

AGENDA

Raymore City Council Special Meeting
City Hall – 100 Municipal Circle
Monday, August 30, 2021

7:00 p.m.

1. Call to Order.

2. Roll Call.

3. New Business. First Reading.

A. Ward Road Cost Share Agreement (emergency reading)

Reference: - Bill 3648 (pg. 5)
- Agreement (pg. 7)

This Bill authorizes the Mayor to enter into an intergovernmental cost share agreement with Cass County to affect emergency repairs on Ward Road. The agreement calls for each entity to contribute \$75,000 to the project.

Cass County will be conducting the work themselves and want to schedule it immediately after approval by the City Council for immediately after Labor Day. The Cass County Commission approved the agreement on Thursday, August 26.

4. Public Comments. Please identify yourself for the record and keep comments to a maximum of five minutes.

5. Adjournment.

EXECUTIVE SESSION (CLOSED MEETING)

The Raymore City Council may enter an executive session before or during this meeting, if such action is approved by a majority of Council present, with a quorum, to discuss:

- Litigation matters as authorized by § 610.021 (1),
- Real Estate acquisition matters as authorized by § 610.021 (2),
- Personnel matters as authorized by § 610.021 (3),
- Other matters as authorized by § 610.021 (4-21) as may be applicable.

Any person requiring special accommodation (i.e., qualified interpreter, large print, hearing assistance) in order to attend this meeting, please notify this office at (816) 331-3324 no later than forty eight (48) hours prior to the scheduled commencement of the meeting.

Hearing aids are available for this meeting for the hearing impaired. Inquire with the City Clerk, who sits immediately left of the podium as one faces the dais.

New Business

BILL 3648

ORDINANCE

“AN ORDINANCE OF THE CITY OF RAYMORE, MISSOURI, AUTHORIZING THE MAYOR TO ENTER INTO A COOPERATIVE COST-SHARING AGREEMENT WITH CASS COUNTY, MISSOURI, FOR THE COMPLETION OF CERTAIN TRANSPORTATION IMPROVEMENTS TO WARD ROAD; AND AUTHORIZING THE MAYOR TO DECLARE THIS AS AN EMERGENCY.”

WHEREAS, Article R-VI, Section 16 of the Constitution of Missouri and Section 70.220 of the Revised Statutes of Missouri, provide that any municipality or political subdivision of the State may cooperate under contract to provide a common service as provided by law; and

WHEREAS, Raymore and Cass County, Missouri (the “Parties”) desire to facilitate certain emergency traffic and transportation repairs along Ward Road; and

WHEREAS, the Parties have agreed to cooperatively assist with the costs of the repairs; and

WHEREAS, the Ward Road repairs would not be realized or completed absent a cooperative effort and cost-sharing between the Parties.

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

Section 1. The Mayor is hereby directed to enter into a Cooperative Cost Sharing Agreement with Cass County, Missouri, for the Ward Road Emergency Repairs project.

Section 2. The Mayor, City Manager, and City Clerk are hereby authorized to execute the contract, attached as Exhibit A.

Section 3. The City Manager is authorized to approve change orders for this project within established budget constraints.

Section 4. Effective Date. The effective date of approval of this Ordinance shall be coincidental with the Mayor’s signature and attestation by the City Clerk.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 6. Emergency Reading. In order to assure timely completion of this project, the Mayor hereby authorizes the passage of this Ordinance as an emergency bill.

DULY READ THE FIRST AND SECOND TIME THIS 30TH DAY OF AUGUST, 2021 BY THE FOLLOWING VOTE:

Councilmember Abdelgawad
Councilmember Barber
Councilmember Berendzen
Councilmember Burke III
Councilmember Circo
Councilmember Holman
Councilmember Townsend
Councilmember Wills-Scherzer

ATTEST:

APPROVE:

Erica Hill, City Clerk

Kristofer P. Turnbow, Mayor

Date of Signature

COOPERATIVE COST-SHARING AGREEMENT FOR WARD ROAD TRANSPORTATION IMPROVEMENTS

This Cooperative Cost-Sharing Agreement for Ward Road Transportation Improvements (“Agreement”) is made by and between the City of Raymore, Missouri (hereinafter “Raymore”) and Cass County, Missouri (hereinafter “Cass County”). Raymore and Cass County being referred to hereinafter collectively as the “Parties”.

Recitals

WHEREAS, Article VI, Section 16 of the Constitution of Missouri provides that any municipality or political subdivision of the State may cooperate under contract to provide a common service as provided by law; and

WHEREAS, Section 70.220 of the Revised Statutes of Missouri provides that political subdivisions, including counties, cities, towns and villages may enter contracts to jointly exercise their authority to provide common services so long as the subject and purposes of such contract are within the scope of the powers of each participating political subdivision; and

WHEREAS, the Parties desire to facilitate traffic and transportation improvements including milling the road surface between 58 Highway to Gore Road and replacing it with a 2" asphalt cap on Ward Road (“Transportation Improvements”) which is a growing operational collector street shared by each Parties’ jurisdictional boundaries, and will substantially benefit each of the Parties; and

WHEREAS, the Transportation Improvements would not be realized or completed absent of a cooperative effort and cost-sharing between the Parties; and

WHEREAS, the City Council of Raymore and the County Commission of Cass County each of whom are Parties to this Agreement deem it to be in their best interests and the interests of their citizenry to enter into this Agreement; and

WHEREAS, the Recitals and introductory paragraphs set forth above are, and for all purposes, shall be interpreted as being an integral part of this Agreement by this reference.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby mutually agree as follows:

Agreement

1. Scope of Agreement. The purpose of this Agreement is to provide for a cooperative effort between the Parties, including but not limited to sharing of the costs, incurred in planning, engineering, construction, and completion of the Transportation Improvements

("Costs"). The section(s) of Ward Road within which the Transportation Improvements are contemplated are visually depicted on Exhibit "A" attached hereto and incorporated by reference herein.

2. Cost-Sharing.

A. Under this Agreement, Raymore shall commit up to and including a total of \$75,000.00 ("Costs") to be used towards the Costs, including but not limited to unit costs for asphalt and oil products attributable to Raymore's jurisdiction, which said amounts shall be paid to Cass County to reimburse it for Transportation Improvements within Raymore's jurisdiction.

B. Under this Agreement, Cass County will contribute up to and including a total of \$75,000.00, including but not limited to unit costs for asphalt and oil products attributable to Cass County's jurisdiction, to be used towards the Costs, and shall provide all of the labor and equipment to accomplish the Transportation Improvements.

C. Payment by Raymore to Cass County shall be made within thirty (30) days of receipt of Notice from Cass County to Raymore of the Costs charged by and incurred in completing the Transportation Improvements, including planning, engineering, and construction costs.

D. The cost-sharing contemplated by this Agreement shall be subject to appropriation of funds by Raymore and Cass County.

E. If the Costs of planning, engineering, construction and completion of the Transportation Improvements contemplated herein should exceed the total of \$150,000.00, Raymore and Cass County may, but shall not be obligated to, pay more than the agreed proportion of the Costs as provided for in Section 2(A) and 2(B) above. If the Costs should exceed the total of \$150,000.00 and Raymore determines not to proceed with further cost-sharing under this Agreement, Cass County, at its sole discretion, may either;

i. Terminate this Agreement, thereby relieving the Parties of any further obligations of the same, or

ii. Allocate supplemental funding for the Transportation Improvements as may be necessary to complete the same and without requiring further obligations as provided under Section 4 below (except as may be otherwise required by law).

3. Obligations of Raymore. Raymore agrees to:

A. Provide Cass County and/or its agents and employees with reasonable access to any easements, rights-of-way, engineering plans and traffic studies maintained by Raymore for the areas included within the anticipated Transportation Improvements,

B. Subject to the appropriation of funds, pay the Costs for completion of the Transportation Improvements in the amount of \$75,000.00 to Cass County within thirty (30) days of receipt of Notice from Cass County of the Costs charged,

C. Comply with all other requirements as set forth in this Agreement.

4. **Obligations of Cass County.** Cass County agrees to:

A. Contribute \$75,000.00 towards materials for the Transportation Improvements, and provide all labor and equipment to construct the Transportation Improvements.

B. Comply with all other requirements applicable as set forth in this Agreement,

C. Subject to the appropriation of funds, pay the Costs for completion of the Transportation Improvements, and

I. Receipt for any funds paid by Raymore towards the Costs

Miscellaneous Provisions

1. **Governing Law.** This Agreement shall be construed and governed in accordance with the law of the State of Missouri without giving effect to Missouri's choice of law provisions. The parties, (A) shall submit exclusively to the jurisdiction of the state and federal courts located in Cass County, Missouri; (B) shall waive any and all objections to jurisdiction and venue; and (C) shall not raise forum non convenience as an objection to the location of any litigation.

2. **Waiver.** No consent or waiver, express or implied, by any party to this Agreement or of any breach or default by any other party in the performance by such party of its obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any of the other parties or to declare any of the other parties in default, irrespective of how long such failure continues shall not constitute a waiver by such party of its rights under this Agreement. The Parties reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the Parties reserve the right to

exercise any and all of their rights and remedies under this Agreement irrespective of any waiver granted.

3. License to Use of Right-of-Way. Raymore hereby grants to Cass County, its agents, employees, contractors, engineers, consultants and surveyors, a license to use that portion of the public right-of-way along Ward Road in order to allow for completion of the Transportation Improvements in accordance with the terms of this Agreement. The grant of this license by Raymore to Cass County shall not constitute a conveyance of any interest other than non-exclusive written license rights in the public right-of-way.

4. Modification. This Agreement shall not be amended, modified or cancelled without the written consent of the Parties.

5. Headings: Construction of Agreement. The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

6. Severability of Provisions. Except as specifically provided in this Agreement, all of the provision of this Agreement shall be severable. In the event that any portion of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the Parties could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the Parties.

7. Audit. Raymore shall have the right to audit this Agreement and all books, documents and records relating to this Agreement and the contracts for the completion of the Transportation Improvements. Cass County shall maintain all its books, documents, plan sets, record drawings and records in hard copy and electronic version relating to this Agreement and any contracts for the completion of the Transportation Improvements during the term of this Agreement and for a period of three (3) years after the date of final completion of the Transportation Improvements. The books, documents and records shall be made available to Raymore within ten (10) days after the written notice of request to inspect the same is made.

8. Assignment. The Parties shall not sell, assign, transfer or otherwise convey any of their rights under this Agreement without the prior and expressed written consent of the other parties. Each party may, at its sole discretion, refuse to consent to any proposed sale, assignment, transfer or other conveyance. Any attempted sale, assignment, transfer, or

conveyance in violation of this paragraph shall be void and shall relieve the non-consenting party of any further liability under this Agreement but shall not relieve the violating party of any liability. If a party consents in writing to a sale, assignment, transfer or conveyance, unless specifically stated to the contrary in the consent, it shall not release or discharge the party receiving consent from any duty or responsibility set forth in this Agreement.

9. Conflicts of Interest. Raymore shall certify that none of their officers or employees has, or will have, a direct or indirect financial personal interest in this Agreement, and that no officer or employee of it, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of the Parties.

10. No Partnership. It is expressly understood that the Parties are not now, nor will they be engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in the performance of this Agreement.

11. Binding Effect. This Agreement shall be binding upon the Parties hereto and upon their assigns, transferees and successors in interest, providing none of the Parties may assign this Agreement or the rights or obligations hereunder without the express written consent of the other parties.

12. Representations. The Parties certify that they have the power and authority to execute and deliver this Agreement, to use the funds as contemplated hereby and to perform this Agreement in accordance with its terms.

13. Records of Agreement. The City Clerk of Raymore and the County Clerk of Cass County will be provided an original of the final executed Agreement.

14. Notices. Any notices, correspondence or materials required by this Agreement shall be delivered to the addresses provided as follows:

If to Raymore:

City of Raymore
Attn: Mr. James Feuerborn
City Manager
100 Municipal Circle
Raymore, MO 64083

If to Cass County:

Cass County
Attn: Presiding Commissioner
102 E. Wall St.
Harrisonville, MO 64701

All notices, requests, demands and other communications hereunder (a "Notice") shall be deemed to have been duly given if the same shall be in writing and shall be delivered by a nationally recognized overnight delivery service, with cost borne by the sender (marked by the sender for next business day delivery), or sent by certified United States mail, return receipt requested, postage pre-paid, and addressed as set forth above. Notice given by a nationally recognized overnight delivery service shall be deemed given the next business day after deposit with such delivery service in accordance with the requirements hereof, and Notice given by certified mail shall be deemed given the third (3rd) business day after deposit with the United States Postal Service in accordance with the requirements hereof. A copy of any Notice to a Party shall be contemporaneously provided to any other non-sending parties to this Agreement (if any).

15. Construction of Agreement. No inference in favor of, or against any Party shall be drawn from the fact that counsel for such Party has drafted any portion of this Agreement, each Party having the right to be represented by counsel of that Party's choosing in the negotiation of the terms and conditions of this Agreement.

16. Cooperation. All Parties agree to cooperate (including the execution of any additional documents) necessary to effectuate the terms of this Agreement. The Parties also agree to refrain from unnecessarily prejudicing the position or hindering the ability of any Party to complete their requirements, conditions and obligations under this Agreement.

17. Prohibition of Indirect Action. Any act that the Parties are prohibited from doing directly shall not be done indirectly through an affiliate or by any other indirect means.

18. Attorney Fees. In the event any Party is required to bring an action at law or in equity against any other Party to enforce any of the terms of this Agreement, the losing party hereby agrees to pay to the prevailing Party, reasonable attorney fees, costs and expenses as they may be fixed by the court including reasonable attorney fees, costs and expenses of any appeal.

19. Compliance With Laws. Raymore and Cass County shall comply with all federal, state and local laws, ordinances and regulations applicable to the Transportation Improvements on Ward Road. Cass County's contracts with any contractor performing work on the Transportation Improvements shall require that they comply with all applicable federal, state and local laws, ordinances and regulations.

20. Term. This Agreement shall begin upon its execution and shall continue until all of the Transportation Improvements are completed subject to the terms and conditions set forth in this Agreement.

21. Counterparts. This Agreement may be executed in counterparts, each of which is deemed to be an original, and all such counterparts shall constitute one and the same instrument.

22. Future Appropriations. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by any of the Parties.

23. Default and Remedies. If any party shall be in default or breach of any provision of this Agreement, the other party may terminate this Agreement, suspend its performance, and invoke any other legal or equitable remedy after giving the other party written notice and thirty (30) days to correct such default or breach. All rights and remedies granted to each party herein and any other rights and remedies which either party may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that any party may have exercised any remedy without terminating this Agreement shall not impair that party's rights thereafter to terminate or to exercise any other remedy herein granted or to which that party may be otherwise entitled.

24. Dispute Resolution.

A. In case of a dispute, the party alleged to be injured by breach of this Agreement shall give written notice of claim to the other party of its intent to file a claim or petition for money or other relief. Such notice of claim shall provide details of the alleged breach and the required cure. The written notice shall be submitted within thirty (30) days of the event/action upon which the claim is based.

B. If the dispute is not disposed of by agreement between the Parties, within thirty (30) days after submission of the written notice of claim, the Parties shall each appoint a representative, who, together, shall select a third-party attorney in good standing and licensed to practice law in Missouri, to mediate the issue. The parties shall participate in the mediation in good faith, which said mediation shall be non-binding unless a written settlement agreement is reached. Costs of mediation shall be split equally between the parties. Failure of the parties to reach a resolution in mediation shall be a prerequisite to filing suit or initiating further action to resolve the dispute.

C. If mediation is unsuccessful, the parties may, by mutual written agreement, participate in binding arbitration pursuant to the provisions of the American Arbitration Association.

D. If the mediation is unsuccessful and the parties do not agree to participate in arbitration, either party may thereafter file suit and/or seek redress through surety or bond claims. Venue and jurisdiction under this Contract shall be in Circuit Court of Cass County, Missouri at Harrisonville, or the United States Courts, Western District of

Missouri. The parties hereby agree to waive jury trial in all claims or disputes which may arise under this Contract.

E. In all cases where a dispute or claim arises, and work on the Transportation Improvements remains incomplete, the Parties agree to carry on with the work and to maintain the progress schedule during the resolution of the dispute or claim under this Agreement, unless otherwise mutually agreed in writing by the Parties.

25. No Waiver of Immunity. Nothing in this Agreement shall constitute or be construed as a waiver of either Party's sovereign immunity.

26. Third Parties. There are no third-party beneficiaries to this Agreement. None of the obligations under this Agreement of either party shall run to or be enforceable by any party other than the parties to this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement the day and year provided next to each of their signature blocks below.

City of Raymore, Missouri

Date:

By: Mayor Kristofer P. Turnbow

ATTEST:

Approved as to form:

City Clerk
Ordinance #: _____

City Attorney

STATE OF MISSOURI)
) SS.
COUNTY OF CASS)

Be it remembered, that on the _____ day of _____, 20__ before me, the undersigned notary public in and for said county and state aforesaid, came Kristofer Turnbow, Mayor for the City of Raymore, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said municipal corporation and that said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

Cass County, Missouri

Date:
Presiding Commissioner

By: Bob Huston

ATTEST:

Approved as to form:

County Clerk
Resolution #: _____

County Counselor

STATE OF MISSOURI)
) SS.
COUNTY OF CASS)

Be it remembered, that on the ____ day of _____, 20__ before me, the undersigned notary public in and for said county and state aforesaid, came Bob Huston, Presiding Commissioner, Cass County, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said county and that said instrument was signed and sealed on behalf of said county by authority of its County Commission and acknowledged said instrument to be the free act and deed of said county.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:
