

Bill No. 5147

Ordinance No. _____

Requested by: Amanda Brauer

Sponsored by: Joe Brazil

AN ORDINANCE APPROVING AN AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR PRELIMINARY ENGINEERING FUNDING FOR IMPROVEMENTS NEEDED TO REDUCE CONGESTION ON THE IMPROVEMENT OF ROUTE N FROM ROUTE Z TO ROUTE I-64 / ROUTE 364

WHEREAS, the Missouri Department of Transportation (MoDOT) and the County desire the improvement or reconstruction of Route N, extending generally from Route Z to I-64 / Route 364 interchange; and

WHEREAS, the improvements are needed to reduce congestion on Route N, from the intersection of Route Z, continuing east along existing Route N to I-64 / Route 364 interchange; and

WHEREAS, this public improvement will involve preliminary engineering for the future construction of expanding lanes and adding and/or modifying intersections; and

WHEREAS, the total length of the planned improvement is approximately 4.876 miles; and

WHEREAS, funds have been secured for preliminary design of the improvements subject to the terms and conditions herein to allow for right-of-way dedication or purchase as development occurs along the roadway and to expedite construction should funds become available,

subject to the terms and conditions of the Agreement attached hereto; and

WHEREAS, the County contribution for this preliminary design work may be included as work eligible for County's share of a future Cost Share construction project; and

WHEREAS, the preliminary engineering of the improvements can start within this year (2023) should the County decide to finance the funds to be provided by MoDOT.

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 substantially the same in form and content as Exhibit A for the purpose of coordinating improvements and reconstruction of Route N, with the County contributing three million dollars (\$3,000,000) for the project described herein with MoDOT.

Section 2. The Cost Share Agreement shall be substantially in the same form as **EXHIBIT A** attached hereto, which is incorporated herein by reference.

Section 3. The agreement identified above shall be subject to appropriation in budget year 2023.

Section 4. Compliance with all the terms of the agreement authorized in Section 1 shall be the responsibility of the Roads and Traffic Manager.

Section 5. This ordinance shall be in full force and effect from and after the date of its passage and approval.

Section 6. 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

EXHIBIT A

CCO Form: DE07
Approved: 07/97 (DPP)
Revised: 12/21 (BDG)
Modified: 08/22 (BDG)

Cost Apportionment Agreement
Route: N
County: St. Charles
Job No.: J6S3342B

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
COST APPORTIONMENT AGREEMENT**

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

WITNESSETH:

WHEREAS, the Commission owns and maintains Route N in St. Charles County as part of the State Highway System;

WHEREAS, the parties desire the improvement or reconstruction of Route N, extending generally from Route Z to I-64 / Rte. 364 interchange; and

WHEREAS, the Entity is willing to provide assistance in the construction or reconstruction of the improvements, subject to the terms and conditions herein.

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

(1) PURPOSE: The purpose of this Agreement is to co-ordinate the participation by the Entity in the cost of the Commission's public improvement for Route N, in the County of St. Charles, designated as Job No. J6S3342B. This public improvement will involve preliminary engineering for the future construction of expanding lanes and adding and/or modifying intersections.

(2) LOCATION: The transportation improvement that is the subject of this Agreement is contemplated at the following location:

The public improvement contemplated herein and designated by the Commission as Job No. J6S3342B provides for the preliminary engineering for the improvement of Route N, from the intersection of Route Z, continuing east along existing Route N to I-64 / Route 364 interchange. The total length of the improvement is approximately 4.876 miles.

The general location of the public improvement is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) AMENDMENTS: Any change in this Agreement, whether by modification

or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the Entity and the Commission.

(4) COMMISSION REPRESENTATIVE: The Commission's St. Louis District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(5) PROJECT RESPONSIBILITIES: With regard to project responsibilities under this Agreement, the Commission will be responsible for the preparation of preliminary plans and preliminary design documents. This includes survey, geotechnical, traffic analysis, utility coordination, conceptual engineering, draft environmental, and preliminary engineering of the project. The plans shall be prepared in accordance with and conform to Commission requirements.

(6) PAYMENT RESPONSIBILITIES: With regard to payment responsibilities under this Agreement, the parties agree to as follows:

(A) The Entity will be responsible for one hundred percent (100%) cost of the preliminary engineering. The details of the estimated cost breakdown are listed in "Exhibit B", which is attached hereto and made part hereof. The current estimate of the Entity's responsibilities is three million dollars (\$3,000,000). Actual costs will include preliminary engineering for consultant contract fees as well as MoDOT staff management, review, and support. The Entity shall remit a check in the amount of three million dollars (\$3,000,000) to cover preliminary engineering no later than ten days after the execution of the design consultant agreement. This check should be made payable to the *Missouri Highway and Transportation Commission – Local Fund*. If the Entity fails to make the required deposit, the Commission is under no obligation to continue with the project.

(B) The Entity is responsible for the balance of the project's preliminary engineering in excess of three million dollars (\$3,000,000). Any underruns that may occur will be reimbursed to the County.

(7) COMMINGLING OF FUNDS: The Entity agrees that all funds deposited by the Entity, pursuant to this Agreement with the Commission, may be commingled by the Commission with other similar monies deposited from other sources. Any deposit may be invested at the discretion of the Commission in such investments allowed by its Investment Policy. All interest monies shall be payable to the *Local Fund* and credited to the project. If the amount deposited plus any applicable credited interest with the Commission shall be less than the actual obligation of the Entity for this project, the Entity, upon written notification by the Commission, shall tender the necessary monies to the Commission to completely satisfy its obligation. Upon completion of the project, any excess funds or interest credited to the Entity shall be refunded to the Entity based on its pro rata share of the investment.

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

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

(10) APPROVAL OF FHWA AND AVAILABILITY OF FUNDS: This Agreement is entered into subject to the approval of the Federal Highway Administration and is further subject to the availability of federal and state funds for this construction.

(11) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations or for convenience by providing the Entity with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Entity.

(12) 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.

(13) 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 Entity.

(14) COMMISSION RIGHT OF WAY: All improvements made within the state-owned right-of-way shall become the Commission's property, and all future alterations, modifications, or maintenance thereof, will be the responsibility of the Commission, except as otherwise provided by this Agreement or a separate written agreement.

(15) NO INTEREST: By contributing to the cost of this project or improvement, the Entity gains no interest in the constructed roadway or improvements whatsoever. The Commission shall not be obligated to keep the constructed improvements or roadway in place if the Commission, in its sole discretion, determines removal or modification of the roadway or improvements, is in the best interests of the state highway system. In the event the Commission decides to remove the landscaping, roadway, or improvements, the Entity shall not be entitled to a refund of the funds contributed by the Entity pursuant to this Agreement.

(16) 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.

(17) 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.

(18) ADDITIONAL FUNDING: In the event the Commission obtains additional federal, state, local, private or other funds to construct the improvement being constructed pursuant to this Agreement that are not obligated at the time of execution of this Agreement, the Commission, in its sole discretion, may consider any request by the Entity for an off-set for the deposited funds, a reduction in obligation, or a return of, a refund of, or a release of any funds deposited by the Entity with the Commission pursuant to this Agreement. In the event the Commission agrees to grant the Entity's request for a refund, the Commission, in its sole discretion, shall determine the amount and the timing of the refund. Any and all changes in the parties' financial responsibilities resulting from the Commission's determination of the Entity's request for a refund pursuant to this provision must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Entity and the Commission.

(19) NO ADVERSE INFERENCE: This Agreement shall not be construed more strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

(20) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

(21) VOLUNTARY NATURE OF AGREEMENT: Each party to this Agreement warrants and certifies that it enters into this transaction and executes this Agreement freely and voluntarily and without being in a state of duress or under threats or coercion.

(22) 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 immediately after delivery in person, or by facsimile or electronic mail addressed as follows:

Commission to: Missouri Department of Transportation
Attn: St. Louis District Engineer
1590 Woodlake Drive
St. Louis, MO 63017

Entity to: St. Charles County
Attn: Manager of Roads and Traffic
201 North Second Street, Suite 534
St. Charles, MO 63301

or to such other place as the parties may designate in accordance with this Agreement.

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

Executed by the Entity this ____ day of _____, 20__.

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

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

ST. CHARLES COUNTY, MISSOURI

By _____

Title _____

Title _____

ATTEST:

ATTEST:

By _____

Secretary to the Commission

Title _____

Approved as to Form:

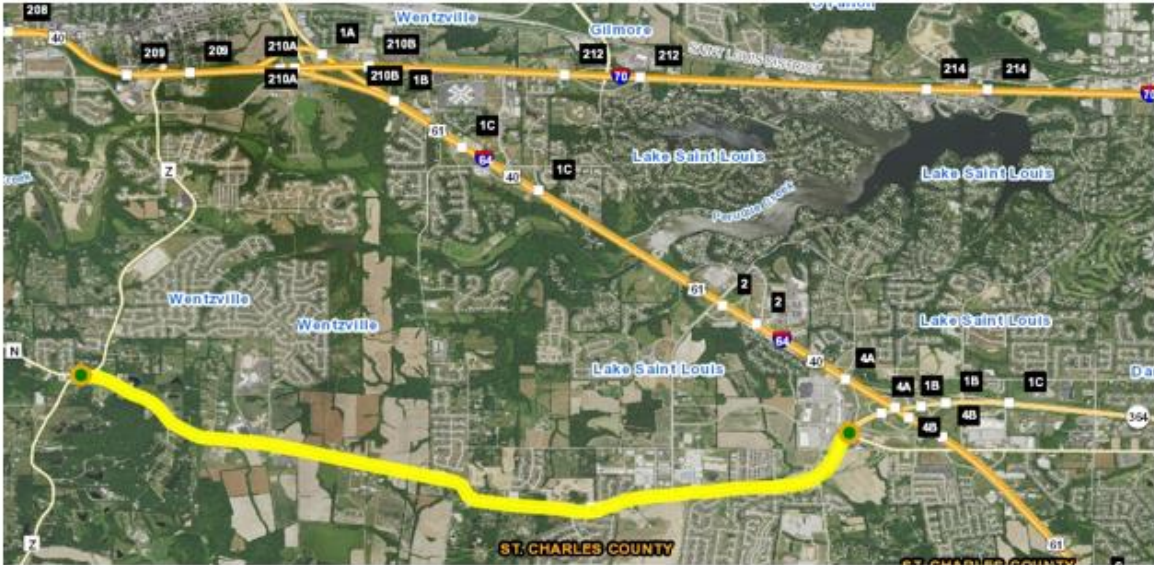
Approved as to Form:

Commission Counsel

Title: _____

Ordinance No _____

EXHIBIT A – LOCATION SKETCH



MoDOT Project J6S3342B
Route N, St. Charles Co.
Route Z to I-64 / Route 364 interchange
4.876 mi.

Exhibit B

Project Name: Route N
MoDOT Project Number: J6S3342B
Description: Preliminary Engineering
Total Project Cost Estimate: \$3,000,000
Local Entity: St. Charles County

	Current Estimate	Cost Share/Participation Eligible
Preliminary Engineering	\$3,000,000	\$3,000,000
Right of Way Acquisition (including easements)	\$0	\$0
Right of Way Incidentals	\$0	\$0
Utilities	\$0	\$0
Construction	\$0	\$0
Construction Engineering	\$0	\$0
Total	\$3,000,000	\$3,000,000

Project Responsibilities:

Design	MoDOT
Right of Way Acquisition	To be determined at later date
Letting	To be determined at later date
Inspection	To be determined at later date

Financial Responsibilities:

District	\$0	0%
Cost Share Funds (if applicable)	\$0	0%
City/County	\$3,000,000	100%
CMAQ/STBG	\$0	\$0
Total:	\$3,000,000	100%

How are overruns and underruns handled? The County will be responsible for any cost overruns. Any underruns will be reimbursed to the County.