

Bill No. 5095

Ordinance No. _____

Requested by: John Lyons

Sponsored by: Nancy Schneider

AN ORDINANCE AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE INTERGOVERNMENTAL AGREEMENTS WITH MUNICIPALITIES FOR ROAD MAINTENANCE AND REPAIR

WHEREAS, St. Charles County collects Special Road and Bridge Fund taxes pursuant to Article X, Section 12(a) of the Constitution of Missouri and Section 137.555, Revised Statutes of Missouri, as amended; and

WHEREAS, municipalities have a duty to maintain their public roads, streets and rights-of-way; and

WHEREAS, various municipalities have for many years arranged for the County to perform certain maintenance work pursuant to road maintenance and repair agreements; and

WHEREAS, the St. Charles County Council passed Ordinance 98-97 authorizing the County Executive to enter into agreements for road maintenance and repair between the County and municipalities; and

WHEREAS, Ordinances 04-090, 12-052, and 16-056 updated the approved form of those agreements; and

WHEREAS, the County desires to update the approved form for these agreements again in order to provide for more advance planning for road maintenance and repair work; and

WHEREAS, Section 70.220 of the Revised Statutes of Missouri as amended, authorizes intergovernmental agreements 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 agreements with municipalities in St. Charles County for the purpose of providing road maintenance and repair services by the County.

Section 2. Such agreements shall be substantially the same in form and content as **Exhibit A** attached hereto and incorporated herein by reference.

Section 3. Compliance with all terms of such agreements shall be the responsibility of the County Engineer.

Section 4. This ordinance shall be in full force and effect from and after the date of its passage and approval, and such agreements shall be valid upon the lawful execution of the agreement by the 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

EXHIBIT A

**AMENDED AND RESTATED AGREEMENT FOR
ROAD MAINTENANCE AND REPAIR**

This contract is entered into as of the ____ day of _____, 20____, between ST. CHARLES COUNTY, MISSOURI (hereinafter referred to as “County”), and the CITY OF _____, MISSOURI (hereinafter referred to as “Municipality”) (collectively, the “Parties”).

WHEREAS, the County, on behalf of the Municipality, collects Special Road and Bridge Fund taxes pursuant to Article X, Section 12 (a) of the Constitution of Missouri and Section 137.555 R.S.Mo., as amended; and

WHEREAS, the County and Municipality agree that fifty percent (50%) of the revenue received from the Special Road and Bridge Tax levied upon certain property situated within the boundaries of the Municipality shall be expended for repair and improvement of existing roads, streets and bridges within the boundaries of the Municipality; and

WHEREAS, the Municipality has a duty to maintain its public roads, streets and rights-of-way; and

WHEREAS, the Municipality desires to contract with the County to perform certain maintenance work as specified herein; and

WHEREAS, Section 70.220, R.S.Mo. authorizes intergovernmental agreements; and

WHEREAS, the Parties entered into an Agreement for Road Maintenance and Repair on August 17, 2016 (the “2016 Agreement”); and

WHEREAS, the Parties now desire to amend the 2016 Agreement;

NOW, THEREFORE, the parties do hereby agree as follows:

Services and Cost Assessment

1. Budget for Services.

(a) In General.

By January 1 of each year, the County and the Municipality shall agree upon an estimate of the annual amount of the proceeds Municipality would otherwise be entitled to receive from taxes levied during the term of this Agreement and any extensions thereof upon property within the Municipality for the County’s Special Road and Bridge Fund pursuant to Article X, Section 12 (a) of the Constitution of Missouri and Section 137.555 R.S.Mo., as amended. This amount shall be referred

to herein as the “Estimated Services Budget”. If the County and the Municipality are unable to agree upon an Estimated Services Budget by August 1, then the Estimated Services Budget shall be the amount for the preceding year of the actual proceeds Municipality would otherwise have been entitled to receive from taxes levied upon property within the Municipality for the County’s Special Road and Bridge Fund, along with any adjustment resulting from the annual reconciliation described in Section 6 below.

(b) Option for using additional funds.

The Municipality shall have the option each year of designating additional funds to apply to the determination of the amount of the Estimated Services Budget. These additional funds may be used for Contract Work only (as defined in Section 4(b)(5)). If the Municipality utilizes that option, then the Municipality shall pay the County the amount of the additional funds over four equal installments payable on January 1, April 1, July 1 and October 1 for the year in which the additional funds are to apply. This designation of additional funds must be completed by July 1 of the previous year as part of the establishment of the Estimated Services Budget.

2. **Cost of Services.** Attachment A provides an itemized list of unit costs and/or fixed costs for services the County typically provides for the repair, maintenance, construction or reconstruction of public roads, streets and rights-of-way. The costs shall be based upon the most recent available actual bid prices for similar work for concrete slab replacement, asphalt overlay work, crack sealing or asphalt street reconstruction. The costs for other work, including general maintenance and winter response, will be determined each year by the County based on its determination of its actual costs incurred in performing such work. The County shall provide the Municipality with an update of Attachment A by May 1 of each year, and such updated costs shall apply immediately and remain in effect until April 30 of the following year. Work that does not fall into one of the categories above will be performed on a time and material basis. Costs for time and material work will be calculated as the sum of the following: Equipment- using reimbursement rates for the use of the same or substantially similar equipment as established by the Federal Emergency Management Agency and in effect at the time work was performed; Personnel – using the hourly pay rate for any employee who participated in the work (including overtime if emergency repairs are required after hours) and in effect at the time work was performed; Material- using actual material costs; Specialty Equipment (equipment not included within the FEMA reimbursement rates) – will be charged an hourly rate of \$25 for every \$50,000 of original purchase price (Example: \$200,000 purchase price = \$100/hr); Administrative Services – 1.5% of subtotal repair cost to account for material bidding services and tracking of time and material invoices. Time will be charged in 0.5 hour increments.
3. **Authorized Location of Services.** The County shall provide the City with a current list of County maintained Municipal streets effective the date of this agreement as Attachment B. The Municipality shall review Attachment B, selecting what type of services the County is to perform and return it with the signed agreement. The Municipality is responsible for providing to the County an updated Attachment B, with selected services, at least once per

year on May 1. The Municipality may update Attachment B as needed; however, any addition or deletion of a street must be accompanied by the pertinent city ordinance and no street shall be added or removed from this service agreement without an updated Attachment B from the Municipality.

4. **Request for Services.** The Municipality shall provide the County each year with a list of requested repairs, maintenance, construction or reconstruction of public roads, streets and rights-of-way within the Municipality that reflects a total cost amount not in excess of the Estimated Services Budget or, if an adjustment has occurred pursuant to Section 5 of this Agreement, the Adjusted Services Budget. This list must be provided by August 1 for scheduled work and contract work for the next calendar year. The Municipality may request the assistance of the County in compiling such requests, and the County agrees to provide such assistance as is reasonably available; however the ultimate decision on which services to request lies with the Municipality.

5. **Provision of Services.**

- (a) In General.

The County shall provide the services requested by the Municipality and track its costs therefore in accordance with the categories of services identified below and the corresponding costs set forth in Attachment A or based on time and material as specified above, and assess the costs incurred against the Estimated Services Budget or, if an adjustment has occurred pursuant to Section 6 of this Agreement, the Adjusted Services Budget. Notwithstanding any other provision of this Agreement, the County shall have no obligation to provide services that will result in the County's incurring costs in excess of the Estimated Services Budget or, if an adjustment has occurred pursuant to Section 6 of this Agreement, the Adjusted Services Budget. The County may, however, incur excess costs at its own discretion in which event such excess costs shall be recouped in accordance with the provisions of Section 6 below; however the County shall not incur costs in excess of twenty percent (20%) of the current year's Estimated Services Budget or, if an adjustment has occurred, the Adjusted Services Budget, without the written consent of the Municipality.

- (b) Categories of Services.

- (1) General maintenance: The County shall provide general maintenance for all streets specified in Attachment B, at a flat rate per mile established each year, as shown in Attachment A. General maintenance will include pothole patching (limited to an area no larger than two feet (2') by two feet (2') in size), trash pickup once per year on rural roads to be mowed, mowing of rural roads twice per year, washing and sealing bridges not more than once per year, and emergency response for debris removal or flooding. The County shall not be obligated to mow along any subdivision streets. All roadways that will receive these general services shall be identified in

Attachment B by the Municipality.

- (2) **Scheduled maintenance:** The Municipality shall request scheduled maintenance services in accordance with Section 4 above, and the County shall make all reasonable efforts to provide such services subject to the limitations set forth herein. This work will consist of the following types of scheduled maintenance: concrete slab replacement, asphalt overlays, curb replacement, sidewalk replacement, curb ramp replacement or construction, replacement of culvert pipes or storm sewers, mowing along urban arterial roads twice per month, striping, sign installation, or the total reconstruction of a roadway. Such work must be requested by August 1 for scheduling work the next calendar year. The County shall have the discretion to deny work if sufficient staff is not available and determine when during the calendar year the scheduled maintenance will be performed, but agrees to confer with the Municipality regarding any specific timing needs.
- (3) **Unscheduled repairs (work orders):** The Municipality may request work during the year that was not scheduled but is required due to changing conditions. This work will consist of the following types of unscheduled work: concrete slab, curb or sidewalk replacement, repair of holes or soft spots in asphalt roadways that are larger than two feet (2') by two feet (2') in size, replacement of a failed culvert, flushing culverts, street creep repairs, street sweeping, new sign installation, sign replacement, or other unscheduled maintenance work. This work will be requested by the Municipality by submitting a work order request to the County Highway Department office. The County will investigate the work order within 10 business days and either make the repair or provide the Municipality with a plan for performing the corrective work along with a timeframe. The total value of Unscheduled Repairs must not exceed \$35,000.00 per year without prior approval from the County.
- (4) **Winter Response:** The County shall provide winter response services for all streets specified in Attachment B as of October 31 of each year. Winter response service shall be assessed at a flat rate per mile established each year, as shown in Attachment A. Winter response shall include pre-treatment, de-icing, and snow plowing services. All winter response services for the Municipality shall be performed in conjunction with winter response for County owned roads. No work shall be performed solely for the benefit of County or Municipality. Timing of services, material application rates, and response routes shall be at the discretion of the County in order to maximize efficiency and minimize costs to both parties.
- (5) **Contract Work:** The Municipality may request additional scheduled maintenance work, whose costs exceed the annual Estimated Services Budget, if the type of work consists of Contract Work, as defined herein.

The term "Contract Work" shall mean: concrete slab replacement, asphalt overlays, curb replacement, sidewalk replacement, curb ramp replacement or construction, or the total reconstruction of a roadway. Such work must be requested by August 1 for scheduling work the next calendar year. Payment for the Contract Work shall be made in accordance with Section 1. If the Contract Work is to be paid for, or the costs therefore reimbursed, in whole or in part by a state or federal grant, then the Municipality shall be responsible for any required matching funds. At the County's discretion, should the Contract Work exceed the County's ability to provide adequate construction inspection services, the Municipality will be responsible for providing inspection services for those portions of a contract involving municipal streets. Contract Work shall be subject to an additional payment to the County equivalent to 1.5% of the Municipality's Contract Work amount. This additional payment will help offset the administrative costs borne by the County during performance of bidding services. Furthermore, the County shall have the discretion to deny any request for Contract Work if the County determines it does not have sufficient staff or other resources available to administer the requested work.

(c) Cost Reporting.

The County shall provide the Municipality with a quarterly accounting of the services provided and the costs incurred no later than one (1) month following the conclusion of each quarter. The parties may then confer to determine whether to make any adjustments to the requested work for the remainder of the year. The accounting for the general maintenance and winter response services shall be based on the streets selected and annual flat rates applicable thereto, assessed quarterly on January 1, April 1, July 1 and October 1. For all work that is not performed on a time and materials basis, the costs reflected in Attachment A shall be used; any costs incurred by the County in excess of the costs for such work reflected in Attachment A shall be borne by County, and any savings realized shall be retained by the County. For all work that is performed on a time and materials basis, the costs shall be calculated as stipulated in Section 2.

6. **Annual Reconciliation.** After the conclusion of each year this Agreement is in effect, the County shall reconcile the actual costs of the services provided as reflected in the quarterly accountings to the Municipality with the actual revenue that the Municipality would otherwise have received from taxes levied upon property within the Municipality for the County's Special Road and Bridge Fund. Any difference between such actual revenue and such actual costs shall be applied to the Estimated Services Budget for the next year as an adjustment, yielding an amount that shall be referred to herein as the "Adjusted Services Budget" for said year; unless the remaining costs exceed the Estimated Services Budget by 10% or more, at which time the County may request a final yearly payment due in December. The parties acknowledge that the information necessary to complete such reconciliation may not be available until several months into the new calendar year. When the Adjusted Services Budget is determined, the parties shall confer to determine whether

to make any adjustments to the requested work for the remainder of the year to account for the adjustment in budget amount.

7. **Final Reconciliation Upon Termination.** At the time of termination of this Agreement, any outstanding difference between such actual costs and such actual revenue shall be accounted for and paid. This final reconciliation shall be performed by the County and submitted to the Municipality. If such actual costs have exceeded such actual revenues, then the Municipality shall pay the amount of the difference to the County within ninety (90) days of such submission. If such actual revenues have exceeded such actual costs, then the County shall pay the amount of the difference to the Municipality within ninety (90) days of such submission.
8. **Cost and Revenue Calculations.** The County shall be responsible for calculating all amounts of revenue and costs contemplated in this Agreement; however the Municipality shall be entitled to review all data and calculations utilized by the County in determining such amounts. If the County has actual cost data to rely upon for the use of its vehicles and other equipment (normally these costs are only available for rented equipment), it shall use such actual cost data, but if not, then the County shall be entitled to use reimbursement rates for the use of the same or substantially similar equipment as established by the Federal Emergency Management Agency and in effect at the time. If substantially similar equipment as established by the Federal Emergency Management Agency is not available, costs shall be calculated as “Specialty Equipment” as outlined in Section 2 above. In the event of any dispute over calculations of revenue or costs pursuant to this Agreement, the parties agree to meet and confer to attempt to resolve such dispute, however the County’s determination made after such meeting shall be controlling.

Compensation

9. In consideration of the County meeting the obligations of this Agreement, and subject to the right of the Municipality to a refund pursuant to Section 7 of this Agreement, the Municipality waives its rights to refunds of taxes levied during the term of this Agreement and any extensions thereof upon property within the Municipality for the County’s Special Road and Bridge Fund pursuant to Article X, Section 12 (a) of the Constitution of Missouri and Section 137.555 R.S.Mo., as amended. The Municipality may further opt to contribute additional compensation as set forth in Section 1 (b) for the purpose of receiving additional services.

General Terms

10. The County shall perform these services as an independent contractor of the City. The County shall have the discretion to determine the appropriate methods to accomplish necessary repairs and maintenance, but shall utilize the same standards as it uses for the repair and maintenance of the County’s public roads, streets and rights-of-way.
11. The Municipality recognizes that its duty to inspect its roads, streets and rights-of-way is nondelegable, and the County shall not assume any such duty by operation of this

Agreement. Upon the County's receipt of written notice from the Municipality of any specific defect or unsafe condition in a road, street or right-of-way subject to this agreement that requires repair or maintenance, the County shall perform repair or maintenance work to remedy such condition within a period of time that is reasonable under the circumstances and in consideration of the staff available, with the cost of such work to be tracked and assessed against the Estimated or Adjusted Services Budget. If the County receives notice of a defect or unsafe condition in a road, street or right-of-way belonging to the Municipality from another source, the County shall direct such source to report the defect or unsafe condition to the Municipality or otherwise notify the Municipality.

12. Notwithstanding any other terms of this Agreement, nothing herein shall limit the Municipality's right to apply for road improvement project funding from the proceeds of the St. Charles County transportation sales tax or any other source.
13. All improvements that are constructed after the date of this Agreement and that are to be maintained by the Municipality (or by the County pursuant to this Agreement) must be constructed to standards satisfactory to the St. Charles County Highway Department. Any improvement constructed to meet or exceed the standards listed in the "St. Charles County Highway Department Design Criteria for the Preparation of Improvement Plans" (kept on file in the Highway Department), or other standards incorporated by reference therein, shall be considered to be satisfactory. The Municipality shall provide the County with construction plans, inspection reports, and other documentation or information requested by the County that is reasonably necessary to evaluate the design and construction of any improvement submitted for maintenance by the County pursuant to this Agreement.

Other Services

14. Upon written request from the Municipality, the County shall issue special use permits on behalf of the Municipality for work in the Municipality's rights-of-way in the same manner as the County issues special use permits for work in the County's rights-of-way pursuant to Section 229.300 *et seq.* R.S.Mo., as amended. Any fees collected from applicants for permits issued by the County on behalf of the Municipality shall be retained by the County, and no costs for the issuance of such permits shall be assessed against the Municipality.
15. This Agreement shall not affect any contracts for services between the County and the Municipality not related to road maintenance and repair. Nothing in this Agreement shall obligate the County to perform review of development or improvement plans, inspection of improvements under construction or existing improvements, or other development review services for the Municipality. The County may provide such services to the Municipality pursuant to a separate written agreement.

Liability to Third Parties

16. The County shall indemnify, protect and hold harmless the Municipality from and against the loss, cost, claims, demands, damage and/or expense arising out of any demand, claim, suit or judgment for damages to property or injury to or death of persons, including the

officers, agents and employees of either party hereto, and including payment under any workers' compensation law, or under any plan for employee's disability or death benefit, which may arise out of or be caused in whole or in part by the fault, failure, negligence, or alleged negligence of the County, its agents, servants or employees in performing repair and maintenance work pursuant to this Agreement; provided that, for any demand, claim, suit or judgment based upon actual or constructive notice of a defective or unsafe condition, the Municipality has notified the County of the need to repair or otherwise remedy such defective or unsafe condition in the manner provided for herein before the accrual of the cause of action for such claim.

17. The Municipality shall indemnify, protect and hold harmless the County from and against the loss, cost, claims, demands, damage and/or expense arising out of any demand, claim, suit or judgment for damages to property or injury to or death of persons, including the officers, agents and employees of either party hereto, and including payment under any workers' compensation law, or under any plan for employee's disability or death benefit, which may arise out of or be caused in whole or in part by the fault, failure, negligence, or alleged negligence of the Municipality, its agents, servants or employees in performing its obligations under this Agreement or by reason of its ownership of the roads, streets or rights-of-way that are the subject of this Agreement.

Limitations

18. This Agreement is not assignable by either party hereto.
19. The Municipality shall comply with all applicable laws, ordinances, rules, regulations and requirements now in force or which may hereinafter be put into force.

Duration and Renewal

20. The initial term of this Agreement shall begin on January 1, 20____ and expire on December 31, 20____, however, upon expiration of the initial term or any renewal term, this Agreement shall automatically renew for an additional one-year term unless a party gives written notice of termination to the other party at least sixty (60) days before expiration of the then-current term.
21. This Agreement may also be terminated by either party hereto at any time by giving at least sixty (60) days advance written notice to the other at the address shown below. If this contract is terminated such that the termination is effective before December 31 of any year, the amount of tax subject to the Municipality's waiver of refund rights as set forth herein shall be prorated, and a final reconciliation and payment shall be made as specified in Section 7 above.

Miscellaneous

22. The headings in this Agreement are for convenience only and neither limit nor amplify the provisions of this Agreement.

- 23. If any provision of this Agreement shall be found by a court of competent jurisdiction to be invalid or unenforceable, the same shall be reduced in scope and coverage to the extent necessary to render the same valid, and, if that is not possible, the remainder of this Agreement shall not be affected and shall continue in full force and effect.
- 24. No provision of this Agreement shall be construed against or interpreted to the disadvantage of a party by any court or other governmental authority by reason of such party having or being deemed to have structured or dictated such provision.
- 25. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all previous agreements relating to repair and maintenance of the Municipality's roads by the County. There are no contemporaneous agreements, written or oral, between the parties with respect to the subject matter hereof. This Agreement may be modified only by a written instrument signed by each of the parties hereto.
- 26. Notices: All notices and other communications hereunder shall be in writing and shall be deemed to be duly given if (a) delivered in person or by commercial delivery service, or (b) if mailed by certified mail, with postage prepaid and return receipt requested, to the party at its address as set forth below:

To the Municipality:

Mayor
 City of _____
 Address
 Address

To the County:

County Executive
 St. Charles County
 100 North Third Street
 St. Charles, Missouri 63301

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement after duly obtaining authorization to enter into same from the governing body thereof in accordance with applicable law.

THE CITY OF _____, MISSOURI

ST. CHARLES COUNTY, MISSOURI

By: _____
 Mayor

By: _____
 County Executive

ATTEST:

ATTEST:

By: _____
 City Clerk

By: _____
 County Registrar