

Substitute Bill No. 5071

Ordinance No. _____

Requested by: Steve Ehlmann

Sponsored by: Nancy Schneider

AN ORDINANCE AMENDING THE 2022 BUDGET AS ADOPTED BY ORDINANCE 21-098, AS AMENDED, AND AMENDING THE 2022 – 2024 TRANSPORTATION IMPROVEMENT PLAN FOR FISCAL YEARS 2022 THROUGH 2024 FOR REPAIR OF POTHOLES, REPLACEMENT OF DETERIORATING CONCRETE ROAD SLABS OR RECONSTRUCTION OF SEGMENTS OF COUNTY ROADS AND SUBDIVISION STREETS WITH POOR PAVEMENT CONDITION AND AUTHORIZING CORRESPONDING INTERGOVERNMENTAL AGREEMENTS

WHEREAS, an aggressive initiative to fix potholes, which will include replacing over ten thousand slabs of concrete and miles of asphalt roadways, throughout the County is an important project and will allow the County Highway Department and the municipalities in St. Charles County to maintain quality local roads; and

WHEREAS, to accomplish this initiative, County Executive Ehlmann has requested that the Council approve ten million dollars in American Rescue Plan Act Funds for this work and an additional ten million dollars in County’s ½-cent Transportation Sales Tax funds to match the municipalities as they fund their 2022 pothole repair and slab replacement programs; and

WHEREAS, the matching funds from the County’s ½-cent Transportation Sales Tax funds is possible because the Missouri Department of Transportation is able to fund

its own projects, and the County's transportation tax was re-authorized last month by 72% of County voters; and

WHEREAS, the County's ½-cent Transportation Sales Tax allotment will assist St. Charles County municipalities in their own road programs by matching their 2022 pothole repair and slab replacement projects as a 50-50 match, up their share of the ten million dollars from that program based upon their population, and therefore it is necessary for St. Charles County to enter into intergovernmental agreements with various jurisdictions for pothole repair and slab replacement programs within the Transportation Improvement Plan; and

WHEREAS, as subdivision development has continued to expand in the County over the last three decades, the number of miles of subdivision streets has steadily increased, resulting in a growing list of work that needs to be done on local roadways due to routine traffic and seasonal weather extremes; and

WHEREAS, the Federal American Rescue Plan Fund Final Rule issued earlier this year authorized governments to spend up to ten million dollars for government services; and

WHEREAS, while the municipalities in St. Charles County collectively received more than Forty Five Million dollars in ARPA funds, the County is not requiring them to program any of those funds for street repair or replacement, but instead is matching municipal street budgets 50-50, with the maximum funds available to a municipality based on a per-capita allocation of the Ten Million Dollars (\$10,000,000) in the County's ½-cent Transportation Sales Tax Funds; and

WHEREAS, under this plan, St. Charles County municipalities will be able to seek reimbursement from the county for their cost to replace broken concrete slabs and reconstruct asphalt roads that are in poor condition; and

WHEREAS, the Department of Finance has reviewed the Transportation Sales Tax accounts and determined that there are sufficient funds to support the matching program; and

WHEREAS, the St. Charles County Charter, Article VI, Section 6.208 authorizes the County Council to provide by ordinance any and all procedures for administering the budget that are necessary and that do not conflict with the language contained in the Charter.

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

Section 1. The budget related to the American Rescue Plan Act (Fund 761), page 416 of the Budget, as amended, as adopted in St Charles County, Missouri, budget for fiscal year 2022 (initially adopted by Ordinance 21-098), is hereby amended as follows:

1. Establish in American Rescue Plan Act (Fund 761) Line Item 7614600-46661 “Concrete Slab Repair and Replacement and Asphalt Repair, Replacement and Overlay” an amount of Ten Million Dollars (\$10,000,000).
2. Decrease American Rescue Plan Act (Fund 761) Line Item 7614600-47256 “Justice Center” by an amount of Ten Million Dollars (\$10,000,000) for an amended total in Line Item 7614600-47256

“Justice Center” of Eighteen Million Dollars (\$18,000,000).

Section 2. The 2022-2024 Transportation Improvement Plan is hereby amended as herein set forth and recommended by the County Executive, is hereby approved.

Section 3. The County Executive is hereby authorized to execute the intergovernmental agreements with the municipalities listed in the chart immediately below, in the form substantially the same as the form Agreement attached hereto as **Exhibit A**.

Exhibit	Road Sponsor	Allocation
A	Augusta	\$8,679.00
B	Cottleville	\$180,357.00
C	Dardenne Prairie	\$409,604.00
D	Flint Hill	\$31,533.00
E	Foristell	\$17,679.00
F	Josephville	\$16,457.00
G	Lake St. Louis	\$537,021.00
H	New Melle	\$17,390.00
I	O'Fallon	\$2,935,215.00
J	Portage Des Sioux	\$10,768.00
K	St. Charles	\$2,265,891.00
L	St. Paul	\$96,591.00
M	St. Peters	\$1,855,708.00
N	Weldon Spring	\$171,196.00
O	Weldon Spring Heights	\$2,989.00
P	Wentzville	\$1,426,271.00
Q	West Alton	\$11,540.00

Section 4. Compliance with all the terms of the agreements authorized by this Ordinance shall be the responsibility of the Roads and Traffic Manager.

Section 5. Failure of the County Council to appropriate funds in a fiscal year will automatically terminate an agreement at the point that the appropriation is not passed.

Section 6. This ordinance shall be in full force and effect from and after the date of its passage and approval and any Agreement executed pursuant to this ordinance shall be valid upon its lawful execution by each governmental entity entering into that 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:

REGISTRAR

EXHIBIT A

**AGREEMENT BY AND BETWEEN
ST. CHARLES COUNTY, MISSOURI AND _____
FOR
USE OF ST. CHARLES COUNTY TRANSPORTATION SALES TAX FUNDS FOR
CONCRETE SLAB REPLACEMENT AND ASPHALT STREET RECONSTRUCTION**

This agreement is entered into by St. Charles County, Missouri, hereinafter referred to as “County” and _____, State of Missouri, hereinafter referred to as “Municipality.”

In consideration of the mutual covenants herein contained, and other good and valuable consideration including the mutual recognition of the vital importance of Concrete Slab Replacement and Asphalt Street Reconstruction (the “Project”) for acceptable road condition ratings, the parties hereto agree as follows:

SECTION ONE
PREAMBLE

The County Executive has been authorized by Ordinance _____ - _____, attached hereto as Attachment B and made part of this Agreement, to execute this Agreement with the Municipality for the use of St. Charles County Transportation Sales Tax funds, in County fiscal years 2022 and 2023 subject to appropriation as described in Section Seven of this Agreement, for the Project in an amount not to exceed \$ _____ (“County Contribution Amount”).

SECTION TWO
SERVICES AND COUNTY FINANCIAL CONTRIBUTION

- A. The Municipality shall be responsible for the construction of the Project to include road improvements meeting the following criteria:
1. Concrete slab replacement and base repair on a road with a PCI of 75 or less (can be partial slabs, not patching with asphalt or corner repairs) or
 2. Asphalt street reconstruction including patching, base repair, overlay, curb and gutters, and other incidental items on a road with a PCI of 40 or less.

The Municipality has programmed _____ dollars (\$ _____) in its 2022 Budget for the Project (hereinafter “2022 Program Amount”). The County hereby agrees to match the Municipality’s 2022 Program Amount and reimburse the Municipality for 100% of actual costs the Municipality incurs and expends on the Project in addition to the 2022 Program Amount, up to an amount equal to the 2022 Program Amount, and for 50% of the actual costs above the County’s 100% match, up to a maximum equal to the County Contribution Amount. County’s reimbursement pursuant to this Agreement shall be made for work performed in County Fiscal years 2022 and 2023 only. The Municipality will be responsible for the remainder of actual costs not reimbursed by others including those that exceed the estimate recited above unless the parties amend this intergovernmental agreement for additional work. In no event shall the County’s reimbursement to the Municipality pursuant to this Agreement exceed the maximum amount equal to the County Contribution Amount. Should the Municipality’s reimbursable additional work performed pursuant to this Agreement be less than the County Contribution Amount, any remaining funds shall be withdrawn by the County from availability under this Agreement and shall be deposited back into the St. Charles County Transportation Sales Tax

funds to be administered by the County's Road Board.

SECTION THREE
STAFF TIME

Staff time incurred by the Municipality for administrative and clerical tasks related to the Project is not reimbursable from the County and shall not be considered as part of any required Municipality match. In the event questions arise related to eligibility for reimbursement of costs incurred, the County's Road and Traffic Manager shall be the authority making the determination and her decision shall be binding.

SECTION FOUR
TRANSPORTATION SALES TAX SIGN

The Municipality agrees that a sign of the size, lettering, and colors as depicted in **Attachment A** to this Agreement shall be furnished and erected at each end of the project construction limits in a visible location. This sign shall be erected at the beginning of construction and can be removed after final construction contract completion.

SECTION FIVE
TERM

This agreement shall become effective upon execution by all parties hereto and shall continue through the end of the County's 2023 fiscal year in which the agreement is executed. This agreement is subject to appropriation by the County of funds sufficient to fulfill the terms of this agreement.

SECTION SIX
TERMINATION

A. Termination for Breach:

1. Events of Breach: In addition to the breach of the obligations specifically set forth in the Agreement, the following shall constitute breach of this Agreement and reasons for the Agreement to terminate:
 - a. Municipality's Failure to comply with all the obligations set forth under this Agreement.
 - b. Municipality's Failure to fund or administer construction of the Project: In the event the Municipality fails to provide the administration and/or matching funds agreed to by the Municipality pursuant to this Agreement, Municipality agrees to pay all costs incurred by the County in having taken all the steps pursuant to this Agreement up to the time of the Municipality's failure to fund or administer.
2. Remedies for Breach: In the event of a breach of this Agreement by either party hereto that is not remedied within thirty (30) days after delivery of written notice of such breach, the aggrieved party may terminate this Agreement by written notice to the other, which shall be effective on the 5th day following delivery. In the event of the County's breach of any terms and conditions of this Agreement, except for reasons outlined in this

Agreement, the County agrees to pay all documented reasonable costs undisputed by the County and incurred by the Municipality as a direct result of the Municipality being denied County funds for the Project. In the event of the Municipality's breach of any terms and conditions of this Agreement, the County shall be entitled to, and the Municipality shall refund all funds paid to the Municipality, and the County shall have no further obligation to the Municipality to pay any funds pursuant to this Agreement

- B. Termination for County's Failure to appropriate: Should the County fail to appropriate any funds in its annual budget ordinance for any of the County fiscal years to which this Agreement applies, this Agreement will terminate upon notice to the Municipality by the County that the appropriation was not voted in the annual budget ordinance, which notice shall be sent, first-class mail, to the Municipality at the address stated in Section Fourteen of this Agreement. Upon such notice to the Municipality, the County's obligation to pay any further funds pursuant to this Agreement shall terminate immediately and no further funds shall be due and payable by the County to the Municipality for the Project.
- C. Return of Records upon Agreement Termination: Upon expiration or termination of this Agreement, for any cause, each party shall without additional cost to the other party, provide all reasonable assistance and devote its best efforts to returning to each party, or its designee, in an orderly and expeditious manner, all data, records, equipment and documents belonging to that party.

SECTION SEVEN
PROJECT SCHEDULE

Timely completion is an essential element of this contract. The Project must be completed by December 31, 2023.

SECTION EIGHT
COST OVERRUNS

The Municipality shall not request reimbursement from the County for any work performed beyond the scope of services specified herein without a contract amendment approved and executed by both parties.

SECTION NINE
REMUNERATION

Requests for reimbursement by the County pursuant to Section Two shall be submitted to the County's Manager of Roads and Traffic for review and approval. Each reimbursement request shall include a cover letter, reimbursement summary, and proof of payment. The municipality must demonstrate that it has completed all work on the Project in an amount equal to the 2022 Program Amount and paid for said work with its own funds in County fiscal years 2022 and 2023, and that the work performed for which the reimbursement is requested was additional work in excess of the 2022 Program Amount. Payments shall not exceed actual expenses incurred by Municipality or that approved by the county's Manager of Roads and Traffic.

The Municipality shall submit to the County an invoice not less frequently than on quarterly basis listing pay items corresponding to all contractor invoices and all supporting timesheets and other

documentations for the services rendered and deliverables performed and for reimbursable expenses incurred within the quarter time period prior to the date of the invoice submitted by the Municipality to the County. Additionally, an invoice listing pay items corresponding to all contractor invoices and all supporting timesheets and other documentations for the services rendered and deliverables performed and for reimbursable expenses incurred prior to December 31 of each calendar year must be submitted by Municipality to the County no later than **February 15th of the following year**. The County is under no obligation to pay for any invoice items documenting services rendered and deliverables performed and reimbursable expenses incurred and paid over 3 months prior to the date of the invoice submitted by the Municipality to the County, or any invoice submitted after deadlines stated herein. The County may in its sole discretion choose to pay any invoice submitted later than the timeframe provided herein without in any way waiving its right to refuse payment of any subsequent invoice submitted later than the timeframe provided for herein.

SECTION TEN
NOTICE

Any notice required or permitted to be given hereunder shall be deemed properly given if mailed by first-class mail to the address set out for each party at the end of this agreement. Notice to the County shall be sent to the St. Charles County Roads and Traffic Manager. Notice to the Municipality shall be sent to its _____, at the address of _____.

SECTION ELEVEN
SUPERVISION AND THE RELATIONSHIP OF THE PARTIES

In the performance of the work herein contemplated, the Municipality is an independent contractor with the authority to control and direct the performance of the work. The Municipality agrees to comply with all federal, state and local laws, rules and regulations pertaining to the Development and Road Project that are now or may in the future become applicable to the Municipality.

The parties hereto agree that the Municipality is not an employee of the County and is not entitled to the benefits provided by the County for its employees, including, but not limited to, group insurance and pension plan. The Municipality is an independent entity. The Municipality and the County agree that the County may, in its sole discretion, contract with others to provide the services called for in this Agreement in the event that the Municipality breaches its obligations contained in this Agreement.

SECTION TWELVE
INDEMNIFICATION

To the extent permissible by law, the Municipality shall indemnify and hold the County harmless from any and all liability, loss or damage the County may suffer as a result of claims, demands, costs or judgments against it arising out of the Municipality's performance of this Agreement.

To the extent permissible by law, the County shall indemnify and hold the Municipality harmless from any and all liability, loss or damage the Municipality may suffer as a result of claims, demands, costs or judgments against it arising out of the County's performance of this Agreement.

It is understood and agreed that the obligation of the County to perform under the terms of this Agreement is expressly conditioned upon the existence of the Transportation Sales Tax also known as

the Road and Bridge Capital Improvements Sales Tax passed by the electorate on November 5, 1985, and reaffirmed by the voters on April 5, 1994, August 3, 2004, August 7, 2012, and April 5, 2022.

SECTION THIRTEEN
AUDIT

The Municipality's records that shall include, but not be limited to, accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontractor files, indirect cost records, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to this agreement shall be open to inspection and subject to audit and/or reproduction by the County Auditor, or a duly authorized representative from the County, at the County's expense. The Municipality shall preserve all such records for a period of three years, unless permission to destroy them is granted by the County, or for such longer period as may be required by law, after the final payment. The Municipality shall require all subcontractors under this agreement to comply with the provisions of this article by including the requirements listed above in written contracts with the subcontractors.

SECTION FOURTEEN
ATTACHMENTS

The following are Attachments to this Agreement are incorporated herein by this reference.

1. Attachment "A": Transportation Sales Sign of the size, lettering, and colors as depicted thereon
2. Attachment "B": County's Ordinance No. _____.

[Remainder of page left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date last written below.

Executed by the County this _____ day of _____, 20____

Executed by the Municipality this _____ day of _____, 20____

MUNICIPALITY: _____

ST. CHARLES COUNTY, MISSOURI

By _____

By _____

Title _____

Title _____

ATTEST:

ATTEST:

By _____

By _____

Title _____

County Registrar

CERTIFICATE OF DIRECTOR OF FINANCE

I certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet this obligation.

SIGNED: _____
Tracy Bayne, Acting Director of Finance

DATED: _____

This Road Project Paid In Part
Through Your
St. Charles County
1/2 Cent Transportation Sales Tax
and American Rescue Plan Act



*For more information, please visit
www.sccmo.org*

Sign Size: Width = 48" Length = 36" Lettering: Upper = 4" Lower = 2.5" White Lettering on Blue Background