



SPECIAL ANNOUNCEMENT REGARDING CITY COUNCIL MEETINGS

Under Section 610.015 of the Mo. Sunshine Law provides that members of the City Council who are not physically in the Council Chambers can participate and vote on all matters when an emergency exists and the nature of the emergency is stated in the minutes.

The U.S., and the world, is in a state of emergency due to the Coronavirus—Covid-19. Therefore, members of the City Council have elected to participate in this meeting electronically for the public health and safety of each other and the general public.

You are invited to a Zoom webinar.

When: Jun 17, 2021 07:00 PM Central Time (US and Canada)

Topic: June 17, 2021 City Council Meeting

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81343679863>

Or to Join by Telephone:

Dial: +1 301 715 8592 or +1 312 626 6799

Enter Webinar ID: 813 4367 9863

To make a comment during the public comment portion of the meeting please either click the hand icon via Zoom to “raise” your hand, or if you are dialing in from a phone you will “raise your hand” by dialing *9. Raised hands will be called on the order received. ***Any citizen comments received by e-mail by 4:00 p.m. on Thursday, June 17, 2021 will be distributed to the Mayor and City Council.***

If you are unable to join the webinar the meeting will be live-streamed on the following platforms:

Facebook: www.facebook.com/cityofkirkwoodmo

YouTube: www.YouTube.com/kirkwoodcitymo

Twitter: @KirkwoodCity

****SEE THE FOLLOWING PAGES FOR THE AGENDA**



**Kirkwood City Council
Agenda
Thursday, June 17, 2021, 7:00 p.m.
Via Zoom
Posted on June 11, 2021**

- I. PLEDGE OF ALLEGIANCE – COUNCIL MEMBER SEARS**
- II. ROLL CALL**
- III. INTRODUCTIONS AND RECOGNITIONS - NONE**
- IV. PRESENTATIONS - NONE**
- V. PUBLIC HEARINGS - NONE**
- VI. PUBLIC COMMENTS – 3 MINUTE LIMIT PER PERSON**

The Public Comments portion of the meeting is an opportunity for the City Council to listen to comments from citizens. It is not a question and answer session and the City Council will not respond to comments or answer questions during this period. The Mayor may refer any matter brought up to the City Council to the Chief Administrative Officer or City Clerk if action is needed.

VII. CONSENT AGENDA

All items within the Consent Agenda will be enacted by one motion of the Council with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Agenda and placed on the Regular Agenda by request of a member of the City Council. The expenditures listed in the consent agenda are items already approved in the current city budget.

- a) Approval of the June 3, 2021 Council Meeting Minutes

VIII. UNFINISHED BUSINESS - NONE

IX. NEW BUSINESS

- 1. Bill 10882, amending the provisions of the Municipal Code, Chapter 25 – Zoning and Subdivision, regarding revisions to the review procedures for Special Use Permits and revisions to the minimum standards for Row Dwellings and Two-Family Dwellings in the B-2, Central Business District
- 2. Bill 10883, authorizing and directing the Mayor to enter into a Missouri Highways and Transportation Commission Transportation Alternatives Funds Program Agreement for the awarded Surface Transportation Program (STP) 5502(613) Historic Kirkwood Amtrak Station Restoration Project
- 3. Resolution 67-2021, amending the contract with Lamke Trenching and Excavation for Marshall Road High Pressure Reduction and authorizing and directing the Mayor to enter into an amended contract (increasing the contract amount by \$12,426.10 for a not to exceed amount of \$266,891.10)



4. Resolution 68-2021, accepting the bid of Simpson Materials for Limestone Rock for the Street and Water Departments and authorizing and directing the Mayor to enter into a contract (at the rates provided in the bid tab sheet)

X. CONSENT AGENDA ITEMS FOR DISCUSSION (IF ANY)

XI. CITY COUNCIL REPORTS

XII. CHIEF ADMINISTRATIVE OFFICER REPORTS

XIII. CITY ATTORNEY REPORTS

XIV. CITY CLERK REPORTS

1. Upcoming Public Hearings:

July 1, 2021

A request for a Special Use Permit Amendment and Site Plan Amendment to enclose the canopy for additional showroom/office use and enclose the rear area north of the service reception area at 10725 Manchester Road (Lou Fusz Toyota)

XV. MEETING ADJOURNMENT

The next regular meeting of the Kirkwood City Council will take place at **7:00 p.m. on July 1, 2021.**

CONTINUED ITEMS

NONE

TABLED ITEMS

NONE

Kirkwood City Council: Mayor Tim Griffin, Council Members Maggie Duwe, Liz Gibbons, Bob Sears, Wallace Ward, Kara Wurtz, and Mark Zimmer

Contact Information: For full City Council contact information visit www.kirkwoodmo.org/council. To contact the City Clerk call 314-822-5802. To contact the Chief Administrative Officer call 314-822-5803.

Accommodation: The City of Kirkwood is interested in effective communication for all persons. Persons requiring an accommodation to attend and participate in the meeting should contact the City Clerk at 314-822-5802 at least 48 hours before the meeting. With advance notice of seven calendar days, the City of Kirkwood will provide interpreter services at public meetings for languages other than English and for the hearing impaired. Upon request, the minutes from this meeting can be made available in an alternate format, such as CD by calling 314-822-5802.

THE CONSENT AGENDA IS ATTACHED

- a) Approval of the June 3, 2021 Council Meeting Minutes



WHERE COMMUNITY AND SPIRIT MEET*

DRAFT

Kirkwood City Council Meeting Minutes Via Zoom Thursday, June 3, 2021, 7:00 p.m.

Pursuant to notice of meeting duly given by the Mayor, the City Council convened on Thursday, June 3, 2021, at 7:00 p.m. via Zoom Virtual meeting. Present were Mayor Griffin, Council Member Duwe, Gibbons, Sears, Ward, Wurtz and Zimmer. Also in attendance were Chief Administrative Officer Russell Hawes, Assistant Chief Administrative Officer David Weidler, City Clerk Laurie Asche, Deputy City Clerk Kim Sansegraw, Planning and Development Services Director Jonathan Raiche, Public Services Director Bill Bensing, City Engineer Chris Krueger, Public Information Officer Freddy Doss, and City Attorney John Hessel.

ANNOUNCEMENTS FROM CITY ATTORNEY

City Attorney John Hessel stated for the record that under Section 610.015 of the Mo. Sunshine Law provides that members of the City Council who are not physically in the Council Chambers can participate and vote on all matters when an emergency exists and the nature of the emergency is stated in the minutes.

So, let the minutes reflect that the U.S., and the world, is in a state of emergency due to the Coronavirus—Covid 19. Therefore, members of the City Council have elected to participate in this meeting electronically for the public health and safety of each other and the general public.

AMENDMENT TO AGENDA

Motion was made by Council Member Zimmer and seconded by Council Member Ward to amend the agenda adding Resolution 66-2021 appointing Allen Klippel to the Planning and Zoning Commission for a term to June 2025 to the Consent Agenda. The motion was unanimously approved.

INTRODUCTIONS AND RECOGNITIONS

NONE

PRESENTATIONS

NONE

PUBLIC HEARINGS

Mayor Griffin recessed the meeting for the purpose of conducting a public hearing regarding a request for amendments to the Zoning and Subdivision Code regarding Special Use Permit procedures and multi-family in the B-2 Zoning District. Mr. Hessel entered the following exhibits into record: an Affidavit of Publication in the St. Louis Countian on May 13, 2021, as Exhibit 1; an Affidavit of Publication in the Webster-Kirkwood Times on May 14, 2021, as Exhibit 2; the report of the Planning and Zoning Commission dated May 6, 2021, as Exhibit 3; a memorandum from Planning &



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Development Services Director Jonathan Raiche dated May 5, 2021, as Exhibit 4; and the Kirkwood Code of Ordinances, as Exhibit 5.

Planning & Development Services Director Jonathan Raiche presented information pertaining to the request:

- Staff has identified two items that are recommended to be corrected and/or clarified pertaining to the new combined Zoning and Subdivision Code. A summary of the first recommended text amendments is provided below:
 - Item #1 – Special Use Permit Approval Mechanism [Section 25-20 (d)]
Staff recommends that Section 25-20 (d)(1) be revised to reference the fact that City Council may approve, approve with modifications or supplementary conditions, or deny the application by ordinance.
 - Item #2 – Downtown Multifamily Options [25-36 (f) and (g)]
Add the following new subsection (3) to Section 25-36(f):
(3) In the B-2 District, unless otherwise approved as part of a mixed-use development, two-family dwellings cannot be constructed on properties that are designated as Mandatory Commercial in the Downtown Master Plan & Parking Study's Framework Plan.

Add the following new subsection (2) to Section 25-36 (g) and numbering the existing subsection as needed:

(2) In the B-2 District, unless otherwise approved as part of a mixed-use development, two-family dwellings cannot be constructed on properties that are designated as Mandatory Commercial in the Downtown Master Plan & Parking Study's Framework Plan.

The bill will be placed on the June 17, 2021 agenda for council consideration.

PUBLIC COMMENTS

NONE

CONSENT AGENDA

Motion was made by Council Member Ward and seconded by Council Member Duwe to approve the Consent Agenda. The Consent Agenda was unanimously approved.

- a) Approval of the May 20, 2021 Council Meeting Minutes
- b) Resolution 62-2021, reappointing and appointing Members to the Arts Commission
- c) Resolution 65-2021, appointing Gil Kleinknecht as an Alternate Member to the Board of Adjustment for a term to June 2024



WHERE COMMUNITY AND SPIRIT MEET*

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- d) Resolution 66-2021, appointing Allen Klippel to the Planning and Zoning Commission for a term to June 2025.

UNFINISHED BUSINESS

Bill 10881, an ordinance appropriating \$6,174 from Equitable Sharing Fund Balance to the Machinery and Equipment Account for the purchase of four NC350 Traffic Counters for the Police Department was brought before the council.

Roll Call:

Mayor Griffin	"Yes"
Council Member Gibbons	"Yes"
Council Member Sears	"Yes"
Council Member Duwe	"Yes"
Council Member Zimmer	"Yes"
Council Member Ward	"Yes"
Council Member Wurtz	"Yes"

The bill, having received majority approval of the Council, was adopted and became Ordinance 10717.

NEW BUSINESS

Resolution 63-2021, a resolution accepting the bid of Ford Asphalt Co., Inc. in the amount of \$88,500 (which includes a contingency of \$13,500) for the 2021 Downtown Parking Lots and Alley Asphaltic Concrete Overlays and authorizing and directing the Mayor to enter into a contract was brought before the council. Motion was made by Council Member Duwe and seconded by Council Member Ward to accept the resolution as read.

Roll Call:

Mayor Griffin	"Yes"
Council Member Gibbons	"Yes"
Council Member Sears	"Yes"
Council Member Duwe	"Yes"
Council Member Zimmer	"Yes"
Council Member Ward	"Yes"
Council Member Wurtz	"Yes"

Resolution 64-2021, a resolution approving a contract amendment with Murphy Company in the amount of \$110,213 for the replacement of the HVAC equipment in City Hall – Main Level and authorizing and directing the Mayor to enter into an amended contract was brought before the council. Motion was made by Council Member Gibbons



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and seconded by Council Member Duwe to accept the resolution as read. A discussion took place.

Roll Call:

Mayor Griffin	"Yes"
Council Member Gibbons	"Yes"
Council Member Sears	"Yes"
Council Member Duwe	"Yes"
Council Member Zimmer	"Yes"
Council Member Ward	"Yes"
Council Member Wurtz	"Yes"

CONSENT AGENDA ITEMS FOR DISCUSSION NONE

CITY COUNCIL REPORTS

Mayor Griffin announced the City will hold the 4th of July Freedom Festival in Kirkwood Park.

Council Member Gibbons reported the City is moving forward with plans for the Greentree Festival this year and mentioned there will be no dogs allowed.

Council Member Gibbons mentioned Party in the Park is being planned and awaiting approval.

Council Member Gibbons reported that Amtrak is going to have a second train going until December. The legislation from the conference committee restricts Amtrak from going into arrears. Council Member Ward also mentioned that Amtrak has a tremendous economic importance to the entire region and impacts the level of tourism.

Council Member Ward thanked the members of the boards and commissions for the work they have done.

CHIEF ADMINISTRATIVE OFFICER REPORT

Mr. Hawes reported that the City received an Application for a Liquor License from The Wine and Cheese Place, 10451 Manchester Road, to sell intoxicating liquor by the drink plus Sunday. Motion was made by Council Member Wurtz and seconded by Council Member Gibbons to approve the application. The motion was unanimously approved.

CITY ATTORNEY REPORT

Mr. Hessel had nothing to report.



WHERE COMMUNITY AND SPIRIT MEET*

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CITY CLERK REPORT

Ms. Asche read the report of the June 2, 2021 meeting of the Planning & Zoning Commission. The following action was taken:

1. After a presentation by staff and Lou Fusz Toyota for a Special Use Permit Amendment and Site Plan Amendment to enclose the canopy for additional showroom/office use and enclose the rear area north of the service reception area at 10725 Manchester Road, the Commission recommended approval subject to conditions contained in the staff memo dated June 2, 2021. A public hearing will be scheduled.
2. After a presentation by staff and Grace Episcopal Church for Zoning Code Text Amendments to allow commissaries and non-profit offices as renters in churches, Commissioners Adkins, Diel, and Salzer-Lutz were appointed to a Subcommittee. The Subcommittee will meet via Zoom on June 9, 2021, at 8:30 a.m.

ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 7:20 p.m. The next regular council meeting is scheduled for June 17, 2021 at 7:00 p.m.

Laurie Asche, CMC/MRCC
City Clerk

Approved:

BILL 10882

ORDINANCE

AN ORDINANCE AMENDING THE PROVISIONS OF THE MUNICIPAL CODE, CHAPTER 25 – ZONING AND SUBDIVISION, REGARDING REVISIONS TO THE REVIEW PROCEDURES FOR SPECIAL USE PERMITS AND REVISIONS TO THE MINIMUM STANDARDS FOR ROW DWELLINGS AND TWO-FAMILY DWELLINGS IN THE B-2, CENTRAL BUSINESS DISTRICT.

WHEREAS, on the 18th day of February 2021, the City Council adopted Ordinance 10702 which replaced Appendices A and B with a newly revised and combined Zoning & Subdivision Code in Chapter 25; and

WHEREAS, City Staff has identified various items within Chapter 25 that are recommended for revision; and

WHEREAS, the Planning and Zoning Commission did on the 5th day of May, 2021, by referencing the Staff Memo dated May 5, 2021 (attached hereto and incorporated by reference herein), recommend the approval of said Zoning Code text amendment; and

WHEREAS, on the 3rd day of June, 2021, the City Council did hold a public hearing with respect to such amendments to the Zoning Code after duly advertising and giving proper notice of such hearing.

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

SECTION 1. That the City of Kirkwood Municipal Code of Ordinances, Chapter 25 – Zoning and Subdivision, is hereby amended by replacing the language in Section 25-20(d)(1) with the following language:

- (1) A special use permit application shall be reviewed in the same manner as a major site plan review, as set forth in §25-19(e), except that the City Council may approve, approve with modifications or supplementary conditions, or deny the application by ordinance.

SECTION 2. That the City of Kirkwood Municipal Code of Ordinances, Chapter 25 – Zoning and Subdivision, is hereby amended by adding a new subsection (3) in Section 25-36(f) with the following language:

- (3) In the B-2 District, unless otherwise approved as part of a mixed-use development, row dwellings cannot be constructed on properties that are designated as Mandatory Commercial in the Downtown Master Plan & Parking Study's Framework Plan. See Figure 36-A.

SECTION 3. That the City of Kirkwood Municipal Code of Ordinances, Chapter 25 – Zoning and Subdivision, is hereby amended by adding a new subsection (2) in Section 25-36(g) with the following language:

- (2) In the B-2 District, unless otherwise approved as part of a mixed-use development, two-family dwellings cannot be constructed on properties that are designated as Mandatory Commercial in the Downtown Master Plan & Parking Study’s Framework Plan. See Figure 36-A.

SECTION 4. This ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS ____ day of _____, 2021.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Public Hearing: June 3, 2021

1ST Reading:

2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 6/3/2021

Step #1:

Strategic Plan NO Goal # & Title

Background To Issue:

Staff has identified two items in the newly adopted Zoning & Subdivision Code that are recommended to be addressed via text amendments. These two items include clarifying the legislative mechanism required for special use permits and providing consistency to all forms of multi-family within the downtown district. Further detail is provided in the Staff memo dated May 5, 2021.

Recommendations and Action Requested:

The P&Z Commission recommended approval of the text amendments by a vote of 5-0 with 4 Commissioners being absent. A public hearing is requested followed by City Council consideration of the recommended text amendments.

Alternatives Available:

Does this project have a public information component? Yes No

Cost: \$0.00 Account #: 0 Project #: Budgeted: YES

If YES, Budgeted Amount: \$0.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Jonathan Raiche

Date: 5/26/2021

Authenticated: raichejd

You can attach up to 3 files along with this request.



2021-05-05 Chapter25 Amend
Memo.pdf
Microsoft Edge PDF Document
79.0 KB



2021-06-03 PZ-1-22
Ordinance.doc
Microsoft Word 97 - 2003
Document
31.0 KB

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Disapprove

Chief Administrative Officer's Comments:

BY:



Date:

5-27-21

MEMORANDUM

TO: P&Z COMMISSION
FROM: JONATHAN D. RAICHE, PLANNING & DEVELOPMENT SERVICES DIRECTOR *JDR*
SUBJECT: STAFF-INITIATED TEXT AMENDMENTS
DATE: MAY 5, 2021
CC: AMY LOWRY, PLANNER II
ANDI YANCEY, PLANNER I
PATTI DODEL, ENGINEERING ADMIN. ASSISTANT



WHERE COMMUNITY AND SPIRIT MEET[®]

On February 18, 2021 the City adopted its new combined Zoning and Subdivision Code after going through a comprehensive review of the previous Codes. During the first couple months of implementation, Staff has identified two items that are recommended to be corrected and/or clarified. Staff will continue to review and monitor the effectiveness of the new Code and bring periodic recommendations to the Planning & Zoning Commission and City Council as needed. A summary of the first recommended text amendments is provided below.

Item #1 – Special Use Permit Approval Mechanism [Section 25-20 (d)]

The newly adopted code uses cross-references for review procedures in an effort to help standardize the City’s review processes for development-related applications. Section 25-20(d) of the new Code provides the review procedures for an application for a Special Use Permit and references the procedures for a Major Site Plan review. The Major Site Plan review procedures specifically mention that the City Council would approve a Major Site Plan by resolution. Historically, the City Council has approved Special Use Permits by ordinance rather than resolution which requires one additional vote by the City Council. This slightly more rigorous review has been utilized for Special Uses due to the nature of those uses.

After consulting with the City Attorney, Staff prepared an ordinance for the consideration of the City Council in regard to the one Special Use Permit application received under our new Code thus far. In an effort to clarify this legislative mechanism, Staff recommends that Section 25-20(d)(1) be revised to reference the fact that City Council would approve a Special Use Permit by ordinance. The revised language is provided in Exhibit 1.

Item #2 – Downtown Multifamily Options [25-36(f) and (g)]

In response to a recommendation from the Downtown Master Plan, the City previously revised the Zoning Code to allow multi-family development on B-2 properties in certain areas of Downtown. In this previous version, the Code was only amended to specifically allow “Dwelling, Multi-family” and did not include “Dwelling, Row” or “Dwelling, Two-family”. The new Code now lists all three multi-family style buildings as “Permitted with Standards” in the B-2 District; however, the standard that references Mandatory Commercial Streets on the Downtown Master Plan’s Framework Plan was not carried through in the standards that apply specifically to “Dwelling, Row” or “Dwelling, Two-family”. Without providing this text amendment, a case could be made that these specific types of multi-family buildings would be permissible on any B-2 property. The revised language for these sections is provided in Exhibit 1.

Recommendation

Staff recommends the following motion: “I move to recommend approval of the Zoning Code Text Amendments found in Exhibit 1 of the Staff memo dated May 5, 2021.”

Exhibit 1

Revised language is indicated in red-colored font.

Revise Section 25-20(d)(1) to read:

- (1) A special use permit application shall be reviewed in the same manner as a major site plan review, as set forth in §25-19(e), except that the City Council may approve, approve with modifications or supplementary conditions, or deny the application by ordinance.

Add the following new subsection (3) to Section 25-36(f):

- (3) In the B-2 District, unless otherwise approved as part of a mixed-use development, row dwellings cannot be constructed on properties that are designated as Mandatory Commercial in the Downtown Master Plan & Parking Study's Framework Plan. See Figure 36-A.

Add the following new subsection (2) to Section 25-36(g) and numbering the existing subsection as needed:

- (2) In the B-2 District, unless otherwise approved as part of a mixed-use development, two-family dwellings cannot be constructed on properties that are designated as Mandatory Commercial in the Downtown Master Plan & Parking Study's Framework Plan. See Figure 36-A.

PROCEDURE FOR PUBLIC HEARING

Mayor: At this time the council will recess to conduct a public hearing regarding:

A request for amendments to the Zoning and Subdivision Code regarding Special Use Permit procedures and multi-family in the B-2 Zoning District

Mayor: Mr. Hessel, do you wish to enter any exhibits into the record?

Mayor: Mr. Hawes, who will present this issue to the City Council?

Planning & Development Services Director Jonathan Raiche

Mayor: Is there anyone from the public wishing to speak regarding this proposal?

Mayor: Hearing no further discussion, the council will take this matter under advisement and consider the hearing to be recessed.



AFFIDAVIT OF PUBLICATION

STATE OF MISSOURI
COUNTY OF ST. LOUIS

} S.S.

Page 1 of 1

Before the undersigned Notary Public personally appeared **Stephen Pope** on behalf of **THE COUNTIAN, ST. LOUIS COUNTY** who, being duly sworn, attests that said newspaper is qualified under the provisions of Missouri law governing public notices to publish, and did so publish, the notice annexed hereto, starting with the **May 13, 2021** edition and ending with the **May 13, 2021** edition, for a total of 1 publications:

05/13/2021

CITY OF KIRKWOOD NOTICE OF PUBLIC HEARING BEFORE THE CITY COUNCIL OF KIRKWOOD, MISSOURI

The Council of the City of Kirkwood will hold a public hearing via Zoom at the hour of 7:00 p.m., Thursday, June 3, 2021 to consider the following:

A request for amendments to the Zoning and Subdivision Code regarding Special Use Permit procedures and multi-family in the B-2 Zoning District.

Laurie Asche, CMC/MRCC
City Clerk

The City of Kirkwood is interested in effective communication for all persons. Persons requiring an accommodation to attend and participate in the meeting should contact the City Clerk at 314-822-5802 at least 48 hours before the meeting. With advance notice of seven calendar days, the City of Kirkwood will provide interpreter services at public meetings for languages other than English and for the hearing impaired. Upon request, the minutes from this meeting can be made available in an alternate format, such as CD by calling 314-822-5802.
12000076 County May 13, 2021



Stephen Pope

Subscribed & sworn before me this 13th day of May, 2021
(SEAL)



Notary Public

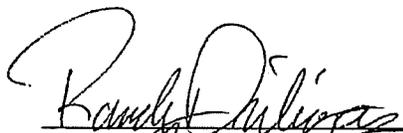
CHANEL JONES
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis County
My Commission Expires: August 08, 2022
Commission Number: 14397721

AFFIDAVIT OF PUBLICATION

Date: 05/14/21

City of Kirkwood
139 S. Kirkwood Rd.
Kirkwood, MO 63122

I, Randy Drilingas, being duly sworn, both depose and say that I am an authorized representative of the WKTimes LLC, publishers of the Webster-Kirkwood Times Newspaper in the county of St. Louis, MO, and that the advertisement shown below was published in the Webster-Kirkwood Times May 14, 2021 edition.



Authorized Agent, Randy Drilingas
Webster-Kirkwood Times



NOTICE OF PUBLIC HEARING
before the City Council of
City of Kirkwood, MO

The Council of the City of Kirkwood will hold a public hearing via Zoom at the hour of 7:00 p.m., Thursday, June 3, 2021 to consider the following:

A request for amendments to the Zoning and Subdivision Code regarding Special Use Permit procedures and multi-family in the B-2 Zoning District.

Laurie Asche, CMC/MRCC
City Clerk

The City of Kirkwood is interested in effective communication for all persons. Persons requiring an accommodation to attend and participate in the meeting should contact the City Clerk at 314-822-5802 at least 48 hours before the meeting. With advance notice of seven calendar days, the City of Kirkwood will provide interpreter services at public meetings for languages other than English and for the hearing impaired. Upon request, the minutes from this meeting can be made available in an alternate format, such as CD by calling 314-822-5802.



WHERE COMMUNITY AND SPIRIT MEET

May 6, 2021

Russell B. Hawes
Chief Administrative Officer

At the May 5, 2021, meeting of the Planning and Zoning Commission, the following action was taken:

1. The Commission unanimously recommended approval of amendments to the Zoning and Subdivision Code as recommended by Staff's memo dated May 5, 2021, regarding Special Use Permit procedures and multi-family in the B-2 Zoning District.

The next meeting will be held on May 19, 2021, at 7 p.m. via Zoom.

Respectfully submitted,

Jim Adkins, Chair
Planning and Zoning Commission

MEMORANDUM

TO: P&Z COMMISSION
FROM: JONATHAN D. RAICHE, PLANNING & DEVELOPMENT SERVICES DIRECTOR *JDR*
SUBJECT: STAFF-INITIATED TEXT AMENDMENTS
DATE: MAY 5, 2021
CC: AMY LOWRY, PLANNER II
ANDI YANCEY, PLANNER I
PATTI DODEL, ENGINEERING ADMIN. ASSISTANT



WHERE COMMUNITY AND SPIRIT MEET[®]

On February 18, 2021 the City adopted its new combined Zoning and Subdivision Code after going through a comprehensive review of the previous Codes. During the first couple months of implementation, Staff has identified two items that are recommended to be corrected and/or clarified. Staff will continue to review and monitor the effectiveness of the new Code and bring periodic recommendations to the Planning & Zoning Commission and City Council as needed. A summary of the first recommended text amendments is provided below.

Item #1 – Special Use Permit Approval Mechanism [Section 25-20 (d)]

The newly adopted code uses cross-references for review procedures in an effort to help standardize the City's review processes for development-related applications. Section 25-20(d) of the new Code provides the review procedures for an application for a Special Use Permit and references the procedures for a Major Site Plan review. The Major Site Plan review procedures specifically mention that the City Council would approve a Major Site Plan by resolution. Historically, the City Council has approved Special Use Permits by ordinance rather than resolution which requires one additional vote by the City Council. This slightly more rigorous review has been utilized for Special Uses due to the nature of those uses.

After consulting with the City Attorney, Staff prepared an ordinance for the consideration of the City Council in regard to the one Special Use Permit application received under our new Code thus far. In an effort to clarify this legislative mechanism, Staff recommends that Section 25-20(d)(1) be revised to reference the fact that City Council would approve a Special Use Permit by ordinance. The revised language is provided in Exhibit 1.

Item #2 – Downtown Multifamily Options [25-36(f) and (g)]

In response to a recommendation from the Downtown Master Plan, the City previously revised the Zoning Code to allow multi-family development on B-2 properties in certain areas of Downtown. In this previous version, the Code was only amended to specifically allow "Dwelling, Multi-family" and did not include "Dwelling, Row" or "Dwelling, Two-family". The new Code now lists all three multi-family style buildings as "Permitted with Standards" in the B-2 District; however, the standard that references Mandatory Commercial Streets on the Downtown Master Plan's Framework Plan was not carried through in the standards that apply specifically to "Dwelling, Row" or "Dwelling, Two-family". Without providing this text amendment, a case could be made that these specific types of multi-family buildings would be permissible on any B-2 property. The revised language for these sections is provided in Exhibit 1.

Recommendation

Staff recommends the following motion: "I move to recommend approval of the Zoning Code Text Amendments found in Exhibit 1 of the Staff memo dated May 5, 2021."

Exhibit 1

Revised language is indicated in red-colored font.

Revise Section 25-20(d)(1) to read:

- (1) A special use permit application shall be reviewed in the same manner as a major site plan review, as set forth in §25-19(e), **except that the City Council may approve, approve with modifications or supplementary conditions, or deny the application by ordinance.**

Add the following new subsection (3) to Section 25-36(f):

- (3) **In the B-2 District, unless otherwise approved as part of a mixed-use development, row dwellings cannot be constructed on properties that are designated as Mandatory Commercial in the Downtown Master Plan & Parking Study's Framework Plan. See Figure 36-A.**

Add the following new subsection (2) to Section 25-36(g) and numbering the existing subsection as needed:

- (2) **In the B-2 District, unless otherwise approved as part of a mixed-use development, two-family dwellings cannot be constructed on properties that are designated as Mandatory Commercial in the Downtown Master Plan & Parking Study's Framework Plan. See Figure 36-A.**

BILL 10883

ORDINANCE

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION TRANSPORTATION ALTERNATIVES FUNDS PROGRAM AGREEMENT FOR THE AWARDED SURFACE TRANSPORTATION PROGRAM (STP) 5502(613) HISTORIC KIRKWOOD AMTRAK STATION RESTORATION PROJECT.

WHEREAS, City Council authorized for the submittal of a Transportation Alternatives Program (TAP) Application under to East-West Gateway Council of Governments for federal funds for the Historic Kirkwood Amtrak Station Restoration Project, and

WHEREAS, the Missouri Highways and Transportation Commission has determined that the Historic Kirkwood Amtrak Station Restoration Project is consistent with the goals of the Transportation Alternatives Program (TAP) and has awarded grant funding for the project, and

WHEREAS, the Engineering Department recommends the City enter into a Missouri Highways and Transportation Commission Transportation Alternatives Funds Program Agreement for the awarded STP-5502(613) Historic Kirkwood Amtrak Station Restoration Project for 32.6% of the project costs not to exceed \$1,500,000.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into a Missouri Highways and Transportation Commission Transportation Alternatives Funds Program Agreement for the awarded STP-5502(613) Historic Kirkwood Amtrak Station Restoration Project for 32.6% of the project costs not to exceed \$1,500,000.

Section 2. This ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

Mayor, City of Kirkwood

ATTEST:

City Clerk
1st Reading:
2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 6/17/2021

Step #1:

Strategic Plan YES

Goal # & Title Goal 5. Invest for the future through infrastructure

Background To Issue:

East West Gateway Council of Governments has determined that the Historic Kirkwood Amtrak Station Restoration Project is consistent with the goals of the Transportation Alternatives Program (TAP) and has awarded funding for the project. This project includes the restoration of the train station construction in 1893, including roof, tuckpointing, HVAC, interior, and ADA improvements, window restoration, and a new passenger platform cover.

Recommendations and Action Requested:

The Engineering Department recommends approval of an ordinance authorizing the Mayor to enter into an agreement with the Missouri Highways and Traffic Commission for the awarded project, STP-5502 (613) Historic Kirkwood Amtrak Station Restoration Project to fund 32.6% of the project costs, not to exceed \$1,500,000 which is the grant amount. The total estimated project cost is \$4,607,498.

Alternatives Available:

Does this project have a public information component? Yes No

Cost: \$0.00

Account #: 0

Project #:

Budgeted: YES

If YES, Budgeted Amount: \$0.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Christopher Krueger

Date: 6/8/2021

Authenticated: kruegeca

You can attach up to 3 files along with this request.



TAP-5502(613) Cover
Letter.pdf
Microsoft Edge PDF Document
120 KB



TAP-5502(613) Agreement.pdf
Microsoft Edge PDF Document
498 KB



FFATAForm1590SubRecipient
InformationForm.xlsx
Microsoft Excel Worksheet
33.7 KB

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (**Must have Purchasing Director's approval**).

Approve

Purchasing Director's Comments:

BY: Brian Mullady

Date: 6/8/2021

Authenticated: mulladbd

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

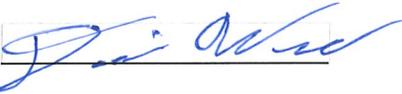
Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Disapprove

Chief Administrative Officer's Comments:

BY:



Date:

6/9/2021



Missouri Department of Transportation

St. Louis District
Thomas Blair, P.E., District

1590 Woodlake Drive
Chesterfield, Missouri 63017-5712
314.275.1500
Fax: 573.522.6475
1.888.ASK MODOT (275.6636)

June 1, 2021

Mr. Chris Krueger
City Engineer
City of Kirkwood
139 S. Kirkwood Road
Kirkwood, MO 63122

RE: City of Kirkwood
Historic Amtrak Station Restoration
Federal Project No. TAP-5502(613)
TIP# 7158-22
Draft Program Agreement and Programming Comments

Dear Mr. Krueger:

This federal aid project is shown in the regional Transportation Improvement Program (TIP) and has been assigned a federal project number of TAP-5502(613). Please use this number on all future project correspondence. **In order for the City to remain eligible for federal reimbursement for Design, Right of Way, or Construction activities, the City must first obtain MoDOT approval.** This project will be administered per the direction given in the Local Public Agency (LPA) Manual. The LPA Manual can be viewed at MoDOT's website.

Federal Aid Program Agreement

Enclosed for your review is a draft copy of the STP program agreement for the above noted project. This agreement must be fully executed by the City and by the Missouri Highways and Transportation Commission (MHTC) before obligation of federal funds and authorization of reimbursable work. **The federal reimbursement rate included in this agreement is based on the reimbursement rate requested in the TIP Application. Please note this rate may be less than 80%.**

Federal Form 1273, 'Required Contract Provisions for Federal Aid Construction Contracts' (which outlines the requirements of the Federal-Aid process) is attached to the draft program agreement. If this program agreement is acceptable to the City, then please process the agreement through the DocuSign process and attach one copy of the City's applicable enabling ordinance. Please note that the person authorized to sign the agreement per the enabling ordinance will be required to provide signatures on the executed program agreement. A fully executed program agreement will be returned to your office.

Also enclosed is the 1590 Federal Funding Accountability and Transparency Act (FFATA) form that must be filled out and returned to this office. This form is required from Local Agencies for each project receiving fed-aid funds.

Consultant Contracts/Preliminary Engineering/Construction Engineering Costs

Federal funds for Preliminary Engineering (PE) have been programmed in FY 2022. If the City is seeking federal funds for consultant engineering services, the City must use a Qualification Based Selection (QBS) process for the procurement of engineering services, see LPA section 136.4 for details. As the City is developing the RFQ, please submit an estimate of cost for the



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www.modot.org

consultant contract and a list of anticipated activities that will take place during the design process. This information will be used to determine a DBE goal for the contract, which will need to be included in the RFQ. LPA Figure 136.4.7 is a sample RFQ solicitation form. When the approved RFQ process is completed, please submit a .pdf copy of the Engineering Services Contract (ESC) using the ESC sample cover letter, LPA Fig. 136.4.9, to this office for review and approval. The standardized contract format in LPA Fig. 136.4.1 is required. A .pdf of the consultant's E-Verify MOU, Affidavit of Compliance, and Consultant Rating Sheets are also required.

If the consultant contract is estimated to be less than \$100,000, the City may select a firm from the LPA On-Call Consultant List for consideration without advertisement. For further information regarding using the LPA ON-Call Consultant List, please see section 136.4.2.4.3 of the LPA Manual. Please be aware that MoDOT's Division of External Civil Rights will now make DBE determinations for the PE phase on projects where consultants are selected from the ON-Call list. An estimate of cost for the consultant contract and a list of anticipated activities that will take place during the design process will now need to be submitted in order to establish DBE participation on the PE phase of the project.

Design Criteria

The City's engineer of record for this project will be considered responsible for determining the appropriate design parameters chosen, see LPA 136.7.2.7. If any improvements are to occur on MoDOT right of way, the project design criteria that will be used will need to be approved by MoDOT.

Environmental Requirements

The City must submit the LPA Request for Environmental Review (RER) to MoDOT's Environmental Division. The RER initiates MoDOT environmental and historic preservation staff's review of the project to determine the appropriate NEPA classification. The RER form is located in section 136.6.2 of the LPA Manual.

Utilities, Public Meetings, Preliminary Plan Submittal

All utility companies that are affected by this project should be notified of the project scope and project schedule at this time. Utility company comments may affect preliminary plan development. To help address utility coordination issues, MoDOT now requires a Utilities Scoping Checklist for each utility. Please submit the Utility Scoping Checklist with the preliminary plans. (See EPG Figure 136.7.8).

During the environmental review process, the City will need to provide information about the type of public involvement. Depending on the impacts to the public, the public involvement will vary. Examples of public involvement include adding project information to the City's website, using press releases to notify the public, contacting nearby property owners to inform them about the project, and having a public hearing.

If a public hearing is required for this project, please provide this office with a copy of the public hearing advertisement that is to be published. Please refer to EPG Section 136.7.6 for further information.

ADA requirements

The Americans with Disabilities Act (ADA) requires that all facilities must be designed to current accessibility standards. When final plans for this project are submitted to MoDOT for review, the

plans will need to include enough detail to show that sidewalks, curb cuts, detectable warning panels, etc., meet ADA requirements.

Once preliminary plans are complete, please submit an electronic copy of the plans via CD for review/approval.

If you have any questions, please contact me at Thomas.McCloskey@modot.mo.gov or (314) 453-1831.

Sincerely,

A handwritten signature in black ink that reads "Tom McCloskey". The signature is written in a cursive style with a long, sweeping underline.

Tom McCloskey
District Design Liaison
MoDOT

Copy: Jason Lange – East West Gateway
Brad Williams – East West Gateway

CCO Form: FS25
Approved: 04/95 (MGB)
Revised: 03/17 (MWH)
Modified:

CFDA Number: 20.205
CFDA Title: Highway Planning and Construction
Award name/number: TAP-5502(613)
Award Year: 2022
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION ALTERNATIVES FUNDS
PROGRAM AGREEMENT**

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

WITNESSETH:

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

(1) PURPOSE: The United States Congress has authorized, in Fixing America's Surface Transportation Act (FAST); 23 U.S.C. §101, §106 and §213; SAFETEA-LU §1404 funds to be used for transportation alternatives activities. The purpose of this Agreement is to grant the use of such transportation enhancement funds to the City.

(2) LOCATION: The transportation alternatives funds which are the subject of this Agreement are for the project at the following location: Amtrak Train Station in Kirkwood. The scope of the project included the interior and exterior restoration of the Kirkwood Missouri Pacific Depot (Amtrak Train Station).

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable

progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City. The City may not be eligible for future Transportation Alternatives Funds if the City does not meet the reasonable progress policy.

(4) INDEMNIFICATION:

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

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

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

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

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

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

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

Commission in furtherance of the performance of this Agreement.

(7) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may

determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

(11) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and

made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(13) ACQUISITION OF RIGHT OF WAY: No acquisition of additional right of way is anticipated in connection with Project TAP-5502(613) or contemplated by this Agreement.

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalk or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalk or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalk or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City's failure to maintain the improvement. If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 32.6 percent not to exceed \$1,500,000. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not

be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. The City shall repay any progress payments which involve ineligible costs.

(18) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(19) PERMITS: The City shall secure any necessary approvals or permits from any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(20) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the Transportation Enhancement Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(21) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(22) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business

enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

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

(24) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(25) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(26) OMB AUDIT: If the City expend(s) seven hundred fifty thousand dollars (\$750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars (\$750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(27) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

[Remainder of Page Intentionally Left Blank]

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

Executed by the City on _____(DATE).

Executed by the Commission on _____(DATE).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF KIRKWOOD

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title _____

Ordinance No _____

Exhibit A - Location of Project



Location Map: Historic Kirkwood Train Station at the Southwest corner of Kirkwood Road and West Argonne Drive

Exhibit B – Project Schedule

Project Description: TAP-5502(613) Restoration of Kirkwood Amtrak Train Station

PROJECT DEVELOPMENT SCHEDULE			
<i>Note: many stages can occur concurrently.</i>			
Activity Description	Start Date (MM/YYYY)	Finish Date (MM/YYYY)	Time Frame (Months)
Receive notification letter	04/2021	04/2021	1
Execute agreement (project sponsor and DOT)	04/2021	08/2021	4
Engineering services contract submitted and approved*	09/2021	04/2022	7
Obtain environmental clearances (106, CE2, T&E, etc.)	04/2022	08/2022	4
Public meeting/hearing	09/2022	09/2022	1
Develop and submit preliminary plans	10/2022	10/2022	1
Preliminary plans approved	10/2022	02/2023	4
Develop and submit right-of-way plans	02/2023	03/2023	1
Review and approval of right-of-way plans	03/2023	04/2023	1
Submit and receive approval for notice to proceed for right-of-way acquisition (A-Date)*	04/2023	06/2023	2
Right-of-way acquisition	06/2023	12/2023	6
Utility coordination	10/2022	10/2023	12
Develop and submit PS&E	10/2023	02/2024	4
District approval of PS&E/advertise for bids*	02/2024	04/2024	2
Submit and receive bids for review and approval	04/2024	06/2024	2
Project implementation/construction	06/2024	08/2025	14
* Finish date must match fiscal year for each milestone shown in bold text.			

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and a Supplemental Agreement is required to modify this date.

Exhibit C - Required Contract Provisions

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Form 1590 Sub Recipient (Project Sponsor) Information

Federal Funding Accountability and Transparency Act 2006 (FFATA)

This section to be complete by district liaison.

MoDOT District: St. Louis

Project Federal ID Number: TAP-5502(613)

Project Dollar Amount (Federal only): \$1,500,000.00

Sub-Recipient (Project Sponsor) Information

Name and Address

Name:

Address:

City:

State:

Zip:

Project Sponsor DUNS Number:

Date of Central Contractor Registry (CCR) registration:

Project Sponsor Annual Gross Revenues Exceed 80% or more in Federal Awards

Yes

No

Sub-Recipients Annual Gross Revenues Equal or Exceed \$25,000,000

Yes

No

If either of the above questions are answered NO then project sponsor is exempt from the providing the officer compensation information in the next section.

	Officer Name	Officer Compensation
Project sponsor Highly Compensated Officer		

Return form with program agreement OR mail, email or fax form to one of the following:

Missouri Department of Transportation
 Financial Services Division
 105 West Capitol Avenue PO Box 270
 Jefferson City, MO 65102-0270

Fax Number: 1-573-522-1441
 Email: Obligate@modot.mo.gov

PREPARED BY:

DATE:

Name and Title:

Phone number:

Email:

RESOLUTION 67-2021

A RESOLUTION AMENDING THE CONTRACT WITH LAMKE TRENCHING AND EXCAVATION BY INCREASING THE CONTRACT AMOUNT BY \$12,426.10 FOR A NOT TO EXCEED AMOUNT OF \$266,891.10 FOR MARSHALL ROAD HIGH PRESSURE REDUCTION AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN AMENDED CONTRACT.

WHEREAS, the City of Kirkwood competitively bid and awarded the Marshall Road High Pressure Reduction on September 17, 2020, and

WHEREAS, the project was awarded for a contract amount of \$231,332 with a contingency of \$23,133, and

WHEREAS, Lamke Trenching and Excavation's actual low bid without contingency for the project was \$254,182, and

WHEREAS, it is now estimated that the final cost of the project will be \$266,891.10, and

WHEREAS, the Water Department requests the contract be amended with Lamke Trenching and Excavation by increasing the contract amount by \$12,426.10 for a total not to exceed amount of \$266,891.10, and

WHEREAS, funds are available in Account #505-2215-481.75.15, Project #WA2102.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into an amended contract with Lamke Trenching and Excavation by increasing the contract amount by \$12,426.10 for a total not to exceed amount of \$266,891.10 for the Marshall Road High Pressure Reduction.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 17TH DAY OF JUNE 2021.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 6/17/2021

Step #1:

Strategic Plan NO Goal # & Title

Background To Issue:

Per resolution 105-2020 the City Council awarded a contract to Lamke Trenching and Excavation for the Marshall Road High Pressure Reduction project. The resolution was approved with a contract amount of \$231,332 with a contingency of \$23,133 for a total contract cost of \$254,465. However, Lamke's actual low bid without a contingency was \$254,182. It is now estimated that the final cost of the project will be \$266,891.10. Therefore, it is being requested that the City Council authorize an increase of \$12,426.10 to Lamke Trenching and Excavation's contract for a total contract amount of \$266,891.10

Recommendations and Action Requested:

It is recommended that the City Council increase Lamke Trenching and Excavation's contract amount to \$266,891.10 for the construction of the Marshall Road High Pressure Reduction Project.

Alternatives Available:

Does this project have a public information component? Yes No

Cost: \$12,426.10 Account #: 50522154817515 Project #: WA2102 Budgeted: YES

If YES, Budgeted Amount: \$12,426.10 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Bill Bensing

Date: 6/8/2021

Authenticated: bensinwe

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:

An audit of the bids shows that the above is correct and Lamke's bid was the low bid and the correct amount was \$254,182.00 not including any contingency.

BY: Brian Mullady

Date: 6/8/2021

Authenticated: mulladbd

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is sufficient and available for \$12,427.00 in account 505-2215-481-75-15, Distribution System Improvements, Project WA2102, Water Main Replacement to be approve as requested above.

BY: Sandra Stephens

Date: 6/8/2021

Authenticated: stephesf

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 6/9/2021

RESOLUTION 105-2020

A RESOLUTION ACCEPTING THE BID OF LAMKE TRENCHING AND EXCAVATING IN THE NOT TO EXCEED AMOUNT OF \$254,465 (WHICH INCLUDES A CONTINGENCY OF \$23,133) FOR MARSHALL ROAD HIGH PRESSURE REDUCTION AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT.

WHEREAS, pursuant to law, the City obtained bids for Marshall Road High Pressure Reduction, and

WHEREAS, the most responsible bid received was that of Lamke Trenching and Excavating in the not to exceed amount of \$254,465 (which includes a contingency of \$23,133) and which bid acceptance is approved by the Chief Administrative Officer and recommended by the Director of Procurement and the Director of Public Services, and

WHEREAS, funds are available in Account #505-2215-481-75.15, Project #WA2102.

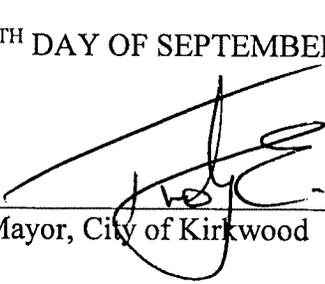
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The bid of Lamke Trenching and Excavating in the not to exceed amount of \$254,465 (which includes a contingency of \$23,133) for Marshall Road High Pressure Reduction is hereby accepted and approved.

SECTION 2. The Mayor is hereby authorized and directed to enter into a contract with Lamke Trenching and Excavating in the not to exceed amount of \$254,465 (which includes a contingency of \$23,133) for Marshall Road High Pressure Reduction.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 17TH DAY OF SEPTEMBER 2020.



Mayor, City of Kirkwood

ATTEST:



City Clerk

RESOLUTION 68-2021

A RESOLUTION ACCEPTING THE BID OF SIMPSON MATERIALS AT THE RATES PROVIDED IN THE BID TAB SHEET (A COPY OF WHICH IS ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN), AMOUNT NOT TO EXCEED BUDGETED FUNDS, FOR LIMESTONE ROCK FOR THE STREET AND WATER DEPARTMENTS AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT.

WHEREAS, pursuant to law, the City solicited bids for Limestone Rock for the Street and Water Departments, and

WHEREAS, the most responsible bid received was that of Simpson Materials at the rates provided in the bid tab sheet (a copy of which is attached hereto and incorporated by reference herein), amount not to exceed budgeted funds, which bid acceptance is approved by the Chief Administrative Officer and recommended by the Director of Procurement and the Director of Public Services, and

WHEREAS, funds are available in Accounts #101-1402-431.66.27 (Street Repair Maintenance) and #505-2214-481.66.13 (Mains, Pipes & Fittings).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The bid of Simpson Materials at the rates provided in the bid tab sheet (a copy of which is attached hereto and incorporated by reference herein), amount not to exceed budgeted funds, for Limestone Rock for the Street and Water Departments is hereby accepted and approved.

SECTION 2. The Mayor is hereby authorized and directed to enter into a contract with Simpson Materials at the rates provided in the bid tab sheet (a copy of which is attached hereto and incorporated by reference herein), amount not to exceed budgeted funds, for Limestone Rock for the Street and Water Departments.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 17TH DAY OF JUNE 2021.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 6/17/2021

Step #1:

Strategic Plan Select... Goal # & Title

Background To Issue:

Annually the Street's and Water Divisions utilize various sized rock materials in the repair and maintenance of streets and water mains.

Recommendations and Action Requested:

It is recommended that the City Council accept the proposal from Simpson Materials to provide various sized rock materials for the use in maintaining City streets and water assists within budgeted fund allocations..

Alternatives Available:

Does this project have a public information component? Yes No

Cost: \$120,000.00 Account #: 10114024316627 Project #: Budgeted: YES

If YES, Budgeted Amount: \$120,000.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Water Account 505-2214-481.66-13

BY: Bill Bensing

Date: 6/9/2021

Authenticated: bensinwe

You can attach up to 3 files along with this request.



Copy of BID TAB 13825- FY22
(Limestone Rock).pdf
Microsoft Edge PDF Document
424 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Brian Mullady

Date: 6/9/2021

Authenticated: mulladbd

You can attach up to 3 files along with this request.



 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is sufficient and available in accounts 101-1402-431-66-27, Street Repair Maintenance and 505-2214-481-66-13, Mains, Pipes & Fittings to approve the above as requested.

BY: Sandra Stephens

Date: 6/9/2021

Authenticated: stephesf

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 6/9/2021

Simpson Materials Company LLC										
									Total Price	\$19,955.00
Line #	Description	Mfgr	Mfgno	QTY	UOM	Estimated	Unit	Extended		
1	Clean Limestone Rock			50	TON			\$8.30	\$415.00	
2	1 Clean Limestone Rock			2000	TON			\$8.30	\$16,600.00	
3	1 Minus Limestone Rock			200	TON			\$4.60	\$920.00	
4	2 Clean Limestone Rock			50	TON			\$7.20	\$360.00	
5	Curb Mix			25	TON		No Bid			
6	D-Stone			200	TON			\$8.30	\$1,660.00	
7	Comm			10	TON		No Bid			

		Fred Weber Inc	
		Total Price	\$26,397.50
Line #	Unit	Extended	
1	No Bid		
2	\$10.75	\$21,500.00	
3	\$5.05	\$1,010.00	
4	\$9.75	\$487.50	
5	No Bid		
6	\$17.00	\$3,400.00	
7	No Bid		

June 8, 2021

To: Russell Hawes, Chief Administrative Officer

For Your Consideration: Limestone Rock, Bid #13825

Sealed bids were publicly opened on June 3, 2021. The bid tabulation is as follows:

<u>Commodity</u>	<u>Vendor</u>	
	<u>Simpson</u>	<u>Fred Weber</u>
Clean- pick up	\$8.30/ton	N/A
Clean- delivered	\$13.20/ton	N/A
1" Clean Limestone- pick up	\$8.30/ton	\$10.75/ton
1" Clean Limestone- delivered	\$13.20/ton	N/A
1" Minus Limestone- pick up	\$4.60/ton	\$5.05/ton
1" Minus Limestone- delivered	\$9.50/ton	N/A
2" Minus Limestone- pick up	\$7.20/ton	\$9.75/ton
2" Minus Limestone- delivered	\$12.10/ton	N/A
D-Stone- pick up	\$8.30/ton	\$17.00/ton
D-Stone- delivered	\$13.20/ton	N/A

Bid requests were also sent to (109) one-hundred and nine additional suppliers based off of commodity through our e-Procurement platform, Ionwave; however, they did not submit bids.

The bids were provided to Bill Bensing, Director of Public Services, Clarence Patterson, Water Superintendent, Doug Thrasher, Street Supervisor, and Brian Mullady, Director of Procurement for evaluation. It is recommended that the bid be awarded to Simpson Material as they are the lowest responsive and responsible bidder meeting specifications.

Attached is a request from for a resolution authorizing a contract to be issued to Simpson Materials at the rates provided for Limestone Rock for use by City Departments pending budgetary availability.

Respectfully,



Brian Mullady
Director of Procurement