

Bill No. 5004

Ordinance No. _____

Requested by: Amanda Brauer

Sponsored by: Mike Elam

AN ORDINANCE APPROVING AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR USE OF COUNTY RIGHT-OF-WAY FOR STORM SEWER, UTILITY, AND ROAD WORK

WHEREAS, the Missouri Department of Transportation (MoDOT) has identified that improvements are needed to reduce congestion on I-70 from Cave Springs Boulevard to Fairgrounds Road; and

WHEREAS, on July 14, 2020, the Missouri Highways and Transportation Commission and St. Charles County entered into agreement number J6I3337/J6I3337Z authorized by County Ordinance No. 20-039 that outlines the parties' agreement regarding the funding to reconstruct the stretch of the I-70 corridor from Cave Springs Boulevard to Fairgrounds Road; and

WHEREAS, the improvements are being completed utilizing design-build procurement as a means to provide increased value for the funds available; and

WHEREAS, the contractors may propose improvements impacting roadways within County right-of-way; and

WHEREAS, the pre-approval of work for impacting County owned storm sewers, utilities, and roadways allows for increased flexibility and value in the proposals; and

WHEREAS, the County has reviewed the potential impacts within County right-of-way and will be notified in advance of construction; and

WHEREAS, the cost for these improvements will be shared between the County and MoDOT as provided in the previously approved Cost Share Agreement; and

WHEREAS, construction of the improvements is expected to start next year (2022) and will be completed by June of 2024.

WHEREAS, Section 70.220 of the Revised Statutes of Missouri, as amended, authorizes intergovernmental contracts between political subdivisions for the purposes herein set out.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF ST. CHARLES COUNTY, MISSOURI, AS FOLLOWS:

Section 1 The County Executive is hereby authorized to execute an agreement with the Missouri Highways and Transportation Commission that is substantially the same in form and content as **EXHIBIT A**.

Section 2. Compliance with all the terms of the agreement authorized in Section 1 shall be the responsibility of the Roads and Traffic Manager.

Section 3. This ordinance shall be in full force and effect from and after the date of its passage and approval.

Section 4. The Agreement authorized herein shall be valid upon its lawful execution by the authorized officials of each governmental entity entering into such agreement as

required by Chapter 70 of the Revised Statutes of the State of Missouri.

DATE PASSED

DATE APPROVED BY COUNTY EXECUTIVE

CHAIR OF THE COUNCIL

COUNTY EXECUTIVE

ATTEST:

COUNTY REGISTRAR

10-21.E.Roads.Agreement with MHTC re I70 Cave Springs to Fairgrounds

EXHIBIT A

CCO Form: DE10
Approved: 01/99 (BDG)
Revised: 03/21 (BDG)
Modified: 09/21 (BDG)

County Agreement
Route: I-70
County: St. Charles
Job No.:J6I3337/J6I3337Z

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION COUNTY AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the County of St. Charles, Missouri (hereinafter, "County").

WITNESSETH:

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

(1) IMPROVEMENT DESIGNATION: The public improvement designated as Route I-70, St. Charles County, Job No. J6I3337 shall consist of improvements to the I-70 corridor from Cave Springs to Fairgrounds Road.

(2) IMPROVEMENT WITHIN COUNTY: The improvement within the County is located as follows:

Beginning at Station 1115+80, a point 3,350 feet west of Cave Springs Rd, run in an east direction along existing I-70 to Station 1365+00 a point 650 feet East of Fairgrounds Rd. Route I-70 intersects Cave Springs Rd, Zumbuhl Rd, Hawks Nest Rd, Route 94, and Fairgrounds Rd. Length of improvement is 4 miles.

(3) LOCATION: The general location of the public improvement is shown on an attached sketch marked "Exhibit A" and made a part of this Agreement. The detailed location of the improvement is shown on the plans prepared by the Commission for the above-designated route and project.

(4) PURPOSE: It is the intent of this Agreement to outline the parties' responsibilities with respect to the construction and maintenance of those improvements to the State Highway System located within the County limits described in paragraphs (1) and (2) above and designated as Commission Job No. J6I3337. The parties' responsibilities with respect to the funding of said improvements are outlined in a separate Cost Share Agreement between the parties dated July 14, 2020 (hereinafter, "Cost Share Agreement").

(5) PROJECT RESPONSIBILITIES: With regard to project responsibilities under this Agreement, the parties agree to contribute as follows:

(A) The County grants the right to modify public roads, streets, alleys, and any other property owned by the County as identified in Exhibits B, C, and D as necessary for construction and maintenance of said public improvement. All County-owned roadway improvements included in the scope of the public improvements to be constructed pursuant to this agreement will be constructed using St. Charles County's standards and within the project budget specified in the Cost Share Agreement.

(B) All County-owned utility relocations shall be designed and constructed by the Contractor. All County utility relocations that are deemed reimbursable shall be at the cost of the Commission. If the County is responsible for the costs, the relocation will be added to the contract by a change order at the expense of the County. The County reserves the right to negotiate pricing for the relocation work or decide to self perform the relocation work. The County shall then remit a check for such amount within 10 days of the beginning of the relocation work. This check should be made payable to the "*Director of Revenue - Credit State Road Fund*". If the County fails to make the deposit, the Commission is under no obligation to continue with including the utility work in the Contract with the Commissions Contractor and the relocation will be the responsibility of the County.

(C) Any County-owned sewers will be constructed using St. Charles County standards.

(6) RIGHT-OF-WAY USE: The County grants the right to use the right-of-way of public roads, streets, alleys owned by the County as necessary for construction and maintenance of said public improvement.

(7) CLOSE AND VACATE: The County shall temporarily close and vacate all streets or roads, or parts thereof, which may be necessary to permit the construction of the project in accordance with the detailed plans. When the Commission deems it necessary to close any street or road permanently during construction, the County shall be advised in time to make provisions for the diversion and rerouting of traffic. The Contractor will give 7 calendar days notice to the County of all closures and detours on County owned roadways.

(8) RIGHT-OF-WAY ACQUISITION:

(A) Upon approval of all agreements, plans and specifications by the Commission and the Federal Highway Administration (FHWA), the Commission will file copies of the plans with the city clerk of the city and the county registrar of the county and proceed to acquire at its expense, at no cost or expense to the County, any necessary right-of-way required for the construction of the improvement.

(B) The portion of state highway covered by this Agreement shall be a controlled access highway between stations 1115+00 and 1365+00. Rights of access between the highway and abutting property shall be procured and the cost classified as right-of-way cost and paid for in the same manner as other right-of-way costs. Only such

rights of ingress and egress shall be allowed as indicated on the plans approved by the Commission and FHWA.

(9) UTILITY RELOCATION:

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

(B) The Commission shall secure the removal, relocation, or adjustment of any public or private utilities located upon private easements and shall pay any costs incurred therein.

(C) In cases of public utilities owned by the County which must be moved, adjusted, or altered to accommodate construction of this improvement, and such county-owned utilities, poles, wires, conduits, and pipes are located within the present county jurisdiction and located on an existing road, not state highway right-of-way, but being taken over by the Commission as a part of its highway right-of-way, the Commission will perform the necessary removal, adjustment, alterations and relocation, at its cost and no cost to the County except as otherwise provided. If the County shall perform the removal, adjustment, alterations and relocation in accordance with the detail plans, estimates of costs and bills of materials prepared by the County in accordance with Federal Aid Policy Guide, Title 23 CFR Subchapter G, Part 645, Subpart A (FAPG 23 CFR 645A), dated December 9, 1991 and any revision of it, and approved by the Commission's District Engineer, and shall perform all work and keep the records of the costs in accordance with FAPG 23 CFR 645A and its revisions. Upon the completion of any such work and on receipt by the Commission of the original and four copies of a bill for the actual costs incurred by the County in making any such removal, adjustment, alteration and relocation, the Commission shall reimburse the County for the actual cost necessitated by construction of this public improvement. The Commission's obligation toward the cost of any such removal, adjustment, alteration and relocation shall extend only to those costs incurred in accordance with FAPG 23 CFR 645A and its revisions.

(D) Should it be necessary to alter, relocate or adjust any county-owned utility facilities outside the present county limits on public right-of-way or on state highway right-of-way within or outside the county limits or within the right-of-way of a public way, the alteration, relocation, or adjustment shall be made by the County at its cost.

(E) The County agrees that any installation, removal, relocation, maintenance, or repair of public or private utilities involving the County performing the work within highway right-of-way included in this project and provided in the Agreement shall be done only in accordance with the general rules and regulations of the

Commission and after coordinating the particular work with the Commission's District Engineer or his authorized representative. Upon the completion of the public improvement that is the Subject of this Agreement, the County will allow no work on the highway right-of-way involving excavation or alteration in any manner of the highway as constructed, including but not limited to driveway connections, except in accordance with the rules and regulations of the Commission and only after a permit for the specific work has been obtained from the Commission's District Engineer or his/her authorized representative. The County shall take whatever actions are necessary to assure compliance with this Subsection.

(10) LIGHTING: The installation, operation, and maintenance by the Commission of any lighting system on the public improvement covered by this Agreement shall be only in accordance with the Commission's policy on highway lighting in effect at the time of any such installation and only to the extent the Commission then deems warranted. No lighting system shall be installed or maintained by or for the County on the improvement without approval of the Commission.

(11) TRAFFIC CONTROL DEVICES: The installation, operation and maintenance of all traffic signals, pavement markings, signs, and devices on the improvement, including those between the highway and intersecting roads shall be under the exclusive jurisdiction and at the cost of the Commission. The County shall not install, operate, or maintain any traffic signals, signs or other traffic control devices on the highway or on roads and highways at any point where they intersect this highway without approval of the Commission.

(12) DRAINAGE: The Commission will construct drainage facilities along the improvement and may use any existing storm and surface water drainage facilities now in existence in the area. The County shall be responsible for receiving and disposing of storm and surface water discharged from those drainage facilities which the Commission constructs within the limits of highway right-of-way to the extent of the County's authority and control of the storm sewer facilities or natural drainage involved.

(13) PERMITS: The Commission will secure any necessary approvals or permits from the Surface Transportation Board, the Public Service Commission of Missouri, or any other state or federal regulating authority required to permit the construction and maintenance of the highway.

(14) COMMENCEMENT OF WORK: After acquisition of the necessary right-of-way, the Commission will construct the highway in accordance with provisions contained in the Request for Proposals (RFP) as approved by the Federal Highway Administration (or as they may be changed from time to time by the Commission with the approval of the FHWA) at such time as federal and state funds are allocated to the public improvement in an amount sufficient to pay for the federal and state government's proportionate share of construction and right-of-way costs. The obligation of the Commission toward the actual construction of the public improvement shall be dependent upon issuance of the final RFP, and the evaluation, approval, and award of a contract based upon a successful

submittal in accordance with the provisions contained in the final RFP.

(15) MAINTENANCE:

(A) Except as provided in this Agreement, upon completion of the public improvement, the Commission will maintain all portions of the improvement within the Commission owned right-of-way. Maintenance by the Commission shall not in any case include maintenance or repair of sidewalks whether new or used in place in County right-of-way, water supply lines, sanitary or storm sewers (except those storm sewers constructed by the Commission to drain the highway) within County jurisdiction, county-owned utilities within the right-of-way or the removal of snow other than the machine or chemical removal from the traveled portion of the highway.

(B) When it is necessary to revise or adjust county roads, the right-of-way acquired for these adjustments and connections will be deeded to the County.

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

(16) ACCEPTED WITHIN HIGHWAY SYSTEM: Effective upon execution of this Agreement, the Commission temporarily accepts any portion of the County road system as identified in Exhibits B, C, and D needed for construction of the project as part of the State Highway System for the purposes of this project. However, during the construction period contemplated in this Agreement:

(A) The Commission will assume no police or traffic control functions not obligatory upon Commission immediately prior to the execution of this Agreement, except the traffic control function which are the contractor's responsibility under the Design-Build Contract and

(B) The County shall perform or cause to be performed normal maintenance on the project site (such normal maintenance shall not include repair of damage caused by activities of the Commission, its Contractor, or other parties involved in the construction of the project) until such time as the Commission's Contractor assumes Maintenance responsibilities according to Book 2 of the Design-Build Contract.

(C) The Commission's Contractor will only assume those responsibilities specified in the Design-Build Contract. The County shall be responsible for all other maintenance activities including, but not limited to, the removal of snow from traveled lanes of County owned roadways.

(17) COUNTY TO MAINTAIN: Upon completion of construction of this improvement, the County shall accept control and maintenance of the improved County road that was temporarily accepted as part of the State Highway System for the purposes

of this project pursuant to paragraph (16) above and shall thereafter keep, control, and maintain the same as, and for all purposes, a part of the County road system at its own cost and expense and at no cost and expense whatsoever to the Commission. All obligations of the Commission with respect to the County road system under this Agreement shall cease upon completion of the improvement.

(17) POLICE POWERS: It is the intent of the parties to this Agreement that the County shall retain its police powers with respect to the regulation of traffic upon the improvement contemplated except when the traffic control function is the Contractor's responsibility under the Design-Build Contract. However, the County will enact, keep in force, and enforce only such regulations relating to traffic movement and parking restrictions as are not in conflict with any regulations for federal aid. The Commission shall not arbitrarily withhold approval of reasonable traffic regulations, signs, and markings which will permit the movement of traffic in accordance with accepted traffic regulation practices.

(18) RESTRICTION OF PARKING: Since the improvement is being designed and constructed to accommodate a maximum amount of traffic with a minimum amount of right-of-way, the County shall take whatever actions that are necessary to prevent parking upon the highway or any part of the area of the highway right-of-way within the limits of the improvement.

(19) OUTDOOR ADVERTISING: No billboards or other advertising signs or devices or vending or sale of merchandise will be permitted within the right-of-way limits of the project and the County will take whatever actions are necessary to enforce this Section.

(20) WITHHOLDING OF FUNDS: In the event that the County fails, neglects, or refuses to enact, keep in force or enforce regulations specified or enacts regulations contrary to the provisions in this Agreement, or in any other manner fails, neglects or refuses to perform any of the obligations assumed by it under this Agreement, the Commission may, after serving written request upon the County for compliance and the County's failure to comply, withhold the expenditure of further funds for maintenance, improvement, construction, or reconstruction of the state highway system in the County.

(21) FEDERAL HIGHWAY ADMINISTRATION: This Agreement is entered into subject to approval by the Federal Highway Administration, and is further subject to the availability of federal and state funds for this construction.

(22) INDEMNIFICATION:

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

(B) 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.

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

(24) COMMISSION REPRESENTATIVE: The Commission's Project Director 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.

(25) COUNTY REPRESENTATIVE: The County's Manager of Roads and Traffic is designated as the County's representative for the purpose of administering the provisions of this Agreement. The County's representative may designate by written notice other persons having the authority to act on behalf of the County in furtherance of the performance of this Agreement.

(26) 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 County:

Manager of Roads and Traffic
St. Charles County
201 North Second Street
St. Charles, MO 63301
Phone No: 636-949-7900

(B) To the Commission:

I-70 Cave Springs to Fairgrounds Project Director
1590 Woodlake Drive
Chesterfield, MO 63017
Phone No: 314-453-5084

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.

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

(28) 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.

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

(30) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the County.

(31) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(32) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

[remainder of page intentionally left blank]

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

Executed by the County on _____(Date).

Executed by the Commission on _____(Date).

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

ST. CHARLES COUNTY

By _____

By _____

Title _____

Title _____

ATTEST:

By _____

Secretary to the Commission

Title _____

APPROVED AS TO FORM:

By _____

Commission Counsel

Title _____

ATTEST:

By _____

Title _____

APPROVED AS TO FORM:

By _____

Title _____

EXHIBIT A

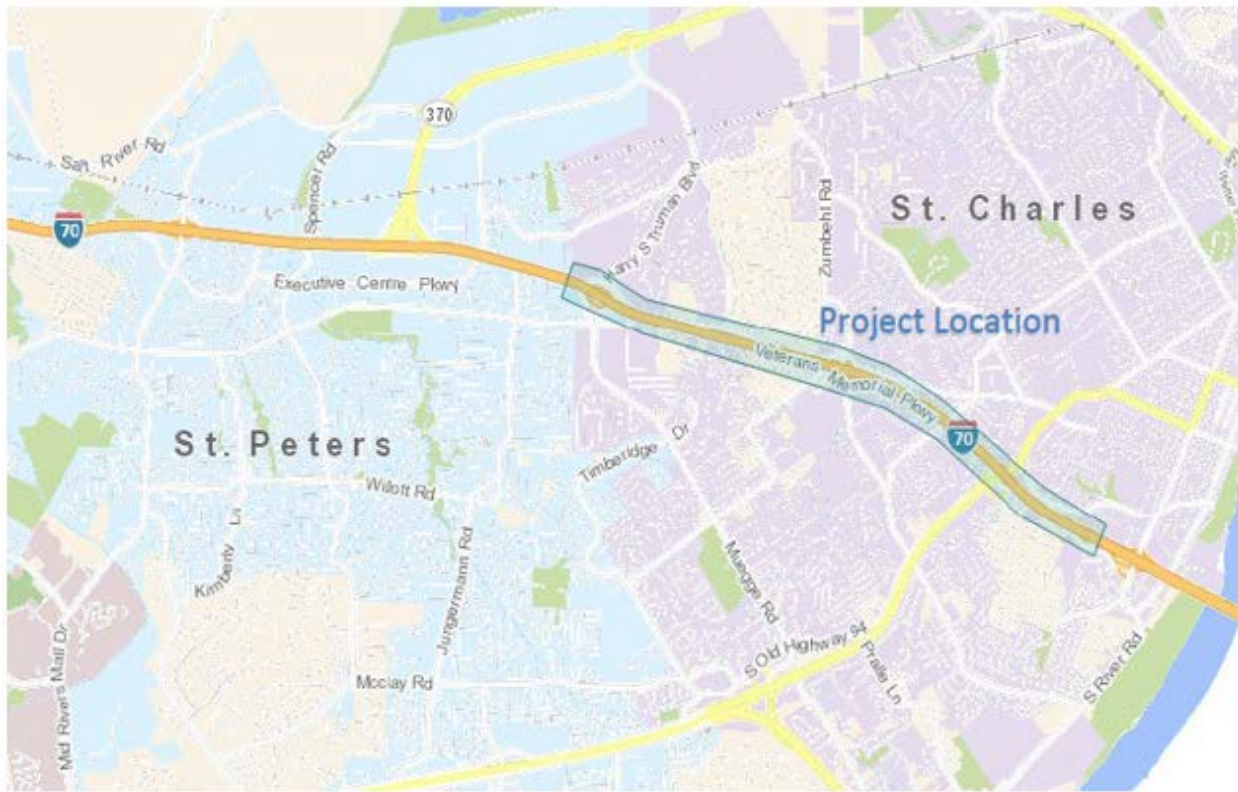


EXHIBIT B

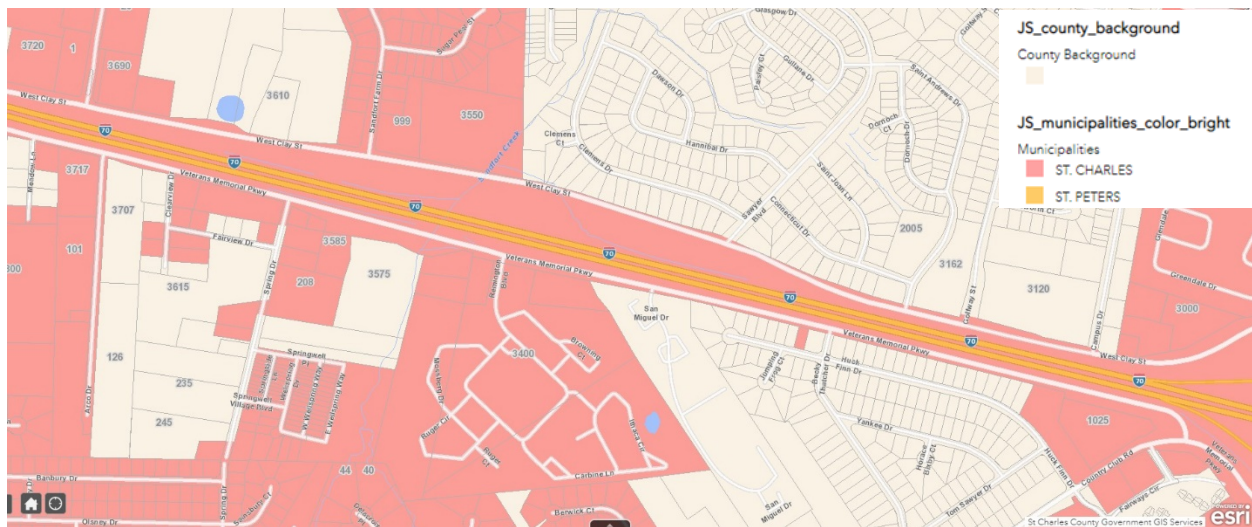


EXHIBIT C

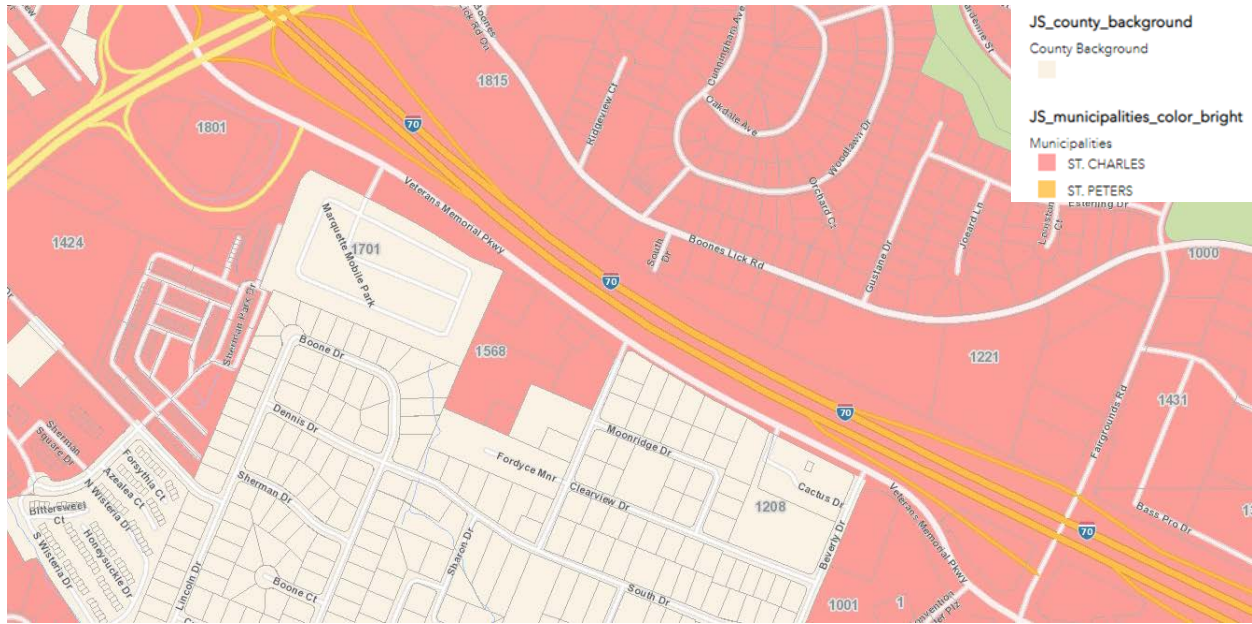


EXHIBIT D

