



BOARD OF ALDERMEN

Meeting Agenda

JULY 27, 2020

7:00 PM 1 GOVERNMENT CTR. BALLWIN, MO 63011

1. *Call to Order*
2. *Roll Call*
3. *Pledge of Allegiance*
4. **Approval of Minutes**
 - a. June 22, 2020 Board of Aldermen Meeting
 - b. June 22, 2020 Board of Aldermen Closed Meeting
5. **Citizen Comments**
6. **Legislation**
 - a. Bill 4065 – Fred Kemp Ct.
 - b. Bill 4066 – Ballwin Manor Dr. Stop Sign
 - c. Bill 4067 – Cell Tower
7. **Consent Items**
 - a. Administration – Six-Month Financial Statement
 - b. Administration – Liquor License-BeerSauce
8. **Mayor's Report**
9. **City Administrator's Report**
10. **Staff Reports**
 - a. Public Works – New Ballwin Rd
 - b. Public Works – Slabs/Sidewalks
11. **City Attorney's Report**
12. **Aldermanic Comments**
13. **Closed Session**
14. **Adjourn**

NOTE: Due to ongoing City business, all meeting agendas should be considered tentative. Additional issues may be introduced during the course of the meeting.

CLOSED SESSION: Pursuant to Section 610.022 RSMo., The Board of Aldermen could, at any time during the meeting, vote to close the public meeting and move to closed session to discuss matters relating to litigation, legal actions, and/or communications from the City Attorney, as provided under Section 610.021(1) RSMo., and/or personnel matters under Section 610.021(13) RSMo., and/or employee matters under Section 610.021(3) RSMo., and/or real estate matters under Section 610.021 (2) or other matters as permitted by Chapter 610.



BOARD OF ALDERMEN

Meeting Briefs

JULY 27, 2020

7:00 PM 1 GOVERNMENT CTR. BALLWIN, MO 63011

This meeting of the Ballwin Board of Aldermen will be conducted live in accordance with the assembly guidelines limiting attendance to 25% of room capacity. The meeting room has been set up to insure social distancing. To insure compliance, staff and/or members of the general public may be required to wait in the lobby and adjacent spaces.

MINUTES: Enclosed please find the June 22, 2020 Board of Aldermen Meeting minutes and the June 22, 2020 Board of Aldermen Closed Meeting minutes.

LEGISLATION

Bill 4065 – AN ORDINANCE ACCEPTING FRED KEMP COURT FOR PUBLIC MAINTENANCE AS PROVIDED FOR IN THE CODE OF ORDINANCES OF THE CITY OF BALLWIN.

This ordinance is for the Board's approval to accept Fred Kemp Court in the City of Ballwin for public maintenance.

Bill 4066 - AN ORDINANCE AMENDING SECTION 15-480 (SCHEDULE E) OF ARTICLE XII OF CHAPTER 15 OF THE ORDINANCES OF THE CITY OF BALLWIN WITH RESPECT TO A NEW STOP SIGN.

This ordinance is for the Board's approval to add a new stop sign at Ballwin Manor Dr. at Manchester Rd.

Bill 4067 - AN ORDINANCE GRANTING A SPECIAL USE EXCEPTION TO NETWORK REAL ESTATE ON BEHALF OF AT&T MOBILITY FOR A COMMUNICATIONS TOWER AT 15407 CLAYTON ROAD.

This ordinance is for the Board's approval to grant a special use exception to Network Real Estate on behalf of AT&T Mobility.

CONSENT ITEMS

ADMINISTRATION – Six-Month Financial Statement

The City's six-month financial statement is presented for the Board's approval.

ADMINISTRATION – Liquor License - BeerSauce

The liquor license for Ballwin restaurant, BeerSauce, is presented for the Board's approval.



BOARD OF ALDERMEN

Meeting Briefs

JULY 27, 2020

7:00 PM 1 GOVERNMENT CTR. BALLWIN, MO 63011

MAYOR'S REPORT

CITY ADMINISTRATOR'S REPORT

STAFF REPORTS

PUBLIC WORKS – New Ballwin Rd.

Public Works is recommending the Board of Alderman approve legislation for an ordinance to give the City Administrator the authority to sign the agreements for New Ballwin Road STP project number 4939.

PUBLIC WORKS – Slabs/Sidewalk Replacement

Public Works is recommending the Board approve increasing the total contract, not to exceed \$815,000, to, Kelp Contracting, Inc. This contract was originally awarded on March 9, 2020.

CITY ATTORNEY'S REPORT

ALDERMANIC COMMENTS



DRAFT MINUTES
BOARD OF ALDERMEN
Meeting Minutes

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7:00 PM 1 GOVERNMENT CTR. BALLWIN, MO 63011

THE MINUTES ARE PREPARED IN SUMMARY TO REFLECT THE OVERALL DISCUSSIONS, NOT VERBATIM QUOTES.

The meeting was called to order by Mayor Tim Pogue at 7:00 p.m.

ROLL CALL

Present

Mayor Tim Pogue
Alderman Mike Utt
Alderman Michael Finley
Alderman Kevin M. Roach
Alderman Mark Stallmann
Alderman Frank Fleming
Alderman Jim Leahy
Alderman Ross Bullington
Alderman Raymond Kerlagon
City Administrator Bob Kuntz
City Attorney Robert Jones

Absent

MINUTES

The Minutes from the May 11, 2020, Board of Aldermen meeting were submitted for approval. ***A motion was made*** by Alderman Leahy and seconded by Alderman Bullington to approve the minutes from the May 11, 2020 Board of Aldermen meeting. A voice vote was taken with a unanimous affirmative result and the motion passed.

The minutes from the May 7, 2020, Board of Aldermen closed meeting were submitted for approval. A motion was made by Alderman Leahy and seconded by Alderman Bullington to approve the minutes from the May 7, 2020 Board of Aldermen closed meeting. A voice vote was taken with a unanimous affirmative result and the motion passed.



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The minutes from the May 13, 2020, Board of Aldermen closed meeting were submitted for approval. A motion was made by Alderman Leahy and seconded by Alderman Utt to approve the minutes from the May 13, 2020 Board of Aldermen closed meeting. A voice vote was taken with a unanimous affirmative result and the motion passed.

The minutes from the June 6, 2020, Board of Aldermen closed meeting were submitted for approval. Alderman Finley stated there was an item he wanted to discuss to be amended. City Attorney Robert Jones stated any discussion of closed meeting minutes should be done in a closed session; Mayor Pogue stated he would be asking for a closed session this evening and the June 6, 2020 closed minutes would be held for discussion during the closed session.

PRESENTATION

SWEARING IN OF ELECTED OFFICIALS

Alderman Michael Finley – oath administered by Honorable Judge Norman Steimel
Alderman Kevin Roach – oath administered by Honorable Judge Virginia Nye
Alderman Frank Fleming – oath administered by Honorable Judge Virginia Nye
Alderman Raymond Kerlagon – oath administered by Honorable Judge Virginia Nye

Officials were sworn in for a two-year term expiring April 2022.

Call to order at 7:10.

There is a second roll call with newly elected officials.

Present:

Absent

Mayor Tim Pogue
Alderman Mike Utt
Alderman Michael Finley
Alderman Kevin M. Roach
Alderman Mark Stallmann
Alderman Frank Fleming
Alderman Jim Leahy
Alderman Ross Bullington
Alderman Raymond Kerlagon
City Administrator Bob Kuntz
City Attorney Robert Jones



DRAFT MINUTES
BOARD OF ALDERMEN
Meeting Minutes

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CITIZEN COMMENTS

Marcia Hummel, 404 Oakmont Cir., spoke to the Board about her fence. She stated she needed to raise the level of her fence because of her dog. She added material to the top of the fence which she was told was flexible, but did not get a permit. She was positive all her neighbors were fine with this, but one neighbor emailed the City about it. Alderman Leahy asked if she had talked with her trustees; she stated she had not, but she talked with Building Commissioner Mike Roberts. Ms. Hummel also stated she has attempted to get in touch with Aldermen Fleming and Leahy, to no avail. Email sent to both came back as invalid. She stated she had also contacted Senator Keonig. City Attorney Robert Jones asked if she had received a code violation; she stated she did. City Attorney Jones stated this would need to be presented before the Board of Adjustment. Ms. Hummel then said she wants to talk with her Aldermen and Sen. Koenig about changing the ordinance. Mayor Pogue explained the process of changing an ordinance. Ms. Hummel asked if she was going to have to take her fence down. Mayor Pogue stated, if it is in violation, which it is, she would have to. Mayor Pogue also stated she should check with her trustees as well; there is a box on the permit application form which asks if trustees have been contacted. Ms. Hummel then asked if there is an appeal process. City Attorney Jones stated she may appeal to the Board of Adjustment. Alderman Fleming asked for Ms. Hummel's email address which Mayor Pogue stated he would provide for him. Alderman Fleming stated he would get in touch with her and try to help her navigate the situation.

Alderman Finley stated Mr. and Mrs. Keonig had arrived and wished to address the Board though they had not completed a form. Mayor Pogue invited them to come forward. Mr. Keonig stated he wants things opened up and doesn't understand why parks aren't open. He stated a person cannot get the virus from a surface; it is respiratory. He also stated the number of kids that have gotten this virus is just about none and that businesses are being hurt. Mayor Pogue stated that we are following orders from St. Louis County and we do not have the authority to override them. The Mayor referenced an article on playgrounds and that children should be allowed to play. He also stated the Lafayette Area Mayor's group has sent multiple letters to County Executive Sam Page for justification; they have received no reasoning from the County Executive's Office. Mayor Pogue stated he understands the frustration and it is shared.

EMPLOYEE RECOGNITION

City Administrator Kuntz shared that the City has three recent or upcoming retirees, each with many years of service. Dan Trower from Parks Department retired with 30+ years, Pete Kraut from Public Works retired with 36 years and Sgt. Ron Moushey from the Police Department retired with 40 years. Mr. Kuntz expressed his personal best wishes to the retirees and Mayor Pogue stated on behalf of the Board, their hard work has been appreciated and their experience will be missed by the City.



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LEGISLATION

Bill 4062 – Reinke Rd Lot Split

**AN ORDINANCE APPROVING A SPLIT OF THE LOT KNOWN AND NUMBERED AS 703
REINKE ROAD IN THE CITY OF BALLWIN.**

A motion was made by Alderman Leahy and seconded by Alderman Stallmann for a first reading of Bill 4062, title only. A voice vote was taken with unanimous affirmative result and Bill 4062 was read for the first time.

In discussion of Bill 4062:

Alderman Roach stated he met the owner of this property, Hugh Rideout; Mr. Rideout is a very honorable member of the community and a recipient of a Silver Star medal, which is the third highest military award.

A motion was made by Alderman Roach and seconded by Alderman Utt for a second reading of Bill 4062. A voice vote was taken with unanimous affirmative result and Bill 4062 was read for a second time.

A roll call vote was taken for passage and approval of Bill No. 4062 with the following results:

Ayes – Aldermen Utt, Finley, Roach, Stallmann, Fleming, Leahy, Bullington, Kerlagon

Nays -- None.

Bill No. 4062 was approved and became Ordinance No. 20-10

Bill 4063 – Ballwin City Administrator

**AN ORDINANCE APPOINTING A CITY ADMINISTRATOR AND APPROVING AN
EMPLOYMENT AGREEMENT**

A motion was made by Alderman Stallmann and seconded by Alderman Finley for a first reading of Bill 4063, title only. A voice vote was taken with unanimous affirmative result and Bill 4063 was read for the first time.

In discussion of Bill 4063:

None

A motion was made by Alderman Roach and seconded by Alderman Finley for a second reading of Bill 4063. A voice vote was taken with unanimous affirmative result and Bill 4063 was read for a second time.

A roll call vote was taken for passage and approval of Bill No. 4063 with the following results:

Ayes – Aldermen Utt, Finley, Roach, Stallmann, Fleming, Leahy, Bullington, Kerlagon

Nays -- None.

Bill No. 4063 was approved and became Ordinance No. 20-11



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With the passing of this ordinance, Mayor Pogue announced Eric Sterman has been chosen as the next City Administrator for the City of Ballwin. Mr. Sterman comes to us from Sunset Hills and will start on August 10. Mr. Sterman served in Sunset Hills for four years and was the first City Administrator for that City.

Bill 4064 - AN ORDINANCE PROVIDING FOR THE ANNEXATION BY THE CITY OF BALLWIN, MISSOURI OF AN AREA OF UNINCORPORATED LAND DESCRIBED HEREIN AND REFERRED TO AS “WATERFORD SUBDIVISION”, AND PROVIDING FOR APPROVAL OF AN ANNEXATION PLAN AND A SIMPLIFIED BOUNDARY CHANGE PROPOSAL TO BE SUBMITTED TO THE ST. LOUIS COUNTY BOUNDARY COMMISSION FOR ITS CONSIDERATION.

A motion was made by Alderman Roach and seconded by Alderman Leahy for a first reading of Bill 4064, title only. A voice vote was taken with unanimous affirmative result and Bill 4064 was read for the first time.

In discussion of Bill 4064:

None

A motion was made by Alderman Roach and seconded by Alderman Stallmann for a second reading of Bill 4064. A voice vote was taken with unanimous affirmative result and Bill 4064 was read for a second time.

A roll call vote was taken for passage and approval of Bill No. 4064 with the following results:

Ayes – Aldermen Utt, Finley, Roach, Stallmann, Fleming, Leahy, Bullington, Kerlagon

Nays -- None.

Bill No. 4064 was approved and became Ordinance No. 20-12

City Attorney Robert Jones stated this would go to St. Louis County tomorrow.

Resolution - A RESOLUTION AUTHORIZING THE CHIEF OF POLICE TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN LAFAYETTE AREA POLICE AGENCIES.

Discussion:

None

A motion was made by Alderman Bullington and seconded by Alderman Roach to approve the resolution as submitted. A voice vote was taken with unanimous affirmative result and the motion passed.

CONSENT ITEMS

ADMINISTRATION – Liquor Licenses/Picnic License – Craft Beer Festival

Liquor licenses for Ballwin businesses and restaurants as well as the Picnic License for the Craft Beer Festival are presented for the Board's approval.

Discussion:

Mayor Pogue requested a motion to approve all liquor licenses except for Clancy's as they do not have all required paperwork completed.

A motion was made by Alderman Roach and seconded by Alderman Utt to approve the liquor licenses with the omission of Clancy's. A voice vote was taken with unanimous affirmative result and the motion passed.

Mayor Pogue requested a motion to approve Clancy's contingent upon all paperwork being filed and approved no later than July 1, 2020.

A motion was made by Alderman Stallmann and seconded by Alderman Bullington. A voice vote was taken with unanimous affirmative result and the motion passed.

ADMINISTRATION – Destruction of Records

Staff requests the Board's approval to destroy the items listed on the Notice of Destruction of Records.

Discussion:

None

A motion was made by Alderman Roach and seconded by Alderman Utt to approve the requested records destruction. A voice vote was taken with unanimous affirmative result and the motion passed.



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MAYOR'S REPORT

Mayor Pogue stated the contract for City Administrator Bob Kuntz's employment would be extended through July 10, 2020 and then part-time (50%) until the new City Administrator begins and will include a one-week overlap.

A motion was made by Alderman Roach and seconded by Alderman Stallmann to approve the contract extension. A voice vote was taken with unanimous affirmative result and the motion passed.

CITY ADMINISTRATOR'S REPORT

Nothing to report

STAFF REPORTS

POLICE – Stop Sign Recommendations

Last year, the Board authorized a comprehensive study and analysis of all of our stop signs by T2 traffic engineering. Implementation for most of the changes would require further study and cost commitment. Due to our uncertain financial condition, we were reluctant to move forward. Officer Burgoyne identified the five areas that can be handled in-house. Those five are: 1. Ramsey at Manchester, 2. Ballwin Manor at Manchester, 3. Ries at Twigwood, 4. Lennox and Mayfair and 5. Holloway and Kehrs Mill.

Alderman Finley stated that he was in favor of the first four on the list, but considering financial uncertainty, he thinks we should wait until next year to do the fifth due to the cost. There was considerable discussion regarding the Holloway/Kehrs Mill intersection; this intersection has the most accidents of City owned streets. Alderman Stallmann agreed with Alderman Finley's concerns about spending, but it appears this cost would be prudent at this point. Alderman Fleming stated this seems to be necessary and reasonable.

A motion was made by Alderman Finley and seconded by Alderman Roach to approve locations one through four on the list and have legislation prepared for the stop sign at Ballwin Manor. A voice vote was taken with unanimous affirmative result and the motion passed.

A motion was made by Alderman Stallmann and seconded by Alderman Bullington to approve location five. A voice vote was taken with seven affirmative votes and one negative vote and the motion passed.



DRAFT MINUTES
BOARD OF ALDERMEN
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PUBLIC WORKS – Fred Kemp Ct.

Staff is requesting legislation be enacted to accept the streets and sidewalks of Fred Kemp Ct. for City maintenance.

Discussion:

Public Works Director Jim Link stated the contractor has completed all work at Fred Kemp and it is ready for the City to take over for streets/sidewalks.

A motion was made by Alderman Roach and seconded by Alderman Stallmann to draft legislation. A voice vote was taken with unanimous affirmative result and the motion passed.

PUBLIC WORKS – Easement/Right of Way Tree Clearing and Removal

Sometime ago, the Board authorized solicitation of bids to supplement our efforts and reduce backlog. We have 262 open work orders in our system with an additional 1215 ash trees to be removed. Acceptance of the low bid, based on a \$30,000 expenditure cap, would enable us to remove an additional 127 trees. Direction, by motion, is requested.

Discussion:

Public Works Director Jim Link stated both bidders are willing to reduce the scope of work. He explained direction from the Board is needed as this was not budgeted for in 2020. There was discussion of the number of trees and work orders as well as easement and right of way clearing. Mayor Pogue stated we are getting in as many work orders as we're taking off and the \$30,000 contract would help to cut that number almost in half. His recommendation is to contract with Omni Tree, not to exceed \$30,000. Alderman Leahy asked if we are doing stump grinding in-house; Mr. Link replied that we are. Mayor Pogue stated we can also work with our arborist to find out which trees are in the worst shape. Alderman Leahy agreed with the Mayor's recommendation and stated we can come back later if necessary once we see how the budget is.

A motion was made by Alderman Roach and seconded by Alderman Utt to approve a contract up to \$30,000 with Omni Tree. A voice vote was taken with unanimous affirmative result and the motion passed.

CITY ATTORNEY'S REPORT

Nothing to report



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ALDERMANIC COMMENTS

Alderman Finley expressed his thanks to Mr. Kuntz for his distinguished service and leadership to the City. Alderman Stallmann also expressed his thanks and shared that it has been a pleasure to have Mr. Kuntz back. Alderman Roach expressed his thanks to Parks & Recreation staff for working hard to open up as much as possible. Alderman Leahy shared information regarding a letter all members of the Board received and asked if we could look at businesses which were forced to shut down and the amount of licensing fees they are paying.

CLOSED SESSION

The Board moved to go into closed session as authorized by Revised Statutes of Missouri, Section 610.021(13) regarding personnel matters.

A motion was made by Alderman Bullington and seconded by Alderman Utt. A roll call vote was taken with unanimous affirmative result. The Board moved to closed session at 8:22 p.m.

OPEN SESSION

A motion was made by Alderman Fleming and seconded by Alderman Stallmann to reconvene. The motion passed by unanimous affirmative voice vote.

A motion was made by Alderman Fleming and seconded by Alderman Stallmann to approved the June 6, 2020 Board of Alderman closed meeting minutes. The motion passed by unanimous affirmative voice vote.

A motion was made by Alderman Fleming and seconded by Alderman Finley to adjourn. The motion was passed by unanimous affirmative voice vote and the meeting adjourned at 8:30 p.m.

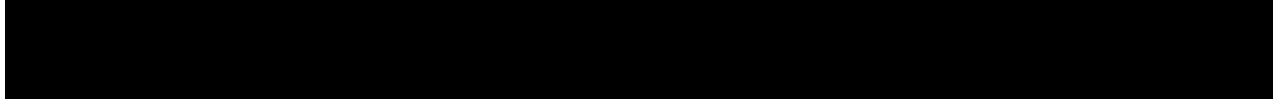
TIM POGUE, MAYOR

ATTEST:

POLLY MOORE, CITY CLERK

MINUTES OF THE CLOSED SESSION – JUNE 22, 2020
BALLWIN BOARD OF ALDERMEN

The Ballwin Board of Aldermen convened in closed session on June 22, 2020 at 8:22 PM at 1 Government Center. Present were Mayor Pogue and Aldermen Finley, Kerlagon, Fleming, Stallmann, Bullington, Leahy, Roach and Utt and City Attorney Robert E. Jones.



A motion was made by Alderman Roach to adjourn the closed session. The motion was seconded by Alderman Utt.

The following vote was recorded:

Alderman Stallmann	aye
Alderman Fleming	aye
Alderman Finley	aye
Alderman Roach	aye
Alderman Bullington	aye
Alderman Kerlagon	aye
Alderman Utt	aye
Alderman Leahy	aye

The closed session adjourned at 8:29 PM.

/s/ Robert E. Jones

Robert E. Jones
Acting Secretary



Bill No. 4065
Ordinance No. _____

INTRODUCED BY
ALDERMEN UTT, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, KERLAGON, BULLINGTON

AN ORDINANCE ACCEPTING FRED KEMP COURT FOR PUBLIC MAINTENANCE AS PROVIDED FOR IN THE CODE OF ORDINANCES OF THE CITY OF BALLWIN.

Whereas, a request has been received to accept Fred Kemp Court in the City of Ballwin for public maintenance; and

Whereas, the minimum standards relative to width, curb and gutter and pavement conditions as determined by City staff have been met.

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

SECTION ONE: Fred Kemp Court is hereby accepted for public maintenance.

SECTION TWO: This ordinance shall take full force and effect from and after the date of its passage by the Board of Alderman and approval of the Mayor.

PASSED this _____ day of _____, 2020.

TIM POGUE, MAYOR

APPROVED this _____ day of _____, 2020.

TIM POGUE, MAYOR

ATTEST: _____
ROBERT KUNTZ, CITY ADMINISTRATOR



Bill No. 4066

Ordinance No. _____

INTRODUCED BY

ALDERMEN UTT, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, KERLAGON, BULLINGTON

AN ORDINANCE AMENDING SECTION 15-480 (SCHEDULE E) OF ARTICLE XII OF CHAPTER 15 OF THE ORDINANCES OF THE CITY OF BALLWIN WITH RESPECT TO A NEW STOP SIGN.

WHEREAS, the Board of Aldermen adopted certain ordinances that are codified as Section 15-480, Schedule E of Article XII of Chapter 15 of the Ordinances of the City of Ballwin with regard to stop intersections on certain streets; and

WHEREAS, the Board of Aldermen deems it necessary for public safety to amend the aforesaid schedule to include an additional stop sign.

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

Section 1. The listing of streets within Section 15-480, Schedule E of the Ballwin Code of Ordinances shall be amended to add a stop sign at the following intersection:

Intersection or Location	Traffic on Street, Road, Highway or Alley Listed Below Shall Stop
Ballwin Manor Drive and Manchester Road	Ballwin Manor Drive

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

PASSED this ____ day of _____, 2020.

TIM POGUE, MAYOR

APPROVED this ____ day of _____, 2020.

TIM POGUE, MAYOR

ATTEST: _____

ROBERT KUNTZ, CITY ADMINISTRATOR



Bill No. 4067

Ordinance No. _____

INTRODUCED BY

ALDERMEN UTT, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, KERLAGON, BULLINGTON

AN ORDINANCE GRANTING A SPECIAL USE EXCEPTION TO NETWORK REAL ESTATE ON BEHALF OF AT&T MOBILITY FOR A COMMUNICATIONS TOWER AT 15407 CLAYTON ROAD.

WHEREAS, Network Real Estate on behalf of AT&T Mobility submitted a Petition for a special use exception to erect a communications tower at 15407 Clayton Road in the City of Ballwin; and

WHEREAS, a public hearing was duly noticed and held before the Planning & Zoning Commission on July 6, 2020; and

WHEREAS, the Planning & Zoning Commission recommended approval of the Petition submitted by Network Mobility on behalf of AT&T Mobility; and

WHEREAS, the Board of Aldermen has determined that the special use exception, under certain conditions, would not substantially increase traffic hazards or congestion; would not adversely affect the character of the neighborhood; would not adversely affect the general welfare of the community; would not over-tax public utilities; would not adversely affect public safety and health; is consistent with good planning practice; can be operated in a manner that is not detrimental to the permitted developments and uses in the District; and can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area; and

WHEREAS, in determining the location for the proposed structure, and in keeping with RSMO. Section 67.5094 with regard to new wireless infrastructure deployment, AT&T Mobility conducted an analysis of available collocation opportunities on existing wireless towers inside their search areas but did not find any suitable opportunities to meet their needs.

WHEREAS, all applicable matters in Appendix A, "The Zoning Ordinance," have been adequately provided for:

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

Section 1. A special use exception, subject to the conditions hereinafter specifically set forth in the addendum attached hereto and incorporated herewith as Exhibit One, is hereby granted to Network Real Estate on behalf of AT&T Mobility to use the premises in the City of Ballwin, Missouri known as 15407 Clayton Road for erection of a communications tower.

Section 2. The special use exception hereby issued, and referred to in Section 1, is issued to the named permittee only and shall not be assigned or transferred, without the permission of the Board of Aldermen of the City of Ballwin.

Section 3. The special use exception hereby issued and referred to in Section 1, shall be



Bill No. 4067

valid only if the conditions set forth in the Addendum, attached hereto as Exhibit 1 made a part hereof , are observed by permittee.

Section 4. This Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED this ____ day of _____, 2020.

TIM POGUE, MAYOR

APPROVED this ____ day of _____, 2020.

TIM POGUE, MAYOR

ATTEST: _____

ROBERT KUNTZ, CITY ADMINISTRATOR

ORDINANCE NO. _____**EXHIBIT ONE**

The permittee granted a Special Use Exception per the ordinance hereby appended to, their assignees and successors, as authorized and approved by the Board of Aldermen of the City of Ballwin, agree to abide by the following provisions, the provisions of all ordinances of the City of Ballwin, and all applicable laws of St. Louis County, the State of Missouri and of the United States of America and to require all licensees, franchisees, and lessees to similarly abide by said ordinances, laws and provisions, as appropriate to such special use exception. In addition, the following provisions, as appropriate, shall apply:

1. There is no outdoor storage, display or sale of any merchandise, equipment, vehicle, supplies or product except as may be provided and limited by this Special Use Exception or ordinance of the City of Ballwin.

2. There is no servicing, repair, cleaning, maintenance or other work on any merchandise, equipment, vehicle, materials, supplies, or product except as may be provided and limited by this Special Use Exception or ordinance of the City of Ballwin, except within a fully enclosed building which shall not include carports, porte-cocheres, accessory structures or temporary coverings and/or enclosures such as tents, tarpaulins, flies, or other similar structures.

3. Any violation of the laws, statutes, ordinances, codes, policies and regulations of the City of Ballwin, St. Louis County, the State of Missouri, or the United States of America by the permittee, its agents, servants or employees shall be cause for the revocation of the Special Use Exception hereby granted.

4. That the site, premises and/or land use described by the permittee in the application and subsequently approved by this ordinance is developed and operated in accordance with the final approved development plan and the provisions of this ordinance, and any failure to do so shall be cause for the revocation of the Special Use Exception hereby granted.

5. All new utility and other service laterals and connections on the site and/or premises, and all connections to site improvements and fixtures installed outside of a fully enclosed building shall be installed underground.

6. All sign illumination and other lighting is selected and arranged so as not to cast light upon, and/or be a nuisance, to any right-of-way or any other property.

7. The permittee and their approved assignees or successors, if any, shall install plantings native to the State of Missouri, subject to review and approval by City staff and shall preserve, maintain and care for all plantings, and landscaped and planted areas on the site and/or premises, in accordance with the landscape and site plans of this ordinance. Such maintenance, preservation and care shall include all planted and landscaped rights-of-way adjacent to the site and/or premises addressed and approved by the Special Use Exception hereby granted.

8. Trash and debris shall not be allowed to accumulate and the site/premises shall at all times be kept clean and free of all refuse, debris, leakage and recyclable material accumulation.

9. Unless otherwise provided by this Special Use Exception or other ordinances of the City of Ballwin, no vehicles, equipment or property may be parked or stored on the premises for which



this permit is issued except non-commercial vehicles as defined by the Ballwin Ordinances and one fully operational and licensed delivery/service vehicle per business or tenant or use operated on the premises.

10. No changes or departures from the approved final development plan may be made without the approval of the Board of Aldermen in accordance with the provisions of Article XIV, Section 3, of the Ballwin Zoning Ordinance.

11. This Special Use Exception shall terminate three months following the non-renewal of the business license for the business associated with the location for which the Exception is granted.

12. The final site development plan shall comply with all recommendations of the Petition Review Report for Petition No. SUE 20-04.

13. The Simtek wall shall be constructed to a height of 8 feet, and any equipment buildings will be lower than the 8 foot height of the wall.



Consent Item

RE: Semi-Annual Revenue/Expenditure Statement

Department/Program: Administration/Finance

Recommendation: Staff recommends that the Board approve the semi-annual statement of revenues and expenditures.

Explanation: Per RSMo Statute Section 79.160, *“the Board of Aldermen shall semi-annually each year, at times to be set by the Board of Aldermen, make out and spread upon their records a full and detailed account and statement of the receipts and expenditures and indebtedness of the city for the half year ending with the last day of the month immediately preceding the date of such report, which account and statement shall be published in some newspaper in the city.”*

In accordance with this statute section, attached is a report of actual revenues and expenditures received/expensed during the period January 1 – June 30, 2020. This needs to be published in a local newspaper by the end of July.

Submitted By: Denise Keller

Date: July 14, 2020

CITY OF BALLWIN
GENERAL/CAPITAL PROJECTS FUNDS
REVENUE/EXPENSE STATEMENT
FOR THE SIX MONTH PERIOD ENDING 6/30/20

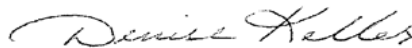
REVENUE	General Fund	Capital Projects Fund
Sales Taxes	\$ 4,538,566	\$ 340,293
Other Taxes	865,465	-
Licenses & Permits	1,222,469	-
Public Utility Licenses	1,502,139	-
Court Fines	129,407	-
Police & Communications	168,710	-
Community Programs	865,671	-
Grants & Donations	10,917	37,858
Sale of Capital Assets	25,499	-
Investment Income	69,394	-
Escrows	16,497	-
Miscellaneous	37,854	-
Other Financing Sources	-	-
Total:	\$ 9,452,588	\$ 378,151
 EXPENDITURES		
Administration	\$ 1,550,635	\$ 18,294
Parks & Recreation	1,982,747	225,806
Police	2,775,653	17,588
Public Works	1,673,793	102,936
Transfers Out	-	-
Total:	\$ 7,982,828	\$ 364,624

CITY INDEBTEDNESS

2002 Tax Increment Revenue Bonds **\$ 6,840,000 (1)**

(1) The bonds do not constitute a general obligation or indebtedness of the City. Please refer to the annual audit report on the City's website for additional details.

I, Denise Keller, Finance Officer for the City of Ballwin, Missouri, certify that to the best of my knowledge, the above unaudited statement is true and in agreement with city records on file as of 6/30/20.



Denise Keller
Finance Officer

ATTEST:



Bob Kuntz
City Administrator



Staff Report

Subject: New Ballwin Road-STP 4939

Department/Program: Public Works/Engineering

Recommendation: We recommend the Board of Alderman approve an Ordinance to give the City Administrator the authority to sign the agreements for New Ballwin Road STP project number 4939.

Explanation: On 1/28/2019 the Board of Alderman approved Cochran Engineering's proposal for the New Ballwin Road STP project. The Missouri Highways and Transportation Commission and the City of Ballwin are required to enter into an agreement for this project. This Ordinance will give the City Administrator the Authority to sign and enter in this agreement.

Submitted By: Jim Link, Director of Public Works

Date: 7/13/2020

CCO Form: FS11
Approved: 07/96 (KMH)
Revised: 03/17 (MWH)
Modified:

CFDA Number: CFDA #20.205
CFDA Title: Highway Planning and Construction
Award name/number: STP-4939(609)
Award Year: 2022
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
STP-URBAN PROGRAM AGREEMENT**

THIS STP-URBAN AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Ballwin, St. Louis County, Missouri (hereinafter, "City").

WITNESSETH:

WHEREAS, the Fixing America's Surface Transportation Act (FAST) 23 U.S.C. §133, authorizes a Surface Transportation Program (STP) to fund transportation related projects; and

WHEREAS, the City desires to construct certain improvements, more specifically described below, using such STP funding; and

WHEREAS, those improvements are to be designed and constructed in compliance with the provisions of this Agreement.

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

(1) PURPOSE: The purpose of this Agreement is to grant the use of STP funds to the City. The improvement contemplated by this Agreement and designated as Project STP-4939(609) involves:

Resurfacing, curb ramps, pedestrian signals and street lighting on New Ballwin Road from Manchester Road to Twigwood Drive.

The City shall be responsible for all aspects of the construction of the improvement.

(2) LOCATION: The contemplated improvement designated as Project STP-4939(609) by the Commission is within the city limits of Ballwin, Missouri. The general location of the improvement is shown on an attachment hereto marked "Exhibit A" and incorporated herein by reference. More specific descriptions are as follows:

New Ballwin Road from Manchester Road to Twigwood Drive

(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.

(4) LIMITS OF SYSTEM: The limits of the surface transportation system for the City shall correspond to its geographical area as encompassed by the urban boundaries of the City as fixed cooperatively by the parties subject to approval by the Federal Highway Administration (FHWA).

(5) ROUTES TO BE INCLUDED: The City shall select the high traffic volume arterial and collector routes to be included in the surface transportation system, to be concurred with by the Commission, subject to approval by the FHWA. It is understood by the parties that surface transportation system projects will be limited to the said surface transportation system, but that streets and arterial routes may be added to the surface transportation system, including transfers from other federal aid systems.

(6) INVENTORY AND INSPECTION: The City shall:

(A) Furnish annually, upon request from the Commission or FHWA, information concerning conditions on streets included in the STP system under local jurisdiction indicating miles of system by pavement width, surface type, number of lanes and traffic volume category.

(B) Inspect and provide inventories of all bridges on that portion of the federal-aid highway systems under the jurisdiction of the City in accordance with the Federal Special Bridge Program, as set forth in 23 U.S.C. §144, and applicable amendments or regulations promulgated thereunder.

(7) CITY TO MAINTAIN: Upon completion of construction of this improvement, the City shall accept control and maintenance of the improved street and shall thereafter keep, control, and maintain the same as, and for all purposes, a part of

the City street system at its own cost and expense and at no cost and expense whatsoever to the Commission. Any traffic signals installed on highways maintained by the Commission will be turned over to the Commission upon completion of the project for maintenance. All obligations of the Commission under this Agreement shall cease upon completion of the improvement.

(8) 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.

(9) CONSTRUCTION SPECIFICATIONS: Parties agree that all construction under the STP for the City will be constructed in accordance with current MoDOT design criteria/specifications for urban construction unless separate standards for the surface transportation system have been established by the City and the Commission subject to the approval of the FHWA.

(10) 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.

(11) ACQUISITION OF RIGHT OF WAY: No acquisition of additional right of way is anticipated in connection with Project STP-4939(609) or contemplated by this Agreement.

(12) 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. All federally funded projects are required to have a project end date. Any costs incurred after the project end date are not eligible for reimbursement. The federal share for this project will be 80 percent not to exceed \$652,863. 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.

(B) The total reimbursement otherwise payable to the City under this Agreement is subject to reduction, offset, levy, judgment, collection or withholding, if there is a reduction in the available federal funding, or to satisfy other obligations of the City to the Commission, the State of Missouri, the United States, or another entity acting pursuant to a lawful court order, which City obligations or liability are created by law, judicial action, or by pledge, contract or other enforceable instrument. Any costs incurred by the City prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs.

(13) PERMITS: The City shall secure any necessary approvals or permits from the Federal Government and the State of Missouri as required to permit the construction and maintenance of the contemplated improvements.

(14) TRAFFIC CONTROL: The plans shall provide for handling traffic with signs, signal and marking in accordance with the Manual of Uniform Traffic Control Devices (MUTCD).

(15) WORK ON STATE RIGHT OF WAY: If any contemplated improvements for Project STP-4939(609) will involve work on the state's right of way, the City will provide reproducible final plans to the Commission relating to such work.

(16) DISADVANTAGED BUSINESS ENTERPRISES (DBEs): At time of processing the required project agreements with the FHWA, the Commission will advise the City of any required goals for participation by 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.

(17) 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.

(18) 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. All progress payment requests must be submitted for reimbursement within 90 days of the project completion date for the final phase of work. The City shall repay any progress payments which involve ineligible costs.

(19) 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.

(20) OUTDOOR ADVERTISING: The City further agrees that the right of way provided for any STP improvement will be held and maintained inviolate for public highway or street purposes, and will enact and enforce any ordinances or regulations necessary to prohibit the presence of billboards or other advertising signs or devices and the vending or sale of merchandise on such right of way, and will remove or cause to be removed from such right of way any sign, private installation of any nature, or any

privately owned object or thing which may interfere with the free flow of traffic or impair the full use and safety of the highway or street.

(21) FINAL AUDIT: The Commission will 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.

(22) AUDIT REQUIREMENT: 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.

(23) 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.

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

(25) 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.

(26) 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.

(27) 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.

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

- (A) To the City:
14811 Manchester Road
Ballwin, MO 63011
- (B) To the Commission:
1590 Woodlake Drive
Chesterfield, MO 63017
Facsimile No.: 537-522-6475

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

(29) 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, 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, 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 (29) 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.

(30) 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 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.

(31) CONFLICT OF INTEREST: The City shall comply with conflict of interest policies identified in 23 CFR 1.33. A conflict of interest occurs when an entity has a financial or personal interest in a federally funded project.

(32) MANDATORY DISCLOSURES: The City shall comply with 2 CFR 200.113 and disclose, in a timely manner, in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

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

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

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

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF BALLWIN

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

By _____

Title _____

Ordinance No: _____



Architecture
Civil Engineering
Land Surveying
Site Development

737 Rudder Road
St. Louis, Missouri 63026
Telephone: 314-842-4033
Fax: 314-842-5957
E-Mail: david@cochraneng.com

January 24, 2019

Mr. Andy Hixson
Assistant City Administrator
City of Ballwin
14811 Manchester Road
Ballwin, MO 63011

**RE: Proposal – Grant Application and Engineering Services
New Ballwin Road STP Project**

Dear Mr. Hixson:

Thank you for giving Cochran the opportunity to submit this proposal to provide application and professional engineering services for the above referenced project. In accordance with my presentation to City Council last night, we offer the following professional services:

SCOPE OF SERVICES:

1. **Application Phase** – we will prepare and submit the application in accordance with the attached cost estimate. The application is a very detailed and involved process; here are some of the questions and information required on the application:
 - a. Project map showing limits of improvements
 - b. Definition and description of roadway characteristics
 - c. Written description of proposed project
 - d. Proposed Cross Section
 - e. Detailed Map showing improvements and connections to transit Routes, activity centers, and schools
 - f. Written project justification – 1) proposed improvement, 2) transportation problem the improvement will address, 3) effect the improvement will have on the problem, and 4) transportation demand management strategies
 - g. Average daily traffic (ADT) counts
 - h. Pavement Condition – PASER Analysis
 - i. Description of bicycle and pedestrian elements
 - j. Detailed cost estimate
 - k. Project implementation schedule
2. **Design and Bidding Phase** – we will provide professional services necessary to produce a quality set of construction and bidding documents. The scope will be in accordance with the attached cost estimate. Tasks will include the following:
 - a. Determine the needs of the City by meeting with City officials and representative interest groups.
 - b. Conduct topographic, property and utility surveys sufficient to develop plans for the project.

- c. Develop preliminary plans and cost estimates and recommend to the City the best overall general design.
 - d. Submit four copies of preliminary plans and estimates for review by the City and the Missouri Department of Transportation.
 - e. Based on approvals of preliminary plans, prepare detailed construction plans, cost estimates, specifications and related documents as necessary for the purpose of soliciting bids for constructing the project.
 - f. Ensure compliance with all regulations in regards to noise abatement and air quality, if necessary.
 - g. Provide the City with five sets of completed plans, specifications and cost estimates for the purpose of obtaining construction authorization from the Missouri Department of Transportation.
 - h. Upon receipt of construction authorization from MODOT, make final corrections resulting from reviews by agencies involved and provide plans, specifications, and bid documents to the City.
 - i. Provide the City with a list of qualified area bidders and assist the City in advertising for bids.
 - j. Assist the City in evaluating bids and requesting concurrence in award from MoDOT.
3. **Construction Phase** - we will serve as the City's representative for administering the terms of the construction contract between the City and their Contractor. Cochran will endeavor to protect the City against defects and deficiencies in workmanship and materials in work by the Contractor. However, the furnishing of such project representation will not make Cochran responsible for the construction methods and procedures used by the Contractor or for the Contractor's failure to perform work in accordance with the contract documents. Tasks will include the following:
- a. Provide the City with a list of qualified area bidders and assist in advertising for bids, distributing bid packages, pre-bid conference, addendums, and pre-bid questions from Contractors.
 - b. Assist the City in opening and evaluating bids and requesting concurrence in award from MoDOT.
 - c. Assist the City with a preconstruction conference to discuss project details with the Contractor.
 - d. Make periodic site visits to observe the Contractor's progress and quality of work, and to determine if the work conforms to the contract documents. It is contemplated that survey staking and layout will be accomplished by the contractor's forces. We will accompany MoDOT and FHWA representatives on visits of the project site as requested.
 - e. Check shop drawings and review schedules and drawings submitted by the Contractor.
 - f. Reject work not conforming to the project documents.
 - g. Prepare change orders for issuance by the City as necessary and assure that proper approvals are made prior to work being performed.
 - h. Review wage rates, postings, equal employment opportunity and other related items called for in the contract documents.
 - i. Inspect materials, review material certifications furnished by Contractor, sample concrete and other materials as required, and provide for laboratory testing of samples.
 - j. Maintain progress diary and other project records, measure and document quantities, and prepare monthly estimates for payments due the Contractor.
 - k. Be present during critical construction operations.
 - l. Participate in final inspection, provide the City with project documentation (diaries, test results, certifications, etc.), and provide as-built plans for the City's records.

OWNER'S RESPONSIBILITY:

1. The Owner shall give prompt and thorough consideration to all sketches, drawings, bid documents and other documents laid before him. Prompt decisions will be required if project is to proceed on schedule.
2. Advertisement and receipt of construction bids.
3. The Owner shall consider the bids and determine whether the project shall proceed to the construction phase. If the Owner Board determines that the project shall proceed to the construction phase, the Owner, by action of the Board of Aldermen, shall select the successful bidder. The owner may abandon the Project, at any time and for any reason, in its sole discretion and, in such event, shall give seven (7) days written notice to Cochran.

FEE:

1. The total amount of fee to be paid for the "Application Phase" outlined in this proposal shall be a lump sum fee of \$5,000.00. We offer that if the application is not approved, we will reimburse the entire fee.
2. If the grant application is approved by the EWGCC, the total amount of fee to be paid for the "Design and Bidding Phase" outlined in this proposal shall be a lump sum fee of \$81,608.00.
3. If the grant application is approved by the EWGCC, the total amount of fee to be paid for the "Construction Phase" outlined in this proposal shall be a lump sum fee of \$57,125.00.

PAYMENT:

1. An invoice for progress payments will be submitted monthly during the performance period of this contract for professional services rendered. It is agreed that monthly progress payments for fees earned under this agreement are due and payable within thirty (30) days of submission of invoices. Any invoices remaining unpaid beyond thirty (30) days will accrue interest at the rate of one and one-half (1½%) per month on the unpaid balance.
2. It is further understood that if the project is abandoned, or if any work being performed is suspended in whole or in part prior to the completion of any phase, payment will be due in direct proportion to the amount of work accomplished.
3. In addition, payment will be due for all reimbursable expenses incurred prior to receipt of written notice or such abandonment or suspension.

TIME OF PERFORMANCE:

We will make every effort to complete the project within the Owner's time frame and according to schedule. Cochran will not, however, be responsible for delays caused by events beyond our control.

TERMS AND CONDITIONS:

Attached to this proposal is a copy of the Cochran Standard Terms and Conditions. These terms and conditions shall apply to this proposal for professional services, which can also serve as a letter agreement. This document is enclosed for your review and reference.

GENERAL:

Cochran's reputation is based on understanding and meeting all the project objectives of our clients. We look forward to having an opportunity to demonstrate that responsiveness by providing timely and cost effective professional services.

If you would like to authorize Cochran to perform the professional services outlined in this proposal, please indicate your acceptance of the terms of this letter agreement by signing in the space provided below and returning one (1) copy for our contract files.

If you have any questions or changes regarding this proposal, please contact me at 314-842-4033. Thank you.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

Sincerely,

Acceptance:
City of Ballwin

Dave Christensen, P.E.
Vice President

By: _____

Title: _____

Date: _____

Attachments – Cochran Standard Terms & Conditions
Cost Estimate

COCHRAN STANDARD TERMS AND CONDITIONS

1. Unless expressly stated in the attached proposal letter ("Proposal"), the Proposal must be accepted in writing within thirty days or the Proposal is void and unenforceable.
2. The acceptance of the Proposal is conditioned upon these Terms and Conditions and the terms of the Proposal, which shall be the only terms and conditions applicable to any agreement between Cochran and Client. Requesting performance of the work by Cochran, sending a notice to proceed with the work, or an acknowledgment of the Proposal by the issuance of a purchase order by Client, notwithstanding any terms additional to or different from those contained herein, shall be deemed to be an acceptance of these Terms and Conditions by Client.
3. The Proposal and these Terms and Conditions constitute the entire agreement ("Contract") between Cochran and the Client for the services identified in the Proposal. All prior proposals, negotiations, representations, recommendations, statements or agreements made or entered into prior to or contemporaneously with this Contract, whether oral or in writing, are superseded by this Contract unless they are expressly incorporated herein by reference. Any terms contained in any communication from Client which are inconsistent with the Contract shall not be binding upon Cochran.
4. Cochran may submit invoices on not less than a monthly basis. Cochran's invoices are due and payable within fifteen (15) days of the submission of each invoice. Interest will accrue at the rate of one and one-half percent (1.5%) per month on all unpaid invoices from the date payment was due. In the event that Client disputes an invoice, Client will pay the undisputed portion of the invoice and provide a written explanation to Cochran of the basis for Client's dispute. If Client fails to pay in full any of Cochran's invoices, Cochran may immediately, without waiving any other rights it may have, suspend work pending resolution of the payment dispute. Client's failure to pay any of Cochran's invoices in full shall be considered a material breach of this Contract.
5. Unless specifically stated to the contrary in the Proposal, reimbursable expenses are in addition to the amounts identified for Cochran's fees for basic and additional services. Reimbursable expenses shall include, but are not limited to: Client-authorized out-of-town travel, transportation, and subsistence expenses; fees paid for securing approval of jurisdictional authorities; postage, courier, or other delivery fees; material costs for models, mock-ups, or other presentation media; photographic film and development expenses.
6. This Contract is binding upon the heirs, successors and assigns of the parties hereto and may not be assigned by either party without the prior written consent of the other party.
7. Nothing in this Contract is intended to create any enforceable third party rights against Client or Cochran.
8. Cochran will perform all of its services consistent with that degree of skill and learning ordinarily used under the same or similar circumstances by the members of Cochran's profession working in the same locale.
9. If, and to the extent that Cochran's scope of work includes construction phase services, any such services shall be provided in accordance with and governed by the applicable terms of AIA Document A201 General Conditions of the Contract for Construction, 2007 Edition ("General Conditions"). If there is a conflict between the General Conditions and this Contract, this Contract will control.
10. When making any interpretation or decision as required by the General Conditions, Cochran will not show partiality to any party, and shall not be liable for interpretations or decisions rendered in good faith.
11. Cochran has no responsibility or obligation to supervise or direct the work activities of the Client's employees and representatives, or any construction contractors, sub-contractors or any of their employees, or other persons not employed by Cochran.
12. Cochran will abide by any job-site safety programs identified in writing by the Client but will not be responsible for job-site safety of any persons not directly employed by Cochran.
13. Cochran has no responsibility or obligation with respect to the construction means, methods, sequencing or procedures of any construction contractors, sub-contractors or any of their employees.
14. Cochran is not responsible for the failure of any contractor to perform work properly and in accordance with any applicable documents, plans, specifications, codes or standards.
15. Cochran is not responsible for the identification of unsafe conditions, nor for the identification, handling, or removal of hazardous and/or toxic substances found on or brought to the site. Prior to the start of work, the Client shall disclose and identify in writing to Cochran, to the best of Client's knowledge, all hazardous and/or toxic substances located on the site.
16. Cochran will have no obligation to commence its work until receipt of a written notice-to-proceed from Client and all other information required to be provided by Client. Cochran shall complete its work within any time limits identified in the Proposal. Cochran shall be entitled to an extension of time for performance of its work due to any delays that are due to any cause beyond Cochran's reasonable control. In no event will Client be entitled to any costs, losses, expenses or damages (including, but not limited to, claims or damages attributable to home office overhead costs, loss of profits, loss of business opportunities and/or additional financing costs) as a result of any delay caused or attributable to Cochran.
17. Cochran and Client waive any and all claims against each other for consequential, indirect, incidental and special damages arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work; including, but not limited to, lost profits, loss of business, financing costs, extended home office overhead and similar types of damages.
18. Provided that written notice of a material breach of this Contract has been provided to the defaulting party and the defaulting party has failed to cure or taken reasonable efforts to cure its default within seven (7) calendar days of its receipt of the notice, the non-defaulting party may terminate this Contract by sending notice of termination to the defaulting party.
19. If the Contract is terminated for any reason not attributable to Cochran, Client will pay for the work performed by Cochran up to the date of termination plus all of Cochran's costs related to the termination (e.g., close-out costs, costs of terminating contracts with consultants, etc.).
20. In the event that there are any changes in applicable laws, codes or regulations after the Contract is executed that result in the need for Cochran to perform additional services and/or incur additional costs, Client shall pay Cochran for said services and costs at the rates set forth in the Proposal.
21. All documents and electronic media produced by Cochran under this Contract ("Instruments of Service") shall be the property of the City.
22. Client and Cochran waive all rights against each other, any contractors and other professionals, and any of their respective consultants, contractors, suppliers, subcontractors, agents and employees, for damages caused by perils to the extent covered by insurance, except such rights as they may have to the insurance proceeds.
23. This Contract and the rights of the parties shall be governed by the laws of the State of Missouri.

24. Any claims, disputes, or other matters in question arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, at Cochran's sole election and discretion, shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the AAA. A demand for arbitration must be made within a reasonable time, and before the expiration of the applicable statute of limitations. Unless it consents in writing, Cochran may not be joined in any other arbitration involving the same project. The arbitration shall be held where the project is located.
25. In the event of any dispute, claim, arbitration or litigation arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, the prevailing party shall be awarded its attorney's fees, expert witness fees, expenses, arbitration fees and expenses, and court costs at the trial and all appellate levels; including costs and fees related to collection efforts. Determination of which party prevailed shall be made by the judge or arbitrator(s). The determination shall be made by reviewing the claims resolved at trial or arbitration (which excludes any claims resolved prior to the taking of evidence), and then determining which party achieved the greater success by quantifying the amounts awarded the party recovering damages or obtaining relief and comparing that result to the relief and/or damages requested by that party at the trial or arbitration. If that party received less than 50% of the relief and/or damages it sought, then the other party prevailed. If that party receives more than 50% of the relief and/or damages it sought, then it prevailed. The judge or arbitrator(s) may consider the percentage of recovery when determining the amount of fees and expenses to be awarded to the prevailing party. If more than one claim is presented, then the judge or arbitrator(s) may elect to evaluate who is the prevailing party on a claim by claim basis, or in the aggregate as they deem appropriate. In making the determination of which party prevailed, the judge or arbitrator(s) shall take into consideration any settlement offers or demands made prior to trial or arbitration.
26. **THE TOTAL LIABILITY OF COCHRAN AND ANY OF COCHRAN'S CONSULTANTS FOR ANY ACTIONS, DAMAGES, CLAIMS, DEMANDS, JUDGMENTS, LOSSES, COSTS, OR EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT OR ARBITRATION COSTS AND FEES) ARISING OUT OF OR RESULTING FROM COCHRAN'S OR ITS CONSULTANTS' NEGLIGENT ACTS, ERRORS, OMISSIONS OR BREACHES OF CONTRACT IS LIMITED TO THE LESSER OF THE CONTRACT PRICE OR THE AMOUNT OF PROFESSIONAL LIABILITY INSURANCE MAINTAINED BY COCHRAN AND AVAILABLE TO PAY SAID CLAIM. THIS LIMITATION OF LIABILITY IS APPLICABLE TO ALL CLAIMS THAT MAY BE ASSERTED AGAINST COCHRAN OR ITS CONSULTANTS ARISING OUT OF OR RELATING TO THE PROJECT OR THIS CONTRACT, WHETHER THE CLAIMS ARISE IN CONTRACT, TORT, STATUTE, OR OTHERWISE.**

Updated 01/2016

Initials _____

CONSTRUCTION COST ESTIMATE

STP Application - Due Feb. 14, 2019

City of Ballwin - New Ballwin Road Improvement Project

No.	Description	Unit	Quantity	Unit Cost	Cost
1	Removal of Improvements	LS	1	35,000.00	\$35,000.00
2	Replace Non-Compliant ADA Ramps	SF	5,365	8.00	\$42,920.00
3	Misc. Concrete Curb and Gutter Repair	LF	500	20.00	\$10,000.00
4	Concrete Pavement (125' @ Manchester)	SY	764	75.00	\$57,291.67
5	Pavement Milling	SY	14,800	2.50	\$37,000.00
6	Asphalt Surface Course	TON	2,500	65.00	\$162,500.00
7	Street Lighting	EA	25	5,500.00	\$137,500.00
8	Intersection Pedestrian Signal Upgrades	EA	2	45,000.00	\$90,000.00
9	Restoration	LS	1	25,000.00	\$25,000.00
10	"Bicycles May Use Full Lane" Signs	EA	4	250.00	\$1,000.00
11	Pavement Striping	LF	19,600	0.30	\$5,880.00
12	Construction Mobilization	LS	1	65,000.00	\$65,000.00
13	Construction Traffic Control	LS	1	22,500.00	\$22,500.00
Project Notes: 1. Project length equals approx. 1.2 miles 2. Project Limits - Manchester Road to Twigwood Drive			Construction Sub-Total		\$691,592
			18% Contingency		\$124,487
			Project Total =		\$816,078
			Federal Share @ 80% =		\$652,863
			Local Share @ 20% =		\$163,216
			EWGCC Application Fee (1/2% of Federal Funds Requested) =		\$3,264
			Cochran Application Fee =		\$5,000
			Surveying/Engineering/Bidding Fee		\$81,608
			Construction Administration/Inspection/Testing		\$57,125
City Expenditure (20% Share + Application Fee + Engineering)					\$310,213



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)

February 19, 2020

Mr. Jim Link
Director of Public Works
City of Ballwin
14811 Manchester Road
Ballwin, MO 63011

RE: City of Ballwin
New Ballwin Road
Federal Project No. STP-4939(609)
TIP# 6938-22
Draft Program Agreement and Programming Comments

Dear Mr. Link:

This federal aid project is shown in the regional Transportation Improvement Program (TIP) and has been assigned a federal project number of STP-4939(609). 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. 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 return two executed copies of the agreement to this office with original signatures. Each copy of the program agreement must include a copy of the location map labeled "Exhibit A", the project schedule labeled "Exhibit B" and a copy of Form 1273. Also submit a 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 agreements. MoDOT will forward the agreements to the MHTC for execution and will return a fully executed program agreement 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.

Federal funds for Preliminary Engineering have not been programmed for this project. Design work



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www.modot.org

may begin at any time since this work is not reimbursable.

If the City is seeking federal funds for consultant Construction Engineering services/Inspection then the City must use a Qualification Based Selection (QBS) process for the procurement of engineering services. The QBS process must include a public announcement, advertisement or other acceptable method that assures qualified in-state and out-of-state consultants are given a fair opportunity for consideration, which allows for a minimum two-week response time. The City must use the MoDOT Consultant Resources website to post the public announcement or advertisement (Figure 136.4.7, sample solicitation form) for the two week period. The solicitation form/RFQ should be sent electronically to this office for review and placement on the MoDOT website.

The City's project files must contain documentation on when the sponsor's review team met to evaluate the prospective consultants. The project sponsor must also have an attendance sheet with the date they met. A copy of the advertisement must be placed in the sponsor project file. All of this information must be submitted to MoDOT for filing along with the consultant contract submittal.

If the City plans on using City forces to perform reimbursable design work then a cover letter must be submitted that shows an estimate of cost for the design work, including classification of workers, estimated hours, rate per hour, and total amount. Once the estimated funds have been approved and obligated by FHWA, then MoDOT will provide the City with approval to begin reimbursable City force design work.

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).

As stated in the LPA manual, public hearings are required for certain projects. If a public hearing is required for this project, please provide this office with a copy of the advertisement for the public hearing that is to be published.

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 fluid and cursive, with the first name "Tom" and last name "McCloskey" clearly legible.

Tom McCloskey
District Design Liaison
MoDOT

akd

Copy: Josh Schwenk – East West Gateway



Staff Report

Subject: SLABS AND SIDEWALK REPLACEMENT

Department/Program: Public Works/Pavement/Streets/Sidewalks

Recommendation: We recommend increasing the total bid for the unit price contract not to exceed \$815,000 to Kelpe Contracting, Inc.

Explanation: The 2020 budget provides for street slab and sidewalk replacement and upgrading of curb ramps to current ADA standards as well as asphalt overlays.

On March 9, 2020, the Board approved Kelpe Contracting's bid of \$669,129.25 for slab and sidewalk replacements.

We recommend replacing Maymont in concrete instead of another asphalt overlay. This recommendation is based on testing and finding the concrete beneath the existing asphalt to be deteriorated and unacceptable for a foundation.

We also recommend spending additional funds on Barham Down due to favorable bids using the rest of the budgeted amounts.

We would use the original budget amounts from the asphalt overlay and the milling/hauling budget on Maymont and the difference from the favorable bids and the budgeted amounts to cover the cost difference. **No additional Funds are needed to add to the overall budget.**

	Original 2020 Estimates	Reallocated Cost
Maymont Overlay	\$65,876.00	
Barham Down	\$57,875.00	
Maymont Phase I		\$85,109.71
Barham Down addition		\$72,652.29
Kelpe Contracting Bid	\$669,129.25	
BUDGET	\$715,113.00	\$815,000.00

Submitted By: Jim Link, Director of Public Works

Date: July 22nd, 2020