual Compensation for the Determination Period that begins with or within such calendar year.

- 2.3. Board of Aldermen means the Board of Aldermen of the City.
- 2.4. Code means the Internal Revenue Code of 1986 as amended and in effect at the time.
- 2.5. City means the City of Clayton, Missouri.
- 2.6. Contributions with Interest means the sum of the Employee's pick up Contributions (excluding any such Contributions previously refunded) made to the City's defined contribution Plan for uniformed Employees adopted on February 24, 1984, and the Employee's pick up Contributions made under section 19-78(a), with

- five (5) percent interest compounded annually beginning January 1, 1994.
- 2.7. Credited Service means the continuous period of Service of an Employee in completed months measured from his date of employment plus any Service Credits purchased in accordance with Section 21 Purchase of Service Credits.
- 2.8. Disability means a physical or mental condition which renders the Participant incapable of continuing in the employment of the City as a police officer or firefighter. Disability shall be deemed to exist when the Participant becomes eligible under the City's long term Disability Plan.
- 2.9. Employee means any person employed in Uniformed Service by the City and classified by the City as a fulltime Employee of the City. Leased Employee means any person (other than an employee of the City) who, pursuant to an agreement between the City and any other person ("leasing organization") has performed services for the City (or for the City and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the City. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the City shall be treated as provided by the City.
A Leased Employee shall not be considered an Employee of the City if:
- (1) such Employee is covered by a money purchase pension plan providing (i) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in Code Section 415(c)(3), but for years beginning before January 1, 1998, including amounts contributed pursuant to a salary reduction agreement which are excludible from the Employee's gross income under Code Sections 125, 402(e)(3), 402(h) or 403(b), (ii) immediate participation, and
 - (2) Leased Employees do not constitute more than 20 percent of the City's non-highly compensated workforce.
- 2.10. Former Participant means a Participant whose Service has terminated by who is entitled to a Retirement Income Benefit.
- 2.11. Hour of Service means each hour for which an Employee is paid or entitled to payment by the City for the performance of duties.
- 2.12. A Limitation Year means the City's fiscal year which begins October 1.
- 2.13. Normal Retirement Date means the first day of the month following: the attainment of age fifty-five (55) after completing ten (10) years of Credited Service; the attainment of age fifty (50) after completing twenty-five (25) years of Credited Service; or the attainment of age sixty-five (65) and after completing of five (5) years of Credited Service.
- 2.14. Participant means an Employee who is participating in the Plan, including a Former Participant whose employment terminated by reason of Disability.
- 2.15. Plan means the City of Clayton Uniformed Employees' Pension Plan.

- 2.16. Plan Year means the twelve-month period from October 1 through the following September 30.
- 2.17. Service means an Employee's employment by the City and such other employment as is classified as Service under nondiscriminatory rules adopted by the Administrator. Service shall not be terminated by an authorized leave of absence (provided the person complies with the terms of his leave) or by military Service (provided the person returns to employment during the period in which his reemployment rights are protected by federal law).
- 2.18. Spouse means the person to whom the Participant is married on the earlier of his date of termination of employment, date of Retirement, or date of Death and is still married on the date of Death.
- 2.19. Trust means the Trust fund established under the Plan for the funding of the Retirement Income Benefits.
- 2.20. Trustee means the board of Trustees established under the terms of the Plan as in effect prior to this amendment, which shall continue to consist of seven (7) members servicing without Compensation, comprised of the mayor of the City, two (2) members of the Board of Aldermen to be chosen by the board, one (1) citizen of the City, outside of the City administration, to be appointed by the mayor with the approval of the Board of Aldermen, one (1) member of the police department, one (1) member of the fire department, and one (1) additional member of either the fire or police department to be elected by the majority vote of the Employees of their respective departments, with the additional member of either the fire or police department to be elected alternately from the fire department and the police department by a majority vote of the Employees of such department. Members of the board of Trustees shall serve for a term of two (2) years or until their successors shall be chosen in the manner provided herein. Should any vacancy occur during the term of any appointment, by reason of Death, resignation or inability to perform the duties of Trustee, such vacancy shall be filled in the same manner as prescribed above, and the appointee shall serve the remaining term of membership or until his successor shall be chosen.
- 2.21. Uniformed Service means an Employee's employment by the City as a police officer or firefighter, including all ranking officers but excluding civilian Employees.
3. Eligibility and Participation.
- 3.1. Each Employee who is employed by the City as a police officer or firefighter shall be eligible to participate in the Plan on the date he becomes a police officer or firefighter.
- 3.2. An Employee who was a Participant in the Plan on January 1, 1994, shall remain a Participant as of that date. Each other Employee shall become a Participant on the date on which he becomes eligible to participate in the Plan, if on such day he remains an Employee.
- 3.3. If an Employee who was a Participant ceases to be an Employee but then

subsequently is reemployed by the City, such Employee shall be eligible to participate in the Plan immediately upon his reemployment but shall be treated as a new Employee for determining his years of Credited Service, unless such Employee returns to Uniformed Service within thirty (30) days of this termination and repays any Distribution hereunder.

4. Contributions.

4.1. Employee Contributions.

(1) For all Participants prior to July 1, 2000, each such Participant, other than one whose employment terminated by reason of Disability, shall, as a condition of participating in this Plan, contribute five (5) per cent of Final Average Salary for each pay period. These Employee Contributions shall be withheld by the City from a Participant's Compensation and shall be paid by the City to the Trustee at least as frequently as once each calendar quarter, shall be designated as Participant. Contributions but shall be treated as picked up by the City within the meaning of section 414(h) of the Code. In no event shall a Participant as of January 1, 1994, be required to make Contributions hereunder beyond twenty-five (25) years. Employees hired after December 31, 1993, shall be required to make Contributions hereunder until the later of twenty-five (25) years or the date they attain age fifty-five (55).

(2) Beginning on and after July 1, 2000, each Participant, other than one whose employment terminated by reason of Disability, shall, as a condition of participating in this Plan, contribute five (5) per cent of his Compensation earned during the Plan Year, pro-rated for each pay period. These Employee Contributions shall be withheld by the City from a Participant's Compensation, shall be paid by the City to the Trustee by the 15th business day of the month following the month in which the contribution was withheld, shall be designated as Participant Contributions but shall be treated as picked up by the City within the meaning of section 414(h) of the Code. In no event shall such a Participant be required to make Contributions hereunder beyond thirty (30) years of Credited Service.

4.2. City Contributions.

(1) The City shall make Contributions to the Trust to provide Retirement Income Benefits for Participants. Such Contributions shall be made in such manner and at such times as the City may determine. Such contribution shall be made in cash.

(2) Except as provided in paragraph (c), in no event shall the principal or income of this Trust be paid to or revert to the City or be used for any purpose whatsoever other than the exclusive benefit of the Participants-or their Beneficiaries and the payment of the reasonable and necessary expenses of the Trust.

(3) (1) Any part of any contribution made by the City to the Trust under a mistake of fact shall be returned by the Trustee to the City within one (1) year after the date such contribution was made, if within that time the City presents to the Trustee a written demand for such return.

(2) If any amount is demanded by the City pursuant to subsection (c)(1) above, the Trustee shall promptly return to the City the amount demanded, subject to the following conditions and limitations:

- (a) Any earnings attributable to the amount demanded shall be retained in the Trust;
- (b) Any losses attributable to the amount demanded shall reduce the amount returned to the City;
- (c) The amount to be returned to the City shall be reduced by the portion thereof which, prior to such return, has been distributed to Participants or Former Participants in accordance with the terms of this Plan.

5. Benefits.

5.1 Retirement Benefits.

- (1) Effective for Participants with an Hour of Service after December 31, 1993, Retirement Income Benefits shall be paid in accordance with this section 5.1.
- (2) Former Participants or Beneficiaries who were eligible to receive or were receiving periodic benefits under the City's defined contribution plan for uniformed Employees as in effect March 31, 1984, shall continue to be eligible to receive periodic benefits after December 31, 1993, in an amount equal to the periodic benefits for which they were eligible, or which were being paid on such date.
- (3) No other person other than those described in subsections (1) or (2) above shall be eligible to receive any benefit under this section 5.1.

(4) Retirement.

- (a) If a Participant's employment terminates on or after his Normal Retirement Date, such Participant shall receive a Retirement Income Benefit equal to two (2%) percent of the Final Average Salary in effect as of the date of the Participant's Retirement, termination of employment or Disability multiplied by the Participant's completed years of Service; with a maximum benefit not to exceed sixty (60%) percent of the Participant's Final Average Salary.
- (b) If a Participant's employment terminates prior to his Normal Retirement Date and after the Participant has completed twenty-five (25) years of Credited Service, the Participant may elect to commence his Retirement Income Benefit immediately. The Retirement Income Benefit shall be equal to the benefit determined under section (b)(1) above reduced by one fourth (1/4th) of one (1%) per cent for each month his date of commencement precedes his Normal Retirement Date. Alternatively, such Participant may defer commencement of his Retirement Income Benefit until his Normal Retirement Date, in which case his benefit shall be determined under subsection (4)(a).
- (c) If a Participant's employment terminates prior to his Normal Retirement Date and after he has completed ten (10) years of Credited Service (but less than twenty-five (25) years), the Participant shall receive a Retirement Income Benefit equal to the benefit determined under section (4)(a), commencing at the Participant's Normal Retirement Date.

- (d) If a Participant's employment terminates before he has completed ten (10) years of Credited Service, such Participant shall not be entitled to any Retirement Income Benefits under this section. Such Participant shall receive a refund of his Contributions with Interest as defined in Section 2.6 hereof.
 - (1) If the value of the Participant's Contributions with Interest as so determined is \$1,000.00 or less, the Plan shall immediately distribute the Participant's entire nonforfeitable account balance;
 - (2) If the Participant has attained the later of the age of 62 or Stated Retirement Age, and if the value of the Participant's nonforfeitable Contributions with Interest as so determined is \$5,000.00 or less, the Plan shall immediately distribute the Participant's entire nonforfeitable account balance; and
 - (3) If the Participant has not attained the later of age 62 or the Stated Retirement Age and if the value of the Participant's nonforfeitable Contribution with Interest as so determined is greater than \$1,000 but not greater than \$5,000.00, the Participant may elect in writing by forms provided by the Plan Administrator to receive a lump-sum distribution of his or her entire nonforfeitable account balance.

(5) Death.

- (a) If a Participant dies in the line of duty after completing ten (10) years of Credited Service, the Retirement Income Benefit as determined under section (4)(a) shall be paid to the Participant's Spouse. Death in the Line of Duty shall mean Death as the result of a specific incident on a specific date occurring while the Employee is performing duties specific to his City employment. Performance of police duties for an employer other than the City with prior written approval by the Clayton Police Chief shall be deemed, for purposes of this Plan only, to be performing duties specific to his City employment.
- (b) If a Participant dies after completing ten (10) years of Credited Service (but not in the Line of Duty) fifty (50) per cent of the Retirement Income Benefit as determined under section (4)(a) shall be paid to the Spouse.
- (c) If a Former Participant is eligible for a Retirement Income Benefit, but dies before commencing payment of such benefit, fifty (50) per cent of the Retirement Income Benefit as determined under section (b)(l) shall be paid to the Participant's Spouse.
- (d) If a Participant dies after commencement of his Retirement Income Benefit, fifty (50) per cent of the Participant's Retirement Income Benefit shall be paid to the Participant's Spouse.
- (e) If a Participant dies before completing ten (10) years of Credited Service, the Participant's Contributions with Interest shall be paid to the Participant's Spouse.

- (f) If a Participant or a Former Participant dies and such Participant or Former Participant does not have a Spouse, the Participant's Contributions with Interest shall be paid to the Participant's Minor Children, if any. Minor Children will mean any child of the Participant under the age of eighteen (18) years. If such Participant or Former Participant does not have a Spouse or Minor Children, no refund hereunder shall be made.
- (g) If a Participant has no Spouse at the date of Death, no Retirement Income Benefits shall be payable under this section

(6) Disability.

In the event a Participant terminates employment due to Disability, such Participant will be entitled to a Retirement Income Benefit commencing at Normal Retirement Date as determined under subsection (4)(a) but including his period of Disability in the determination of years of Credited Service.

(7) Distribution.

- (a) The Retirement Income Benefits payable under this section will commence as of the date of Retirement and will continue to be paid monthly with the last payment to be made on the first day of the month in which the Participant's Death occurs.
- (b) Death benefits payable to the Participant's Spouse under subsection (5)(a), (b) and (d) will commence as of the first day of the month following the month in which occurs the Participant's Death. Death benefits payable to the Participant's Spouse under subsection (5)(c) will commence as of the first day of the month following the month in which the Participant would have attained his Normal Retirement Date. Benefits will continue to be paid monthly with the last payment to be made on the first day of the month in which the earlier of the Spouse's remarriage occurs or the Spouse's Death occurs.

(8) Benefit Limitations.

- (a) Notwithstanding any other provision in this Plan, the following Maximum Benefit Limitations shall apply to Section 5.1 of the Plan except if the Code's Maximum Benefit Limitations under Code Section 415 for governmental plans is less than the Maximum Benefit Limitation in this subsection (8)(a) in any Limitation Year then the Code's Maximum Benefit Limitation shall apply for that Limitation Year. For Plan Years beginning prior to July 1, 2000, the maximum benefit payable to a Participant from the Plan shall be one hundred twenty thousand dollars (\$120,000.00) as adjusted pursuant to Code Section 415(d) for cost of living and as adjusted pursuant to Code Section 415(b) for benefits which begin before age 62. For Plan Years beginning on or after July 1, 2000, but before January 1, 2002, the maximum benefit payable to a Participant from the Plan shall be one hundred thirty-five thousand dollars (\$135,000.00) as adjusted pursuant to Code Section 415(d) for the cost of

living and as adjusted pursuant to Code Section 415(b) for benefits which begin before age 62. For Plan Years beginning on or after the first day of the Plan Year beginning on or after January 1, 2002, the maximum benefit payable to a Participant from the Plan shall be one hundred sixty thousand dollars (\$160,000.00) as adjusted pursuant to Code Section 415(d) for the cost of living and as adjusted pursuant to Code Section 415(b) for benefits which begin before age 62.

(a) Maximum Benefit Limitation, as required by 415 of the Code.

Definitions. For purposes of determining the benefit limitation set forth in this section, the following terms are defined:

- i. Effective date. This section shall be effective for Limitation Years ending after December 31, 1994, except as provided in the provisions regarding combining and aggregating defined benefit plans below.
- ii. Effect on Participants. Benefit increases resulting from the increase in the limitations of Code Section 415(b) shall be provided to all Employees participating in the Plan who have one hour-of-service with the Employer on or after the first day of the first Limitation Year ending after December 31, 2001.
- iii. Effective for Limitation Years ending after December 31, 2001, Applicable Mortality Table means, on any date, the table as set forth in Code Section 417(e).
- iv. Defined Benefit Dollar Limitation means the amount specified in Section 415(b) of the Code for governmental plans, automatically adjusted, effective July 1 of each year, under Code Section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a Straight Life Annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment.
- v. Annual Additions means the sum of the following amounts credited to a Participant's account for the Limitation Year:
 - (1) City contributions;
 - (2) Participant contributions;
 - (3) forfeitures; and
 - (4) allocations under a simplified employee pension.
- vi. Annual Benefit means a Retirement benefit under the Plan which is payable annually in the form of a Straight Life Annuity. Except as provided below, benefit payable in a form other than a Straight Life Annuity must be adjusted to an actuarially equivalent Straight Life

Annuity before applying the limitations of this section. Effective for Limitation Years beginning on or after January 1, 1995, where a Participant's benefit must be adjusted to an actuarially equivalent Straight Life Annuity, the actuarially equivalent Straight Life Annuity is equal to the greater of the annuity benefit computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form, and the annuity benefit computed using a 5 percent interest rate assumption and the Applicable Mortality Table. No actuarial adjustment to the benefit is required for (i) the value of a qualified joint and survivor annuity, (ii) benefits that are not directly related to Retirement Benefits (such as a qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits), and (iii) the value of post-retirement cost-of-living increases made in accordance with Code Section 415(d) and Section 1.415-3(c)(2)(iii) of the Income Tax Regulations. The Annual Benefit does not include any benefits attributable to Participant Contributions or rollover contributions, or assets transferred from a qualified plan that was not maintained by the City.

- vii. Defined Benefit Plan Fraction means a fraction, the numerator of which is the sum of the Participant's Projected Annual Benefits under all the defined benefit plans (whether or not terminated) maintained by the City, and the denominator of which is 125 percent of the Defined Benefit Dollar Limitation applicable to the Participant, adjusted as necessary in accordance with the definition of Maximum Permissible Benefit.
- viii. Defined Contribution Dollar Limitation means, for Limitation Years beginning after December 31, 1994, the amount specified in Section 415(c) of the Code for governmental plans, as adjusted under Code Section 415(d).
- ix. Defined Contribution Plan Fraction means a fraction, the numerator of which is the sum of the Annual Additions to the Participant's account under all the defined contribution plans (whether or not terminated) maintained by the City for the current and all prior Limitation years, (including the Annual Additions attributable to the Participant's voluntary contributions, or mandatory contributions as defined in Code Section 411(c)(2)(C), to this and all other defined benefit plans (whether or not terminated) maintained by the City, and the Annual Additions attributable to all simplified employee pensions maintained by the City), and the denominator of which is the sum of the maximum aggregate amounts of the current and all prior Limitation Years of the Participant's service with the City (regardless of whether a defined contribution plan was maintained by the City).

The maximum aggregate amount for any Limitation Year is the lesser of (a) 125 percent of the Defined Contribution Dollar Limitation, or (b) 35 percent (1.4 x 25 percent) of the Participant's Compensation

for such year.

The Annual Addition for any Limitation Year beginning before January 1, 1987, shall not be recomputed to treat all Participant contributions as Annual Additions.

If the Employee was a Participant as of the end of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined contributions plans maintained by the City which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the Defined Benefit Plan Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (a) the excess of the sum of the fractions over 1.0 times (b) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987 and disregarding any changes in the terms and conditions of the plans made after May 5, 1986, but using the Code Section 415 limitation applicable to the first Limitation year beginning on or after January 1, 1987.

- x. Effective for Limitation Years ending after December 31, 2001, Maximum Permissible Amount (Maximum Permissible Benefit after amended for GUST) means the Defined Benefit Dollar Limitation (adjusted where required, as provided in (a) and, if applicable, in (b) or (c) below).
- (b) If the Participant has less than ten Years of Participation in the Plan, the Defined Benefit shall be multiplied by a fraction, (1) the numerator of which is the number of Years of Participation (or part thereof) in the Plan, and (2) the denominator of which is ten.

The adjustments of this (b) shall not apply to survivor and disability benefits as provided in Code Section 415(b)(2)(l).

- (c) If the Annual Benefit of the Participant commences prior to age 62, the Defined Benefit Dollar Limitation applicable to the Participant at such earlier age is an Annual Benefit payable in the form of a Straight Life Annuity beginning at the earlier age that is the actuarial equivalent of the Defined Benefit Dollar Limitation for age 62 (adjusted under (b) above, if required). The Defined Benefit Dollar Limitation applicable at an age prior to age 62 is determined as the lesser of (1) the actuarial equivalent of the Defined Benefit Dollar Limitation for age 62 computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for purposes of determining actuarial equivalence for early retirement benefits, and (2) the actuarial equivalent of the Defined Benefit Dollar Limitation for age 62 computed using a 5 percent interest rate and the Applicable Mortality Table. To the extent the Plan does not specify an interest rate and mortality table (or other

tabular factor) or for ages for which no tabular factor is specified, a 5 percent interest rate and the Applicable Mortality Table shall be used to determine actuarial equivalence.

The adjustments in this paragraph (c) do not apply in the case of a Participant who is a qualified Participant (as defined in Code Section 415(b)(2)(H)). The adjustments in this paragraph (c) do not apply to survivor and disability benefits as provided in Code Section 415(b)(2)(I).

- (d) If the Annual Benefit of a Participant commences after the Participant attains age 65, the Defined Benefit Dollar Limitation applicable to the Participant at the later age is the Annual Benefit payable in the form of a Straight Life Annuity commencing at the later age that is actuarially equivalent to the Defined Benefit Dollar Limitation applicable to the Participant at age 65 (adjusted under (a) above, if necessary). The actuarial equivalent of the Defined Benefit Dollar Limitation applicable at an age after age 65 is determined as the lesser of (1) the actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for purposes of determining actuarial equivalence for later retirement benefits and (2) the actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation computed using a 5 percent interest rate and the Applicable Mortality Table. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.
- (e) Minimum benefits permitted: Notwithstanding anything else in this definition to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Amount (Maximum Permissible Benefit after amended for GUST) if:
 - (1) the retirement benefits payable for a Plan year under any form of benefit with respect to such Participant under this Plan and all other defined benefit plans (regardless of whether terminated) ever maintained by the City do not exceed \$1,000 multiplied by the Participant's number of Years of Service or parts thereof (not to exceed ten); and
 - (2) the Employer has not at any time maintained a defined contribution plan in which the Participant participated (for these purposes, Participant Contributions, whether voluntary or involuntary, under a defined benefit plan are not treated as a separate defined contribution plan).

The amount in (1) above shall be equal to \$10,000 when determining the minimum benefit for survivor and disability benefits as provided in Code Section 415(b)(2)(I).

- xi. Projected Annual Benefit means the Annual Benefit to which the Participant would be entitled under the terms of the Plan assuming:
 - (1) the Participant will continue employment until normal Retirement age under the Plan (current age, if later), and

- (2) all relevant factors used to determine benefits under the Plan will remain constant for all future Limitation Years.
- xii. Provision regarding combining or aggregating defined benefit plans.
 - (a) This paragraph applies regardless of whether any Participant is or has ever been a participant in another qualified plan maintained by the adopting employer. If any Participant is or has ever been a participant in another qualified plan maintained by the City or a simplified employee pension (as defined in Code Section 408(k)) maintained by the City, that provides an Annual Addition, (c) below is also applicable to that Participant's benefits.
 - (1) The Annual Benefit otherwise payable to a Participant at any time will not exceed the Maximum Permissible Benefit. If the benefits the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit must be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit.
 - (2) If a Participant has made voluntary contributions, or mandatory contributions as defined in Code Section 411(c)(2)(C), under the terms of this Plan, the amount of such contributions is treated as an Annual Addition to a qualified defined contribution plan for purposes of this paragraph (xii)(a)(1) and paragraph (xii)(b)(2) of this Section. Such amounts shall be limited to meet the requirements of Code Section 415(c)(1).
 - (b) This paragraph applies if any Participant is also a participant, or has ever participated, in another plan maintained by the City, including a qualified plan or a simplified employee pension that provides an Annual Addition.
 - (1) If a Participant is, or has ever been, a participant in more than one defined benefit plan maintained by the City, the sum of the Participant's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the Participant's City-provided benefits under all defined benefit plans ever maintained by the City (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the benefit shall be limited (or the rate of accrual reduced) in the plan most recently established to the extent necessary so that the sum of the Participant's Annual Benefits from all such plan(s) does not exceed

the Maximum Permissible Benefit.

- (2) For Limitation years beginning before January 1, 2000, if the City maintains, or ever maintained, one or more qualified defined contribution plans in which any Participant in this Plan participated, including a simplified employee pension, the sum of the Participant's Defined Contribution Plan Fraction and Defined Benefit Plan Fraction will not exceed 1.0 in any Limitation year and, where the sum exceeds 1.0 for a Participant for a Limitation year, the Projected Annual Benefit shall be limited first. If the Participant's Annual Benefits equal his Projected Annual Benefit, as limited, then Annual Additions to the defined contribution plan(s) shall be limited to amounts that will reduce the sum to 1.0 in the same manner in which the Annual Additions are limited to meet the requirements of Code Section 415(c)(1).

Benefit increases resulting from the repeal of Code Section 415(e) will be provided to all Employees participating in the Plan (with benefits limited by Code Section 415(e)) who have an Accrued Benefit under the Plan immediately before the first day of the first Limitation Year beginning in 2000 and have one hour-of-service with the Employer after such date.

- (c) The following provision shall be effective for Limitation Years beginning after December 31, 2001.

For purposes of limiting a Participant's City-provided benefits under all defined benefit plans every maintained by the City to the Maximum Permissible Amount (Maximum Permissible Benefit after amended for GUST), a multiemployer plan (as defined in Code Section 414(f)) shall not be combined or aggregated with any other multiemployer plan for purposes of applying any combined or aggregated limit.

- xiii. Actuarial Equivalent means equality in the value of the aggregate amount expected to be received under different forms of payment.

On and after July 1, 2022, the amount of each payment which is made on behalf of a Participant in an optional or alternative form, i.e. a form other than the normal form of Retirement Benefit for a single Participant which is a monthly pension payable for the lifetime of the Participant, shall be based upon seven (7) percent interest and a mortality table consisting of a blend of fifty (50) percent of the amount weighted Pub-2010 Safety Employees Male Table projected to the year 2025 using mortality improvement scale MP-2021 and fifty (50) percent of the amount weighted Pub-2010 Safety

Employees Female Table projected to the year 2025 using mortality improvement scale MP-2021.

On and after July 1, 1997 and prior to July 1, 2022, the amount of each payment under an optional form shall be based on seven and one half (7.5) percent interest and the mortality table set forth in Revenue Ruling 95-6, 1995-1 C.B. 80, except as otherwise provided below.

For purposes of determining the amount of a distribution other than an annual benefit that is non-decreasing for the life of the Participant or, in the case of a survivor annuity, the life of the Participant's Spouse; or that decreases during the life of the Participant merely because of the death of the surviving annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the surviving annuitant) or merely because of the cessation or reduction of Social Security supplements or qualified Disability payments, Actuarial Equivalent shall mean the Present Value.

Present Value means the current value of a benefit payable on a specified form and on a specified date. The Present Value of any benefit under the terms of this Plan will be the Actuarial Equivalent of the benefit payable on the Straight Life Annuity.

In any event, the preceding paragraphs shall not apply to the extent they would cause the Plan to fail to satisfy the requirements of Maximum Benefit Limitations in Section 5.1(f) of the Plan.

- xiv. Straight Life Annuity means an annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.

(9) Post-Retirement Adjustment.

Effective January 1 each year, commencing with January 1, 2001, each Participant who is currently receiving Retirement Income Benefits or the Participant's Beneficiary who is currently receiving Retirement Income Benefits shall receive two percent (2.0%) annual adjustment in Retirement benefits, up to a total cumulative maximum of twenty-five percent (25%) of the Participant's initial Retirement benefit; with said adjustment to be determined each December and effective the following January, based upon the most recently published U.S. Department of Labor's Consumer Price Index for All Urban Consumers (CPI-U) for the St. Louis region, or a successor index, or such other Post-Retirement Adjustment as required by law.

6. Incapacity.

If, in the opinion of the Administrator, any person becomes unable to handle properly any amounts distributable to him under the Plan, the Administrator may make any arrangement for Distribution on his behalf that it determines will be beneficial, and any

such Distribution” shall be a complete discharge of a liability under the Plan of such Former Participant to the extent of such Distribution.

7. No Assignment of Interest.

The interest of any person in this Plan or in the Trust or in any Distribution to be made under the Plan shall not be assignable either by voluntary or involuntary assignment or by operation of law, including, but not by way of limitation, execution, levy, garnishment, attachment, pledge, or in any other manner, and no right or interest of any person in the Plan shall be liable for, subject to, any obligation or liability of such person. The foregoing shall not prohibit devolution at Death or transfer due to mental incompetency. In addition, an interest in the Plan may be transferred pursuant to a court order entered in a divorce, child support, alimony or similar proceeding in accordance with procedures established by the Administrator, provided however that no payments shall be made under such a court order prior to the time that payments otherwise would be made under this Plan.

8. Change in Employment Status.

(1) The participation of any Participant who enters military Service or who is on an authorized leave of absence without pay shall continue. If such a Participant returns to employment during the period in which his reemployment rights are protected by federal law or at the end of his authorized leave of absence, his leave of absence shall count as Participation in the Plan, and he shall receive credit for those hours of Service which he would have expected to render during such period had he not been so absent.

(2) Notwithstanding any provision of this Plan to the contrary, Contributions, benefits and Service credit with respect to qualified military Service will be provided in accordance with Section 414(u) of the Code, effective October 13, 1994.

9. Administration of the Plan

9.1. Administration Provisions.

(1) The Administrator of the Plan is the Director of Finance or a person(s) or entity appointed by the Director of Finance.

(2) The Plan shall be administered on behalf of the City by its Administrator. The Administrator or the chairman of the committee shall be the agent for Service of legal process on the Plan.

(3) No individual serving as Administrator, or as a member of the committee constituting the Administrator, shall receive any compensation for his Service in such capacity if he is also an Employee of the City. Any other person shall receive his Compensation, if any, from the City.

(4) If the Administrator shall be a committee, a majority thereof shall constitute a quorum for the transaction of business, but the concurrence of a majority of the members shall be necessary for any resolution or other action taken by the committee. No individual acting as Administrator and no individual acting as a member of a committee constituting the Administrator shall act or vote on any question relating solely to

himself, or act or vote in any case in which his individual right or claim to any benefit under this agreement is particularly involved. In any case in which the individual serving as Administrator is so disqualified or in which a majority of the members of the committee constituting the Administrator are so disqualified, the Board of Aldermen of the City shall be constituted as Administrator to exercise all of the powers of the Administrator concerning the matter over which the Administrator is disqualified.

- (5) The Administrator shall have such power, not specifically reserved to the Board of Aldermen of the City or to the Trustee, as may be necessary, expedient or advisable in administering the respective portions of the Plan set forth in this Agreement and, without limiting the generality of the foregoing grant of power or any grant of power elsewhere stated herein, the Administrator shall have power:
- (a) To determine all questions arising in the administration, interpretation and application of the Plan;
 - (b) To employ such agents and assistants, such counsel and such clerical, medical, accounting and actuarial services (not furnished by the City) as the Administrator deems necessary in carrying out the provisions of the Plan set forth in this Agreement, and to pay therefore such sums as he may deem to be reasonable and for which he shall be reimbursed by the City;
 - (c) To delegate such nondiscretionary powers and duties as he may see fit;
 - (d) To make such rules and regulations as may be deemed appropriate in carrying out the general purpose and intent of the Plan as set forth in this Agreement, which rules and regulations shall be binding upon the City and the Participants;
 - (e) By rule or otherwise, to construe this agreement, to- supply omissions therein and to reconcile and correct any-errors or inconsistencies therein;
 - (f) To make equitable adjustments of any mistakes or errors made in the Administration of the Plan; and
 - (g) To decide any disputes which may arise with regard to the rights and/or benefits of Participants, Former Participants, Beneficiaries or their legal representatives.
- (6) If the “Administrator” is a committee, one (1) or more of their number or any agent may be authorized by the committee to execute or deliver any instrument on behalf of the committee, including directions, notifications and instructions to the Trustee. The committee shall notify the Trustee by written instrument signed by all members -of the committee of the person or persons having such authority. The Trustee may rely on such authority until revoked in writing by the committee.

- (a) All decisions, interpretations or rules made by the Administrator in good faith shall be binding on all parties and shall not be subject to review by anyone; provided, however, that in no event may the duties; responsibilities or liabilities of the Trustee be changed in any manner without its express consent in writing.
- (b) The Administrator shall determine the Eligibility of Participants and other facts required in the Administration of the Plan from information furnished to it by the City in accordance with the request of the Administrator. Any certification by the City of information requested by the Administrator shall, for all purposes of this Plan, be binding on all parties in interest.
- (c) Any powers or duties granted to or imposed upon the Trustee that are to be exercised according to the direction of the Administrator shall be exercised by the Trustee only if, when and as directed by the Administrator in a written instrument delivered to the Trustee.
- (d) The Administrator shall supply to the Trustee all information concerning the payment of Retirement Income Benefits.

10. Trust Provisions.

10.1. The Trustee.

(1) It shall be the duty of the Trustee:

- (a) To hold, to invest and to reinvest the Trust; and
- (b) To pay moneys to or on the order of the Administrator, including, when the Administrator shall so order, payments to Former Participants. Such orders need not specify the application to be made of payments so ordered, and the Trustee shall not be responsible in any way respecting such application or for the Administration of the Plan. The Trustee shall be under no duty, express or implied, to verify or determine the amount of any contribution to be made by the City under the Plan or to compel any payment to be made to by the City and shall be accountable only for cash and other property actually received by the Trust. The Trustee's duties under the Plan shall be discharged solely in the interest of the Participants and Former Participants of the Plan and for the exclusive purpose of providing benefits to Participants and Former Participants and for defraying the reasonable expenses of administering the Plan.

(2) Appointments.

- (a) If the City appoints an Investment Manager in accordance with subsection (b)(1) above, then the Trustee shall not be responsible for the investment of those assets over which the Investment Manager has authority, and shall not be liable for the acts or omissions of the Investment Manager with respect to such assets.
- (b) Any Investment Manager appointed in accordance with subsection (b)(1) above

shall have, with respect to those assets over which he has authority, the same powers and authority, and shall be subject to the same restrictions, as are granted to and imposed upon the Trustee by the terms of this Plan and Trust.

(3) Investment Powers.

- (a) The Trustee shall invest and reinvest the assets in the Trust and shall keep the same invested, without distinction between principal and income, in such securities or in such property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to, stocks, common or preferred, bonds and mortgages; and other evidence of indebtedness or ownership, but excluding any debt securities of the City, and excluding individual insurance policies which permit any form of life annuity to be paid as an optional form of benefit Distribution.
 - (b) The Trustee may, from time to time, create two (2) or more funds for the investment of assets of the Trust, with each fund limited to a particular type or range of investments.
- (4) The Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing which a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- (5) The Trustee shall have the following powers and authority in the administration of the Trust, to be exercised in accordance with and subject to the provisions of paragraph (f) hereof:
- (a) To purchase, or subscribe for, any securities or other property, and to sell, exchange, convey, transfer, or otherwise dispose of any securities or other property held by it, by private contract or at public auction or public sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition.
 - (b) To buy, sell, and trade in securities of any nature, including short sales, (and including puts, calls, straddles, and other options both covered and uncovered of any kind and nature), and solely for the purpose of writing put options may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by the Trust with such brokers as securities for loans and advances made to the Trust.
 - (c) To vote any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held as

a part of the Trust.

- (d) To borrow or raise money for the purposes of the Trust in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and, for any sum so borrowed, to issue its promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part of the Trust; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency or propriety of any such borrowing.
 - (e) To keep such portion of the Trust in cash or cash balances as the Trustee may from time to time deem to be in the best interest of the Trust created hereby, without liability for interest thereon.
 - (f) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder.
 - (g) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.
 - (h) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust, to commence or defend suits or legal or administrative proceedings, and to represent the Trust in all suits and legal and administrative proceedings.
 - (i) To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust, and to carry out the purpose of this Trust.
- (6) No provision of this Plan shall operate to permit the Trustee to make or dispose of any investment or to engage in any transaction if such action could result in the imposition of tax under Section 4975 of the Code.
- (7) The Trustee may register any securities or other property held by it hereunder in its own name or in the name of its nominees with or without the addition of words indicating that such securities are held in a fiduciary capacity, and may hold any securities in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust
- (8) If the Trustee is not an Employee of the City, the Trustee shall be entitled to compensation for its Services as Trustee hereunder. The Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees, incurred by it in the administration of the Trust. Such compensation and expenses shall be paid by the Trust.
- (9) The Trustee shall keep accurate and detailed accounts of all investments, receipts,

disbursements and other transactions hereunder, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the Administrator. Within ninety (90) days following the close of each Plan Year, and within ninety (90) days after the removal or resignation of the Trustee as provided in paragraph (j) hereof, the Trustee shall file with the Administrator a written account setting forth all investments, receipts, disbursements and other transactions effected by it during such Plan Year or during the period from the close of the last Plan Year to the date of removal or resignation.

- (10) The Trustee may be removed by the City at any time upon sixty (60) days' notice in writing to the Trustee. The Trustee may resign at any time upon sixty (60) days' notice in writing to the City. Upon such removal or resignation of the Trustee, the City shall appoint a successor Trustee. Upon acceptance of such appointment by the successor Trustee the Trustee shall assign, transfer and pay over to such successor Trustee the funds and properties then constituting the Trust.

11. Expenses of the Plan; Taxes.

The City shall pay the premiums, if any, on insurance of the type described in section 14.1. All other costs of administering the Plan shall be paid from the Trust, including brokerage fees, stock transfer taxes and other expenses directly incurred by the Trustee in buying or selling securities or other investments of the Trust, which shall be paid by the Trustee out of the Trust as a part of the cost of such securities or as a reduction of the proceeds received from the sale of such securities. In addition, all taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to, the Trust or any asset held therein or the income thereof shall be paid from the Trust.

12. Future of the Plan.

The Board of Aldermen reserves the right to amend or terminate the Plan at any time without a further vote of the residents of the City, but unless required to do so by the Internal Revenue Service in order for the Plan to obtain or retain qualified status under section 401 (a) of the Code it shall not adopt any amendment to:

- (1) Reduce the benefits of any Participant accrued under the Plan to the date the amendment is adopted; or
- (2) Divert any part of the assets of the Trust for a purpose other than:
 - (a) The exclusive benefit of Participants or Former Participants who have an interest in the Trust; and
 - (b) The payment of the reasonable and necessary expenses of the Trust. 13.1.

13. Termination of the Plan.

- (1) Upon the termination or partial Termination of the Plan, no part of the Trust shall revert to or be returned to the City or be used or diverted for purposes other than:
 - (a) The exclusive benefit of Participants or Former Participants who have an interest in the Plan;

(b) The payment of the reasonable and necessary Expenses of the Plan; or

(c) If, as of the date this Plan terminates, the value of the Plan assets exceeds the present value of accrued benefits (whether or not non-forfeitable), the excess will revert to the City.

(2) Upon the termination or partial termination of the Plan, or upon the complete discontinuance of City Contributions under the Plan, the right of each Participant (with respect to whom the Plan has terminated or Contributions have been discontinued) to his Retirement Income Benefit shall be non-forfeitable. No further Contributions shall be made by or on behalf of any Participant with respect to whom the Plan has terminated after the date of such termination. Upon Termination of the Plan with respect to a Participant, or upon complete discontinuance of City Contributions under the Plan, Retirement Income Benefits of such Participant shall be distributed to him or to his Beneficiary in accordance with the provisions of section 5.1. If, as of the date this Plan terminates, the value of the Plan assets exceeds the present value of accrued benefits (whether or not non-forfeitable) will revert to the City.

14. Insurance.

To the extent permitted by law, the City may agree to indemnify, or to purchase Insurance for, any officer or Employee of the City, to protect any such person against liabilities arising from actions or failures to act under this Plan.

15. Plan Mergers.

This Plan shall not be merged with, nor shall any assets or liabilities of this Plan be transferred to, any other Plan unless each Participant in this Plan would receive a benefit immediately after the merger, consolidation or transfer (if the Plan then terminated) which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan is then terminated).

16. Claims Procedure.

If a Participant or Former Participant believes that he is entitled to a benefit pursuant to section 5.1, such Participant or Former Participant shall file with the Administrator a written claim for benefit on such forms and with such documentation as the Administrator shall prescribe.

(1) The Administrator shall consider and decide any claim filed pursuant to paragraph (a) above, promptly upon receipt. A claim shall be allowed only to the extent that a majority of the voting members of the Administrator vote to allow the claim. If such claim is denied, in part or in full, the Administrator shall notify the claimant in writing of such decision within sixty (60) days after the Administrator's receipt of the claim. Such notice shall advise the claimant, in language calculated to be understood by him, of the following:

- (a) The specific reason or reasons for the denial of the claim;
 - (b) The pertinent Plan provision or provisions on which the denial is based;
 - (c) A description of any additional material or information which will permit the claimant to perfect the claim, together with an explanation of why such material or information is necessary; and
 - (d) An explanation of the claim review procedure provided by paragraph (c).
- (2) If a claimant receives notice that his claim for benefits has been denied in whole or in part, he or his duly authorized representative may, within sixty (60) days after receipt of notice of such denial:
- (a) Make written application for a review of the decision. Such application shall be made on a form specified by the Administrator and shall be delivered to the Administrator.
 - (b) Review documents in the possession of the Administrator which are pertinent to the decision under review.
 - (c) Submit, in writing, issues and comments on the decision under review.
- (3) If review of a decision is requested pursuant to subsection (c)(1), such review shall be made by the Board of Aldermen, who shall review all relevant documents and other matters, including matters submitted by the claimant. The decision on review shall be made within sixty (60) days after the receipt by the Administrator of the request for review, or within sixty (60) days after the date on which the claimant submits written issues and comments pursuant to subsection (c)(3), whichever is later. The decision shall be in writing, shall include the specific reasons for the decision, including references to pertinent Plan provisions on which the decision is based, shall be written in a manner calculated to be understood by the claimant, and shall be final.

17. Revenue Sources.

- (1) Subject to the provisions of paragraph (b) of this section, funding for the Plan shall be provided by the following:
- (a) Such revenues of the City as the Board of Aldermen determines from time to time are reasonably necessary and available to provide benefits under the Plan.
 - (b) Contributions from members of the fire and police departments.
 - (c) Any other gift, grant, devise or bequest of either money or other thing of value, with the income and principal thereof.
- (2) In no event and under no circumstances shall anything in this Plan be held or construed to impose upon the City any duty or liability to provide defined benefits in excess of those Revenue Sources described in subsections (1)(a), (b) and (c).

18. Miscellaneous.

- (1) The Plan and Trust shall not be construed as an employment contract between the City and any Employee. Participation in this Plan shall not give any Employee the right to be retained in the employ of the City, or to have any right or interest in this Plan or Trust other than as herein provided.
- (2) This Plan, and its validity, construction and all rights hereunder shall be governed by the laws of Missouri and the United States, as are applicable to local governmental plans as defined in Section 414(d) of the Code. The terms and provisions of this Plan shall be construed according to the principles, and in the priority, as follows: first, in accordance within the meaning hereunder which will bring the Plan into conformity with the applicable laws; and secondly, in accordance with the laws of the State of Missouri. If any provision of this Plan shall be held illegal or invalid, the remaining provisions of this Plan shall be construed as if such provision had never been included.
- (3) Each Participant or Former Participant entitled to benefits under the Plan must file with the Administrator in writing his post office address and each change of post office address. Any communication, payment, statement, or notice addressed to such a person at his latest post office address as filed with the Administrator shall be binding upon such person for all purposes of this Plan, and neither the Administrator nor the Trustee shall be obliged to search for or ascertain the whereabouts of any such person.
- (4) Subject to section 19.1, this Plan shall be binding upon the City, its successors and assigns; upon the Participants and Former Participants, their heirs, Beneficiaries and legal representatives; and upon the Administrator, Trustee, any Investment Manager, and any other fiduciaries, their successors and assigns.
- (5) If any provision of the Plan is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect to the greatest extent possible and without being impaired or invalidated in any way.
- (6) The masculine pronoun as used herein refers to both men and women, and words used in the singular are intended to include the plural, whenever appropriate.
- (7) The Plan may be executed in one (1) or more counterparts, and each of such counterparts shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.
- (8) Minimum Distribution Requirement pursuant to Revenue Procedure 2002-29.

18.1. General Rules

- (1) **Effective Date.** Unless an earlier effective date is specified herein, the provisions of this subparagraph (1) will apply for purposes of determining required minimum distributions for calendar years beginning with the beginning with the 2003 calendar year, as well as Required Minimum Distributions for the 2002 distribution calendar year that are made on or after October 1, 2002.
- (2) **Coordination with Minimum Distribution Requirements Previously in Effect.** The required Minimum Distributions for 2002 under this Section will be determined as

follows. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Section equals or exceeds the required minimum distributions determined under this Section, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Section is less than the amount determined under this Section, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this Section.

- (3) Precedence. The requirements of this Section will take precedence over any inconsistent provisions of the Plan.
- (4) Requirements of Treasury Regulations Incorporated. All distributions required under this Section will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code.
- (5) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section, other than paragraph (a)(4) above, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

18.2. Time and Manner of Distribution.

- (1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date which is the April 1st of the calendar year following the later of: when the Participant attains age 70 ½ (effective January 1, 2021, age 72); or the date the Participant terminates his employment with the City.
- (2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (a) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½ (effective January 1, 2021, age 72), if later.
 - (b) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (c) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the

Participant's death.

- (d) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions of the surviving Spouse begin, this subsection 19.2, other than paragraph (2), will apply as if the surviving Spouse were the Participant.

For purposes of this subsection (2)(a) and Section 19.5, distributions are considered to begin on the Participant's required beginning date (or, if paragraph (2)(d) applies, the date distributions; are required to begin to the surviving Spouse under paragraph (2)(a)). If annuity payments irrevocably commence to the Participant before the date the Participant's Required Beginning Date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under paragraph (2)(a)), the date distributions are considered to begin is the date distributions commence.

- (3) Form of Distributions. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections 18.3, 18.4 and 18.5. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury Regulations that apply to individual accounts.
- (4) Election to Allow Participants or Beneficiaries to Elect 5-Year Rule. Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in subsection (2) and Section 19.5 applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under subsection (2) of the Plan, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with subsection (2) and Section 19.5 of this Section.

18.3. Determination of Amount to be Distributed Each Year.

- (1) General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
 - (a) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
 - (b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsection (4) or (5);

- (c) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
- (d) payments will either be non-increasing or increase only as follows:
 - (1) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - (2) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in subsection (4) dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;
 - (3) to provide cash refunds of a Participant's Accumulated Contributions upon the Participant's death; or
 - (4) to pay increased benefits that result from a Plan amendment.
- (e) Amount required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under paragraph (2)(a) or (b) of Section 19.2 is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.
- (f) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

18.4. Requirements For Annuity Distributions That Commence During Participant's Lifetime.

- (1) Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-spouse Beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the

treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

- (2) Period certain Annuities. Unless the Participant's Spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's Spouse is the Participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this paragraph (2), or the joint life and last survivor expectancy of the Participant and the Participants Spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the calendar year that contains the annuity starting date.

18.5. Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the Participant dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in paragraphs (2)(a) or (b) of Section 19.2, over the life of the designated Beneficiary or over a period certain not exceeding:

- (a) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year immediately following the calendar year of the Participant's death; or
- (b) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the annuity starting date.
- (c) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year

containing the fifth anniversary of the Participant's death.

- (d) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this Section (d) will apply as if the surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to paragraph (2)(a) of Section 19.2.

18.6. Definitions.

- (1) Designated Beneficiary. The individual who is designated as the Beneficiary under the Plan and is the designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.
- (2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection Section 19.2(2).
- (3) Life expectancy. Life expectancy shall be computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

19. Contributions Conditional.

All Contributions to this Plan by the City are expressly conditioned on the receipt from the Internal Revenue Service of a letter determining that the Plan meets the requirements of Section 401(a) of the Code as applicable to local government plans as defined in Section 414(d) of the Code, and that the Trust is exempt from federal income tax pursuant to Section 501(a) of the Code. In the event such a determination letter is not received within a time which the Board of Aldermen determine to be reasonable, then the provisions of this Plan amendment shall be null and void, and all Contributions made shall be returned to the parties who made them, including the net earnings thereon, except for amounts which may previously have been distributed to Participants in accordance with the terms of the Plan.

20. Rollover Provision.

- (1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this article, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(2) Definitions.

- (a) Eligible Rollover Distribution: An Eligible Rollover Distribution is any Distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include any Distribution

that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; any Distribution to the extent such Distribution is required under Section 401(a)(9) of the Code; the portion of any Distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to City securities); and any other Distributions that are reasonably expected to total less than Two Hundred Dollars (\$200.00) during a year. An Eligible Rollover Distribution does not include hardship Distributions from a Plan described under Section 401(k) of the Code or an annuity contract described under Section 403(b) of the Code.

- (b) **Eligible Retirement Plan:** An Eligible Retirement Plan is an individual Retirement account described in Section 408(a) of the Code, an individual Retirement annuity described in Section 408(b) of the Code, an annuity Plan described in Section 403(a) of the Code, or a qualified Trust described in Section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving Spouse, an Eligible Retirement Plan is an individual Retirement account or individual Retirement annuity.
- (c) An Eligible Retirement Plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code.
- (d) **Distributee:** A Distributee includes an Employee or Former Employee. In addition, the Employee's or Former Employee's surviving Spouse and the Employee's or Former Employee's Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the Spouse or former Spouse.
- (e) **Direct Rollover:** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

21. Purchase of Service Credit.

21.1 Military Service Credits. An Employee Participant who served on active duty in the Armed Forces of the United States and who became an Employee Participant, or returned to Employee Participant status, after discharge under honorable conditions, and who has completed ten (10) years of Credited Service, may elect, prior to his or her Normal Retirement Date to purchase Service Credits equivalent to such service in the Armed Forces, not to exceed five (5) years, provided the Employee Participant is

not receiving and is not eligible to receive retirement credits or benefits from any other public or private retirement plan for the service to be purchased, other than a United States military service retirement system or United States Social Security benefits attributable to the additional service credit to be purchased, and a affidavit so stating is completed per the City's instruction and accepted by the City in its sole discretion, in accordance with the following.

- (1) An Employee Participant who elects to purchase Service Credits pursuant to Section 21.1 shall pay to the City an amount equal to the actuarial cost (using the Plan's actuarial assumptions applied in determining the cost of benefits in effect at the date of the election) of the additional benefits attributable to the additional Service Credits to be purchased as of the date the Employee Participant elects to make such purchase. Such amount shall be determined by an actuary hired by the City and shall be in an amount in the City's sole discretion.
- (2) In lieu of payment in full on the date the Employee Participant elects to make a purchase hereunder, the Employee Participant may elect to pay the amount in full plus interest on unpaid balances compounded annually at the interest rate assumed from time to time for actuarial valuations of this retirement plan over a period not to exceed two (2) years from the date of election or, if earlier, prior to the commencement date for payment of benefits to the Employee Participant. If payment in full, plus interest, if any, is not made within the prescribed period, any partial payments made by the Employee Participant shall be refunded, and no Service Credits or Credited Service attributable to such election, or as a result of such partial payments shall be allowed. An Employee Participant that has made an election under this subsection and if the Employee Participant is current in payments under an approved repayment plan at the time of his or her death or Disability, such election shall be valid if the Employee Participant, the surviving spouse or surviving Beneficiary pays the entire balance of the remaining amount due, including interest to the date of such payment, within sixty (60) days after the Employee Participant's death or Disability.

21.2 Government Service Credits. An Employee Participant who has earned creditable service under any other retirement plan established by the State of Missouri or any political subdivision or instrumentality of the State in which he or she was not vested and who has completed ten (10) years of Credited Service, may elect, prior to his or her Normal Retirement Date to purchase Service Credits equivalent to such governmental service, not to exceed his or her creditable service under such other government plan. In addition, an Employee Participant who was employed in nonfederal public employment in Missouri and was not covered under a retirement plan in such position and who has completed ten (10) years of Credited Service, may elect, prior to his or her Normal Retirement Date to purchase Service Credits equivalent to his or her years of employment in such uncovered position. The purchase of any such Service Credits shall be done in accordance with the following.

- (1) An Employee Participant who elects to purchase Service Credits pursuant to Section 21.2 shall pay to the City an amount equal to the actuarial cost (using the Plan's actuarial assumptions applied in determining the cost of benefits in effect at the date of the election) of the additional benefits attributable to the additional Service Credits to be purchased as of the date the Employee Participant elects to make such purchase. Such

amount shall be determined by an actuary hired by the City and shall be in an amount in the City's sole discretion. A rollover or trustee-to-trustee transfer from another qualified retirement plan under Code Sections 401(a), 403(a) or 403(b) or a governmental Section 457(b) plan or individual retirement account may be used to make payment for Service Credits purchased hereunder.

- (2) In lieu of payment in full on the date the Employee Participant elects to make a purchase hereunder, the Employee Participant may elect to pay the amount in full plus interest on unpaid balances compounded annually at the interest rate assumed from time to time for actuarial valuations of this retirement plan over a period not to exceed two (2) years from the date of election or, if earlier, prior to the commencement date for payment of benefits to the Employee Participant. If payment in full plus interest, if any, is not made within the prescribed period, any partial payments made by the Employee Participant shall be refunded, and no Service Credits or Credited Service attributable to such election, or as a result of such partial payments shall be allowed. An Employee Participant that has made an election under this subsection and if the Employee Participant is current in payments under an approved repayment plan at the time of his or her death or Disability, such election shall be valid if the Employee Participant, the surviving spouse or surviving Beneficiary pays the entire balance of the remaining amount due, including interest to the date of such payment, within sixty (60) days after the Employee Participant's death or Disability.
- (3) Payments made for Service Credits pursuant to Section 21.2 shall be treated by the plan as would contributions made by the City and shall not be subject to any prohibition on employee contributions or refund provisions under the terms of this plan.

22. Deferred Retirement Option Program.

22.1. **Purpose, Funding and Duration.** Pursuant to Article 22, a deferred retirement option program ("DROP") is created and offered to Employee Participants on a voluntary basis. The DROP is employed as an alternative method of benefit accrual and to facilitate the use of a voluntary early retirement program by the City.

- (1) **Concern.** The City has identified issues in promotion, advancement and wage structures in City departments. The City has highly qualified, high seniority personnel in various service areas. Also, the City has a number of well qualified, less senior personnel who are ready to assume leadership roles; however, they are unable to do so because incumbents who would have otherwise taken retirement, have artificially delayed retirement. The City has learned that many senior staff have not retired because of inability to pay for expensive post-retirement medical insurance and the lengthening of time until full Social Security benefit are available. This has prohibited advancement of talented junior staff into leadership roles and creates a risk that "leadership-ready" junior staff may depart because of inability to advance. Also, longer retention of senior staff has caused an increase in average compensation costs and pressured the City's budget.
- (2) **Objectives.** To address these issues, the City has developed an early retirement incentive program, whose objectives are to (1) provide financial incentives to encourage retirement among senior leadership staff, (2) create opportunities for advancement of qualified junior personnel, (3) reduce overall staffing costs by permitting lower

seniority, lower cost junior personnel to move into leadership roles, and (4) identify savings by position elimination as functions are rationalized through attrition.

- (3) The DROP is created to add flexibility to the Plan permitting long services employees to obtain the financial ability to retire by providing electing participants access to a lump sum benefit in addition to their normal monthly retirement allowance. This would provide a source of funding for the City's early retirement program and a lump sum benefit to permit retirees to purchase post-retirement medical coverage and to bridge the financial gap in retirement income until attaining full Social Security retirement age.
- (4) The City has conducted an actuarial evaluation of the potential cost impact of the DROP upon the Plan and City's future funding obligations and budget considerations. The conclusions are that (1) the Plan's funding position is sufficient to permit the DROP and leaves the Plan funded at a level that satisfies the statutorily required minimum under R.S. Mo. Section 105.684.1 and (2) the City anticipates that savings to be realized from DROP implementation will exceed annual additional pension costs required to fund Plan liabilities expected to be created by the DROP.
- (5) The Temporary Forward or Back DROPs were originally offered to Eligible DROP Participants commencing September 17, 2012, through the period ending November 1, 2012. A Permanent Forward DROP is offered on a permanent basis effective January 1, 2023. A Second Temporary Back DROP is offered to Eligible DROP Participants commencing on January 1, 2023 through the period ending February 28, 2023.
- (6) The City reserves the right to amend the DROP as necessary to meet the City's goals in its implementation. Any amendments to the DROP enacted pursuant to this Amendment will only affect those persons who enter, or are eligible to enter, the DROP.

22.2. **Eligibility to Participate in the DROP.** All Plan Participants who are Employees who:

- (1) Have (or will have) reached eligibility for an unreduced Retirement Income Benefit under Plan Section 5.1(4) as of the applicable dates set forth for each type of DROP hereafter, by reason of having attained eligibility for Normal Retirement, by as of that applicable date, attaining: (1) age fifty-five (55) with at least ten (10) Years of Service, or (2) age fifty (50) with at least twenty-five (25) Years of Service, or (3) age sixty-five (65) with at least five (5) Years of Service, may elect participation in the DROP, and
- (2) Are "actively employed" with the City at the commencement of the Election Period (including participants who are on a short-term leave, i.e. expected to last for thirty (30) days or less because of sickness, disability or administrative leave purposes as well as FMLA leave but excluding persons on extended and longer term leaves) and as specified below, are eligible to participate in the DROP and are "Eligible DROP Participants."
- (3) Have not elected a Second Temporary Back DROP.

22.3. **Participation Terms.** Eligible DROP Participants may elect to participate in the DROP pursuant to the following terms and conditions that are irrevocable and binding and must be completed and accepted as a condition precedent to participating in the DROP:

- (1) Voluntary Participation. Participation in the DROP shall be completely voluntary;
- (2) Form of Election. An Eligible DROP Participant may elect to participate by completing such election process as the City may require be completed.
- (3) Election Period and Choices. Eligible DROP Participants (1) may elect to participate in the DROP during a DROP Election Period that shall commence on September 17, 2012, and that shall end on November 1, 2012 and (2) shall select among one of two forms of DROP participation, either a “Temporary Forward DROP” or a “Temporary Back DROP”. Effective January 1, 2023, Eligible DROP Participants (1) may elect to participate in a “Forward DROP” and (2) shall elect the number of years he or she will participate in the Forward DROP at any time following the date he or she becomes an Eligible DROP Participant. The number of years of participation shall be no less than one (1) year and no more than five (5) years. The Election Period for the Forward DROP is the period following a Participant becoming an Eligible DROP Participant and ending on such Participant’s DROP Commencement Date. Effective January 1, 2023, Eligible DROP Participants may elect to participate in a “Second Temporary Back DROP” during a DROP Election Period.
- (4) Revocability. An election to participate in the DROP program shall be irrevocable.
- (5) Cessation of Pension Benefit Accruals and Freezing of Benefits. Eligible DROP Participants who elect to participate in the DROP agree that from and after the date specified as the Participant’s DROP Commencement Date:
 - (a) They will irrevocably cease to accrue any additional Retirement Income Benefits under the Plan, either as the result of accrual of additional Credited Service or increases in Compensation, Average Monthly Compensation, Final Average Salary (except for Post-Retirement Adjustments), after their DROP Commencement Date and
 - (b) Their Retirement Income Benefit described in article 5 will be irrevocably determined based upon years of Credited Services, Compensation and Average Monthly Compensation and Final Average Salary as of the Participant’s DROP Commencement Date and will be frozen at that date.
- (6) Eligibility for Post-Retirement Adjustments. Participation in the DROP will not disqualify any Participants from any Post-Retirement Adjustments to their Retirement Income Benefits for which they would otherwise be eligible and that may be effective after the Participant’s DROP Commencement Date. For purposes only of calculation of Post-Retirement Income Adjustments as specified in Section 5.1(9), Participant’s electing to participate in the DROP will be considered to be currently receiving Retirement Income Benefits starting with their DROP Commencement Date. Accordingly, any such Adjustments that become applicable during a Participant’s DROP Period and prior to his/her actual separation from employment with the City will be applied in calculating the value of the Participant’s Retirement Benefit following the Participant’s DROP Period. Adjustments do not apply towards the calculation of the Participant’s DROP Account.
- (7) Continued Employment to Obtain Temporary DROP Proceeds. A Participant who

elects to participate in the DROP must satisfy the following employment requirements to obtain payment of DROP Account balances:

- (a) Temporary Back DROP. Participants who elect to participate in the Temporary Back DROP must be employed at the start of the DROP Election Period and must remain employed through December 31, 2012.
- (b) Forward DROPs. Participants who elect to participate in the Temporary Forward DROP must be employed at the start of the DROP Election Period and remain employed through December 31, 2013. Participants who elect to participate in the Forward DROP must be employed at the start of the DROP Election Period and remain employed through the December 31st of the final year in which he or she has elected to participate (the “DROP End Date”).
- (c) Second Temporary Back DROP. Participants who elect to participate in the Second Temporary Back DROP must be employed at the start of the DROP Election Period and must terminate employment prior to the date six months following February 28, 2023.
- (d) Variable Employment at City Option. The City, in its complete discretion except as specified in (iii) below, may:
 - i. Waive the foregoing employment requirements and permit a DROP Participant to voluntarily terminate employment at any time after November 1, 2012, and still properly qualify for payment of all DROP Account balances; or
 - ii. Involuntarily terminate the employment of a DROP Participant at any time after November 1, 2012, for any reason other than “Cause” and the Participant will still properly qualify for payment of all DROP Account balances; or
 - iii. To the extent that the City determines that it has a bona fide and previously unanticipated business need to delay a Participant’s termination of employment, the City may require a Back or Forward DROP Participant to remain employed for a period of up to six (6) months after the end of their DROP Period as a condition precedent to obtaining payment of DROP Account balances.

If, however, a Participant requests and receives permission to terminate prior to the end of the DROP Period, the amount, and time for payment, of DROP Account deposits will be determined as specified in Section 22.8.

- (8) Retirement Income Benefits After Electing DROP Participation. Upon termination of employment from the City by a DROP Participant, the Participant will be entitled to commence Retirement Income Benefits in a manner consistent with all other Plan terms based upon the Participant’s Credited Service and Final Average Salary in effect as of the Participant’s DROP Commencement Date and consistent with Section 22.3(5) and (6).

- (9) Release of All Claims and Waiver of Rights. As a condition precedent to participation in the DROP and payment of DROP Account proceeds, a Participant who elects to participate in the DROP must execute a general release and waiver of all claims and causes of action that the Participant may have against the City, the Plan and all other persons, as identified in such document. The release and waiver shall be in such form and of content as the City deems appropriate.
- (10) Contributions and Refund of Contributions Made After January 1, 2013. While an Employee is a DROP Participant, the Employee shall continue to make any and all contributions required pursuant to Section 4.1 or otherwise. Contributions shall become part of the general assets of the Plan and will not be credited to the DROP Accounts of any Participants.

Provided, however, that if a Temporary DROP Participant satisfies all contributions for payment of his or her DROP Account, then at the conclusion of the Participant's DROP Period, all contributions made by the Participant to the Plan for and during the Temporary DROP Participant's period commencing from January 1, 2013 or January 1, 2023 (as applicable) through: (a) for a Temporary Forward or Back DROP Participant, (i) the earlier to occur of December 31, 2013 or date on which the Participant's employment with the City ends, or (ii) the Participant's DROP End Date; or (b) for a Second Temporary Back DROP Participant the date on which the Participant's employment with the City ends, will also be credited to the Participant's DROP Account.

Notwithstanding the foregoing, if an Employee becomes a Forward DROP Participant on or after January 1, 2023, the Employee will make no contributions, pursuant to Section 4.1 or otherwise, to the Plan.

- (11) Failure to Satisfy DROP Terms. Any Participant or DROP Participant who does not completely satisfy any of the foregoing terms of DROP participation (items (1) through (10) above), including those whose employment is terminated for "Cause", will forfeit any rights to participate in the DROP and forfeit all entitlements to DROP Account balances or payments and, upon their actual separation from service with the City and retirement, will have their Plan Retirement Income Benefits calculated at the time of retirement as though the Participant had never entered the DROP and without reference to the limitations and specifications provided pursuant to Section 22.3 (5) and (6).
- (12) Only for purposes of this DROP Program and no other City program or purpose, "Cause" is to be determined by the City Manager in his or her exclusive judgment and is defined as: (i) Participant's conviction or entering a plea, or guilty or *nolo contendere* to, or receiving a suspended imposition of sentence or any other disposition of a criminal charge other than a finding of "not guilty" or dismissal of the charge, of any felony or misdemeanor involving fraud, dishonesty or moral turpitude (excluding acts involving a *de minimis* dollar value and not related to the City) or acts of threats of violence, (ii) Participant's neglect, refusal or failure to materially discharge his or her duties or failure to comply with the lawful directions of the City, (iii) willful destruction of City property, (iv) fraud, theft, embezzlement or dishonest activity (excluding acts involving a *de minimis* dollar value and not related to the City), (v) willful misconduct by Participant which may cause substantial economic or reputational injury to the City, including, but not limited to, sexual harassment, (vi) willful and knowing material misrepresentation, (vii) violation of any City policy

determined by the City Manager in his exclusive judgment.

22.4. Temporary “Forward Drop” and Counseling Payment.

- (1) An Eligible DROP Participant may elect during the DROP Election Period to participate in a Temporary Forward DROP. Participants who elect a Temporary Forward DROP shall select a DROP Commencement Date of either December 31, 2010, or December 31, 2011, or December 31, 2012.
- (2) Participants electing a Temporary Forward DROP will have an amount equal to 100% of the Retirement Income Benefit that the Participant would have had, calculated under Sections 5.1(2)(a) and 22.3 (5) and (6) determined as if he or she had retired on the DROP Commencement Date, deposited in a nominal account in the Plan, i.e., a DROP Account.
- (3) This deposit shall continue for the following periods:

DROP Commencement Date	DROP Period/Months of Retirement Income Benefit to be Deposited into DROP Account
December 31, 2010	36 months
December 31, 2011	24 months
December 31, 2012	12 months

Amounts associated with the DROP Period prior to January 1, 2013, will be deposited in the Participant’s DROP Account as of January 1, 2013.

- (4) If, however, a Participant requests and receives permission to terminate prior to the end of the DROP Period as specified in Section 22.3(7)(c)(i), deposits will not be made to the Participant’s DROP Account for each whole month that the Participant’s termination of employment from the City precedes December 31, 2013 and the number of months of Retirement Income Benefit to be deposited into the Participant’s DROP Account will be reduced for each such month.
- (5) On October 1, 2012, each Plan Participant who is determined to be eligible to participate in the DROP pursuant to Section 22.2 will be paid Two Hundred Fifty dollars (\$250) as a supplemental payment to assist with retirement planning. This amount is payable regardless of whether the Participant actually elects to participate in the DROP.

22.5. Temporary “Back DROP” and Counseling Payment.

- (1) An Eligible DROP Participant may elect during the DROP Election Period to participate in a Temporary Back DROP. Participants who elect a Temporary Back DROP shall elect a DROP Commencement Date of either December 31, 2009, December 31, 2010, or December 31, 2011.

- (2) Participants electing a Temporary Back DROP will have an amount equal to 100% of the Retirement Income Benefit that the Participant would have had, calculated under Sections 5.1(2)(a) and 22.3(5) determined as if he or she had retired on the DROP Commencement Date, deposited in a nominal account in the Plan, i.e., a DROP Account commencing on the DROP Commencement Date and continuing for the following periods:

DROP Commencement Date	Length of DROP Period/Months of Retirement Income Benefit to be Deposited into DROP Account
December 31, 2009	36 months
December 31, 2010	24 months
December 31, 2011	12 months

Amounts associated with the DROP Period prior to January 1, 2013, will be deposited in the Participant's DROP Account as of January 1, 2013.

- (3) On October 1, 2012, each Plan Participant who is determined to be eligible to participate in the DROP pursuant to Section 22.2 will be paid Two Hundred Fifty dollars (\$250) as a supplemental payment to assist with retirement planning. This amount is payable regardless of whether the Participant elects to participate in the DROP.

22.6. "Forward Drop".

- (1) An Eligible DROP Participant may elect during the DROP Election Period to participate in a Forward DROP. Participants who elect a DROP shall select a DROP Period of no less than one (1) year and no more than five (5) years. The Participant's DROP Commencement Date will be the December 31st immediately preceding his or her elected DROP Period.
- (2) Participants electing a Forward DROP will have an amount equal to 100% of the Retirement Income Benefit that the Participant would have had, calculated under Sections 5.1(2)(a) and 22.3 (5) and (6) determined as if he or she had retired on the DROP Commencement Date, deposited in a nominal account in the Plan, i.e., a DROP Account.
- (3) This deposit shall continue for the following periods:

Number of Years Elected	DROP Period/Months of Retirement Income Benefit to be Deposited into DROP Account
5	60 months
4	48 months

3	36 months
2	24 months
1	12 months

- (4) If, however, a Participant requests and receives permission to terminate prior to the end of the DROP Period as specified in Section 22.3(7)(c)(i), deposits will not be made to the Participant’s DROP Account for each whole month that the Participant’s termination of employment from the City precedes the December 31st of the final year of his or her elected DROP Period, and the number of months of Retirement Income Benefit to be deposited into the Participant’s DROP Account will be reduced for each such month.

22.7. “Second Temporary Back DROP”.

- (1) An Eligible DROP Participant may elect during the DROP Election Period to participate in a Second Temporary Back DROP. Participants who elect a Second Temporary Back DROP shall elect a DROP Commencement Date of either January 1, 2020, January 1, 2021, or January 1, 2022.
- (2) Participants electing a Second Temporary Back DROP will have an amount equal to 100% of the Retirement Income Benefit that the Participant would have had, calculated under Sections 5.1(2)(a) and 22.3(5) determined as if he or she had retired on the DROP Commencement Date, deposited in a nominal account in the Plan, i.e., a DROP Account commencing on the DROP Commencement Date and continuing for the following periods:

DROP Commencement Date	Length of DROP Period/Months of Retirement Income Benefit to be Deposited into DROP Account
January 1, 2020	36 months
January 1, 2021	24 months
January 1, 2022	12 months

Amounts associated with the DROP Period prior to January 1, 2023, will be deposited in the Participant’s DROP Account as of March 1, 2023.

22.8. DROP Account, Vesting and Interest.

- (1) A DROP Account is a “nominal” account established on the books and records of the Plan and on behalf of each DROP Participant. All benefits accrued by, and payments made to or for the benefit of, a DROP Participant, i.e., deposits, interest credits and distributions, will be credited and debited to an Account established within the Plan for each DROP Participant. Each Participant’s DROP Account is exclusively a bookkeeping entry. DROP Participants will not have any actual claim or entitlement to any specific Plan assets. No Plan assets will actually be segregated or set aside for any

DROP Participant, nor will any DROP Participant have any type of priority claim or rights to any Plan assets.

- (2) All amounts credited to a Participant's DROP account shall be fully vested and nonforfeitable at all times unless a DROP Participant violates any of the terms and conditions of the DROP as specified in Section 22.3.
- (3) A Participant's DROP Account shall be:
 - (a) Credited with all deposits made during the DROP Period elected pursuant to Section 22.4, 22.5 or 22.6;
 - (b) Credited with interest at the end of each month at a rate which will equal 5% per annum, when compounded monthly, on the balance of the Participant's DROP Account as of the end of the preceding month (Temporary DROP Participants will have a zero Account balance prior to January 1, 2013, and interest credits will commence January 1, 2013, on amounts credited to their DROP Account on January 1, 2013 and thereafter); and
 - (c) Credited at the conclusion of the DROP Period with the amount of contributions identified at Section 22.3(10) if the DROP Participant satisfies all conditions for payment of his or her DROP Account (notwithstanding the foregoing, if a Participant becomes DROP Eligible on or after January 1, 2023, no contributions will be credited due to Section 22.3(10).

22.9. **Retirement, DROP Distributions and Early DROP.** After a DROP Participant retires and terminates employment from the City, the Participant will be entitled to receive the following.

- (1) **Retirement Income.** The Participant shall receive monthly pension equal to his or her Retirement Income Benefit calculated as of the start of the Participant's DROP Commencement Date taking into consideration Credited Service and Final Average Salary as Section 22.3(6) that would have been applied prior to the Participant's actual termination from City service.
- (2) **DROP Distribution.** The Participant shall receive a distribution in a single sum from the Participant's DROP Account. This distribution is subject to the Rollover provisions of Section 20 and may, upon election, be direct deposited into an individual retirement account or Eligible Retirement Plan or may be taken as a taxable distribution by the Participant at the Participant's election upon completion of such distribution documentation. In the absence of an election within sixty (60) days of retirement, the balance to the credit of a Participant in his or her DROP Account will be paid to him or her in a single sum.

22.10. **Death or Disability Benefit and Beneficiary for DROP Account.**

- (1) **Pre-Retirement Death Benefit.** If a Participant has elected participation in the DROP and dies prior to payment of his or her DROP Account balance and prior to termination of his or her employment (and without the occurrence of any circumstance that would have cause violation of any terms or conditions of DROP participation), then the

Participant's surviving spouse shall have the right to either (i) elect to receive any surviving spouse benefits provided by the Plan pursuant to Section 5.1(3) based upon Participant's Retirement Income Benefit determined pursuant to Sections 22.3 (5) and (6) above plus receive the balance to the credit of the Participant's DROP Account including amounts that would be credited to the Account for the maximum period described in Section 22.4, 22.5 or 22.6 above as applicable or (ii) elect to forfeit the Participant's DROP Account and collect surviving spouse Retirement Income Benefits determined as if the Participant had not ever elected to enter the DROP; provided, however, that the election to take under (i) or (ii) must be made no later than 180 days following the Participant's death.

- (2) Post-Retirement Death Benefit. If a Participant has elected participation in the DROP and dies after termination of his or her employment, (and without occurrence of any circumstance that would have caused violation of any terms or conditions of the DROP), and prior to payment of his or her DROP Account balance, then the Participant's surviving spouse shall receive any surviving spouse benefits provided by the Plan pursuant to Section 5.1(3) based upon Participant's Retirement Income Benefit determined pursuant to Sections 22.3(5) and (6) above plus receive the balance to the credit of the Participant's DROP Account.
- (3) Disability. A Participant who participates in the Forward DROP whose service ends during the Forward DROP period by reason of Disability shall have a Retirement Income Benefit as provided pursuant to Section 5.1(4) based upon Participant's Retirement Income Benefit determined pursuant to Section 22.3(5) and (6) above plus receive the balance to the credit of the Participant's DROP Account including amount that would be credited to the Account for the maximum period described in Section 22.4, 22.5 or 22.6 above as applicable.
- (4) Beneficiary. A Participant who elections to participate in the DROP shall designate in writing, at the time of entry into the DROP, a Beneficiary for the DROP Account. The member may change the designation at any time prior to taking a distribution from the DROP Account. The Participant's beneficiary designation shall be applicable only to the provisions of this Article 22. In the absence of any affirmative election to the contrary, the spouse of a married Participant will be the Participant's Beneficiary. If a Participant dies without a surviving spouse and without a living designated beneficiary, then all DROP Account distribution shall be made to the estate of the DROP Participant.

22.11. Tax Qualification. It is intended that the DROP will not jeopardize in any way the tax qualified status of the Plan under the Code. The City shall have the authority to adopt any rules and regulations necessary to maintain compliance with applicable Federal laws and regulations. The benefits provided pursuant to this Article shall be subject to the provisions of the Code in all respects.



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
TONI SIERING, DIRECTOR OF PARKS & RECREATION
DATE: MARCH 28, 2023
SUBJECT: ORDINANCE – PURCHASE AND INSTALLATION OF ARCHITECTURAL
“SLATE LOOK” SHINGLES ON THE PAVILION AT THE NORTH END OF OAK
KNOLL PARK

A priority project identified in the Parks and Recreation Master Plan is to provide an alternate pavilion in the location of the current uncovered picnic site at the north end of Oak Knoll Park. The purchase and installation of this pavilion was approved by the Board of Aldermen at its October 25, 2022 meeting.

At that meeting, staff were instructed to explore the cost of installing either slate shingles or “slate look” shingles on the roof of the new pavilion so that the prefabricated structure would fit within the overall aesthetics of Oak Knoll Park and the surrounding neighborhood. Staff received a proposal from Old World Roofing to install a slate roof at the cost of \$44,605.20. Additionally, staff requested quotes from roofing contractors that supply architectural shingles with the traditional look of slate. One responsive quote was received from Bone Dry Roofing in the amount of \$11,607.13.

The project scope includes the purchase and installation of these architectural shingles that feature a thickness, proportion, and color selection reminiscent of natural slate. Staff has met with Bone Dry Roofing to discuss the project and is confident that they can perform the work as quoted.

Funding for the Oak Knoll Park Pavilion Project has been included in the City’s Capital Budget for FY23 in the amount of \$110,000. Current expenses for the project include the cost of the pavilion at \$77,024 (with a 5% contingency of \$3,850) and concrete footings and picnic pad at \$13,972. Factoring in the additional cost of the contingency, the \$11,607.13 cost of the “slate look” roof will bring the project in at a total cost of \$106,453, still under the approved budget.

Recommendation: To approve the ordinance allowing for the purchase and installation of architectural “slate look” shingles on the pavilion at the north end of Oak Knoll Park through Bone Dry Roofing in the amount of \$11,607.13.

BILL NO. 6963

ORDINANCE NO. ____

AN ORDINANCE AUTHORIZING AN AGREEMENT FOR THE PURCHASE AND INSTALLATION OF ARCHITECTURAL “SLATE LOOK” SHINGLES ON THE PAVILION AT THE NORTH END OF OAK KNOLL PARK

WHEREAS, the Board of Aldermen believes that installation of a new pavilion in Oak Knoll Park will enhance the leisure and recreation program offered to our residents by the City of Clayton; and

WHEREAS, the Board of Aldermen believes that a “slate look” roof will fit within the overall aesthetics of Oak Knoll Park and the surrounding neighborhood; and

WHEREAS, the Board of Aldermen has appropriated \$110,000 in the FY23 Fiscal Budget for such a 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 an agreement with Bone Dry Roofing for the purchase and installation of architectural “slate look” shingles on the Pavilion at the north end of Oak Knoll Park 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, in an amount not to exceed \$11,607.13, 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 28TH day of March 2023.

Mayor

ATTEST:

City Clerk



Quote

Customer ID: PR2666551
Date: Mar 8, 2023

Bone Dry Roofing

5895 Suemandy Dr
St Peters, MO 63376
(636) 489-1830
Sales Rep: Travis Hayes
Email: travis.hayes@bonedry.com

TO:
City of Clayton - Parks & Rec Department Justin Whipple
Clayton Parks - New Construction
Saint Louis, MO 63105
(314) 290-8554 Justin

Quote valid through: May 8, 2023

Estimated Start Date:

Description: new construction

Current Shingle:

Product	Qty	Unit of Measure	Description	Unit Price	Total
Bone Dry Roof Description	1.0		INCLUDED: Synthetic underlayment, drip edge(color tbd), OC Starter strip plus, OC Berkshire Hip&Ridge Shingles(COLONIAL), approximately 9.33sq of OC Berkshire Shingles(COLONIAL), ice and water shield along eaves on both levels of structure. Remove and haul away all debris. 50 year manufacturer, 25 year workmanship warranty.	\$ 0.00	\$ 0.00
Platinum Warranty	0.0		Owens Corning Platinum Warranty - 25 Year Workmanship & Limited Lifetime Warranty	\$ 0.00	\$ 0.00
OC Berkshire Quote	1.0		Platinum warranty 130 MPH Wind Resistance Algae Resistance Slate Stone Shingle Appearance	\$ 11607.13	\$ 11607.13
Wood Charges	0.0		Any rotten or damaged decking will be replaced as needed at \$90 per sheet.	\$ 0.00	\$ 0.00
Payment Terms	1.0		No down payment required--all payment due upon completion of project	\$ 0.00	\$ 0.00

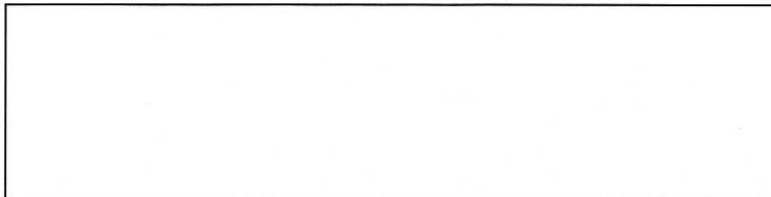
All credit card payments will be subject to a technology fee.

Subtotal \$ 11607.13

Sales Tax \$ 0.00

Total \$ 11607.13

Page 1 of 2



Date: Mar 8, 2023



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
TONI SIERING, DIRECTOR OF PARKS & RECREATION
DATE: MARCH 28, 2023
SUBJECT: ORDINANCE – A CONTRACT WITH MCCONNELL AND ASSOCIATES FOR COURT RESURFACING AT SHAW PARK TENNIS CENTER

In 2012, Shaw Park Tennis Center underwent a major renovation which included replacing the playing surface with a post-tension concrete system. To properly maintain this system and keep the playing surface in excellent condition, it is recommended that the courts are resurfaced every five years, and this was last completed in 2018.

To that end, McConnell and Associates has submitted a proposal for the resurfacing project. Staff has reviewed the proposed scope of work and met with the contractor on site to review the project. Staff believes that McConnell and Associates is well qualified to perform the work and was satisfied with the results when this company completed the same job in 2018. McConnell and Associates participates in The Interlocal Purchasing System (also known as TIPS Purchasing Cooperative), a nationwide purchasing cooperative designed to be a procurement resource for local and state government agencies, school districts (K-12), higher education and nonprofits. As a result, McConnell and Associates. has provided a lump sum bid for the resurfacing, factoring in a 9% discount from the normal price of their products.

The full project scope includes power washing all courts, preparing the surface for patching and recoloring, applying multiple coats of coloring and acrylic resurfacing paint, and striping the court lines per American Sports Builders Association standards. The proposal includes two “mobilizations”, meaning that only half the courts will be completed at a time to allow for use by residents, programs, and Clayton High School Athletics. The full project is expected to take approximately four to five weeks and will be completed this fall.

Funding for this project has been included in the City’s ERF Budget for FY23 in the amount of \$91,307. The total cost of the project will be \$68,840. It is recommended that we include a 5% contingency of \$3,500 to be used to cover expenditures to correct unknown issues that become apparent during this part of the project.

Recommendation: To approve the ordinance executing a contract with McConnell and Associates in the amount of \$68,840, plus a \$3,500 contingency to resurface the courts at Shaw Park Tennis Center.

BILL NO. 6964

ORDINANCE NO. ____

AN ORDINANCE APPROVING A CONTRACT WITH MCCONNELL AND ASSOCIATES FOR COURT RESURFACING AT SHAW PARK TENNIS CENTER

WHEREAS, the Board of Aldermen believes that maintaining the playing surface at Shaw Park Tennis Center will enhance the leisure and recreation program offered to our residents by the City of Clayton; and

WHEREAS, the Board of Aldermen has appropriated \$91,307 in the FY23 Fiscal Budget for such a project; and

WHEREAS, in accord with Art; X, Sec. 3 of the Clayton Charter, the City of Clayton, through the cooperative bidding procedures of The Interlocal Purchasing System (also known as TIPS Purchasing Cooperative), obtained and evaluated bids and proposals for court resurfacing 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 approves on behalf of the City an agreement with McConnell and Associates for tennis court resurfacing 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, in an amount not to exceed \$68,840.00 plus a contingency of \$3,500.00, 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 28th day of March 2023.

Mayor

ATTEST:

City Clerk



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
MATT MALICK, P.E., DIRECTOR OF PUBLIC WORKS
DATE: MARCH 28, 2023
RE: ORDINANCE - A CONTRACT WITH KINGSLAND CONCRETE
CONTRACTOR, LLC. FOR THE FY2023 ADA IMPROVEMENTS
PROJECT

The Public Works Department is requesting approval of a construction contract with Kingsland Concrete Contractor, LLC. for the FY23 ADA Improvements Project. Similar to past years, this project will include the replacement of various sidewalk, curb ramps, curbs, and streetscape that do not meet ADA requirements throughout the City. Areas of work are identified through our ADA Transition Plan Implementation, inspections, and citizen-reported issues. This contract works will involve the replacement of areas that were not suitable to be ground down or otherwise addressable by Public Works Operations staff.

Bids were opened on March 14, 2023, and the City received two bids as shown on the attached bid tabulation. Kingsland Concrete Contractor, LLC submitted the lowest, responsive, responsible Bid in the amount of \$108,129.00. Currently available funding in the budget is \$100,000 and is being funding by 2014 bonds. This has traditionally been an annual project and the 2022 version of this project was bid twice last year with the City receiving no bids each time. The list of repairs did continue to grow during that time, therefore we would request approval of the base bid plus a contingency of \$11,871.00, for a total of \$120,000.00. The intent is to spend the full contingency on similar repairs.

STAFF RECOMMENDATION: To approve the ordinance authorizing a contract with Kingsland Concrete Contractor, LLC in the base amount of \$108,129.00, plus authorization to approve change orders in an amount not to exceed \$11,871.00, for a total of \$120,000.00 for the FY23 ADA Improvements Project.

BILL NO. 6965

ORDINANCE NO. _____

AN ORDINANCE APPROVING A CONTRACT WITH KINGSLAND CONCRETE CONTRACTOR, LLC. FOR THE FISCAL YEAR 2023 ADA IMPROVEMENTS PROJECT

WHEREAS, the City of Clayton desires to undertake improvements to enhance ADA compliance and reconstruct sections of sidewalk and curb ramps in various locations; and

WHEREAS, upon request and advertisement for bids, Kingsland Concrete Contractor, LLC. was found to be the lowest, responsive, responsible bidder for the FY23 ADA Improvement 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 an agreement with Kingsland Concrete Contractor, 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 \$11,871.00, 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 both from and after its passage by the Board of Aldermen.

Passed this 28th day of March 2023.

Mayor

ATTEST:

City Clerk

Bid Tab

ADA Improvement Project FY23

2023.PW.41.050



Bid Date: 3/14/2023

Bid Time: 2:00 PM

BASE BID*				Kingsland Concrete Contractors LLC		Byrne and Jones Construction	
Item No.	Description	Unit	Quantity	Unit Price	Extended Price	Unit Price	Extended Price
1	Concrete Sidewalk-5" Thick (SD-11)	SF	4,808	\$17.00	\$81,736.00	\$43.01	\$206,792.08
2	Concrete Driveway Approach-6" Thick	SF	140	\$20.00	\$2,800.00	\$55.07	\$7,709.80
3	Concrete Alley Approach-8" Thick	SF	370	\$21.00	\$7,770.00	\$36.84	\$13,630.80
4	Concrete Curb and Gutter	LF	115	\$55.00	\$6,325.00	\$151.29	\$17,398.35
5	Concrete Rolled Curb	LF	20	\$50.00	\$1,000.00	\$401.91	\$8,038.20
6	Concrete Streetscape Sidewalk	SF	64	\$20.00	\$1,280.00	\$217.27	\$13,905.28
7	Brick Carriage Strip-12"	LF	16	\$80.00	\$1,280.00	\$475.47	\$7,607.52
8	Brick Carriage Strip-20"	LF	8	\$85.00	\$680.00	\$768.16	\$6,145.28
9	Adjust Tree Grate and Frame	EA	1	\$850.00	\$850.00	\$2,033.88	\$2,033.88
10	Concrete Curb Ramp-7" Thick	SF	76	\$22.00	\$1,672.00	\$172.45	\$13,106.20
11	Detectable Warning Surface	SF	46	\$60.00	\$2,736.00	\$127.60	\$5,818.56
Total Base Bid				\$108,129.00		\$302,185.95	

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 _____, 20__, by and between the City of Clayton, Missouri (hereinafter the "City") and, **Kingsland Concrete Contractor LLC** a Corporation with offices at **10493 Lakeshore Dr., Blackwell, MO 63626**, (hereinafter the "Contractor"). The project shall be identified as **ADA Improvements - FY23**, Project No.: **2023.PW.41.050**

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 **Seventy Five (75)** 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 **One hundred and eight thousand, one hundred and twenty nine dollars (\$108,129.00)**

(the "Contract Sum") as follows:

- (a) On or about the tenth day of each following month, ninety five percent (95%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated into the Work, and ninety five percent (95%) 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 five percent (95%) 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 \$3,300,000.00 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 \$3,300,000 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	\$3,300,000.00
Products/completed operations aggregate	\$3,300,000.00
Personal and advertising injury	\$3,300,000.00
Each occurrence	\$3,300,000.00
Fire damage legal liability	\$3,300,000.00
Medical expenses	\$ 5,000.00

4. Professional Liability Insurance with minimum limits of liability of \$3,300,000.00 each claim, \$3,300,000.00 aggregate.

5. Owner's and Contractor's Protective Liability Policy, including Death \$3,300,000.00 each occurrence; Property Damage \$3,300,000.00 each occurrence, \$3,300,000.00 aggregate.

(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. The Contractor's Workers' Compensation and Employer's Liability policy will include the Owner as an alternate employer by using ISO Alternate Employer WC 00 03 01A.

(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.

ARTICLE XII - The Work

The Scope of Work consists of removal and replacement of various curb ramps, sidewalks, driveway approaches, curb, and gutter to bring non-ADA compliant pedestrian access routes into ADA compliance. Traffic control and other incidental items shall be included 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:

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: _____

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 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 portions 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 mortgage 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 nine (9) 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 Day
Fourth of July	Juneteenth

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 provided 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.

ARTICLE 19 – PERIODS OF EXCESSIVE UNEMPLOYMENT

Whenever there is a period of excessive unemployment in Missouri, every person who is charged with the duty, either by law or contract, of constructing or building any public works project or improvement for the municipal corporation shall employ only Missouri laborers and laborers from nonrestrictive states on such project or improvement. Only such labor shall be used during such period, except that other laborers may be used when Missouri laborers or laborers from nonrestrictive states are not available, or are incapable of performing the particular type of work involved, if so certified by the contractor and approved by the contracting officer. This Section shall apply to all labor on public works projects or improvements, whether skilled, semiskilled or unskilled, and whether manual or nonmanual except work done directly by any public utility company and not let to contract. As used in this Section, the following terms mean: (1) "Laborers from nonrestrictive states", persons who are residents of a state which has not enacted state laws restricting Missouri laborers from working on public works projects in that state, as determined by the labor and industrial relations commission; (2) "Missouri laborer", any person who has resided in Missouri for at least thirty days and intends to become or remain a Missouri resident; (3) "A period of excessive unemployment", any month immediately following two consecutive calendar months during which the level of unemployment in the state has exceeded five percent as measured by the United States Bureau of Labor Statistics in its monthly publication of employment and unemployment figures; (4) "Public works", projects defined as public works pursuant to section 290.210 RSMo

Contractor shall execute and comply with the conditions substantially as stated in the following affidavit:

STATE OF MISSOURI)
) ss
COUNTY OF _____)

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:_____