

Bill No. 5161

Ordinance No. _____

Requested by: Amanda Brauer
Sponsored by: Council as a Whole

AN ORDINANCE APPROVING AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR IMPROVEMENTS NEEDED TO REDUCE CONGESTION ON I-70 BY CONSTRUCTING A NORTH OUTER ROAD EXTENSION AND RELOCATION OF RAMPS FROM ROUTE 94 TO ZUMBEHL ROAD.

WHEREAS, the Missouri Department of Transportation (MoDOT) has worked with St. Charles County to identify improvements needed to reduce congestion on I-70 by constructing a North Outer Road extension and relocation of ramps from Route 94 to Zumbahl Road; and

WHEREAS, this stretch of the I-70 corridor was one of the first segments of interstate highway system constructed in the country. It has been upgraded over time, but the basic configuration has not changed significantly, and it can no longer meet the traffic demand requirements. The corridor has experienced ever increasing congestion along the mainline alignment and significant congestion at the Zumbahl Road interchange as the adjacent area has continued to develop.

WHEREAS, With stagnant development adjacent to the segment and the dated condition of the system, in addition to existing congestion and safety issues, the County has been seeking options for improvements. Over the past few years, the County has developed several concepts for

this segment of I-70 as well as others throughout the County.

WHEREAS, MoDOT's St. Louis District is currently managing a design-build project in this area which will extend the existing north outer roadway connection to Route 94; and

WHEREAS, This project would complete the outer roadway connection on the north side of I-70. Additionally, it includes new outer road connectivity for the existing Hawk's Nest overpass. With interchange spacing averaging 1.5 miles in this area, these improvements provide alternative access points for many residents and remove significant traffic volumes from the congested interchanges at Zumbahl and Route 94; and

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

WHEREAS, construction of the improvements can start next year (2024) should the County decide to finance the balance of 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 that is substantially the same in form and content as **EXHIBIT A**.

Section 2. The agreement identified above shall be subject to appropriation in budget years 2023 and 2024.

Section 3. Compliance with all the terms of the agreement authorized in Section 1 shall be the responsibility of the Roads and Traffic Manager.

Section 4. This ordinance shall be in full force and effect from and after the date of its passage and approval.

Section 5. 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

CCO Form: FS08
 Approved: 03/04 (BDG)
 Revised: 03/17 (MWH)
 Modified: 02/23 (MWH)

Route I-70, St. Charles County
 Project No. SL0119 / SL0161
 St. Charles County

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

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

WITNESSETH:

WHEREAS, the Entity applied to the Commission's Cost Share Committee for participation in the Commission's *Cost Share Program*; and

WHEREAS, on September 22, 2022, the Cost Share Committee approved the Entity's application to the *Cost Share Program* subject to the terms and conditions of this Agreement.

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 of St. Charles County in the cost of the Commission's Project SL0119 / SL0161 .

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

I-70 North Outer Road extension and relocation of ramps from Route 94 to Zumbahl Road.

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

(6) 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.

(7) 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.

(8) PLANS AND CONSTRUCTION: With regard to project responsibilities under this Agreement, the parties agree to the following:

(A) The Entity shall be responsible for the preparation of detailed right-of-way (hereinafter, "ROW") and construction plans and project specifications. This includes design, environmental submittals, survey, legal descriptions and utility relocation of the project. The plans shall be prepared in accordance with and conform to Commission standards and requirements. Said plans shall not be changed in concept or scope without prior written approval of the Commission.

(B) The Entity shall follow the Commission's Local Public Agency (LPA) process.

(C) The Entity shall acquire any additional necessary ROW required for the project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act (**Uniform Act**), as amended and any regulations promulgated in connection with the Act.

(D) The Entity shall secure all required federal, state, and local permits as required for design and construction of the improvements. Prior to entering onto the Commission right of way to perform any obligation under this Agreement, the Entity shall obtain any applicable permit from the Commission, unless the performance of such obligations under this Agreement would not ordinarily require a permit from the Commission.

(E) The Entity shall be responsible for planning utility relocation for the project, including but not limited to the Commission's Intelligent Transportation System (ITS) facilities.

(F) The Entity shall be responsible for the final location survey plan pursuant to the Commission's Engineering Policy Guide Section 238.2.18 dated February 22, 2023.

(G) The Commission will be responsible for letting the work for the herein improvement, which includes advertising the project for bids and awarding the construction contract. The Commission will solicit bids for the herein improvement in accordance with plans developed by the Entity, or as the plans may from time to time be modified in accordance with Commission approval in order to carry out the work as contemplated.

(H) The Commission will be responsible for construction of the herein improvements, which includes administration of the construction contract and inspection of the project work. The project shall be constructed in accordance with and conform to Commission requirements.

(I) The Commission will provide preliminary engineering review and right of way review.

(9) FINANCIAL RESPONSIBILITIES: With regard to work under this Agreement, the Entity agrees as follows:

(A) The estimated total cost of the project is thirteen million two hundred ten thousand dollars (\$13,210,000). The project cost will include preliminary engineering, preliminary engineering review, ROW acquisition, ROW incidentals, ROW, utilities, construction, and construction engineering. The details of the estimated costs breakdown are listed below and in "Exhibit B", which is attached and made part hereof.

(B) The Entity shall be responsible for fifty percent (50%) of the total project cost. The current estimate of the Entity's project cost responsibility is six million six hundred five thousand dollars (\$6,605,000). The Entity shall receive credit for the preliminary engineering costs, estimated at one million three hundred thousand dollars (\$1,300,000), credit for the ROW costs and ROW incidentals, together estimated at one hundred thousand dollars (\$100,000) and credit for the utility costs estimated at two hundred fifty thousand dollars (\$250,000) upon receipt of documentation of actual costs incurred and paid from the Entity. The Entity shall remit a check in the amount of four million nine hundred fifty-five thousand dollars (\$4,955,000) to cover estimated construction no later than five (5) days prior to the Commission's advertisement of the project for bids. Each of these checks should be made payable to the *Missouri Highway and Transportation Commission – Local Fund*. If the Entity fails to make any of the required deposits, the Commission is under no obligation to continue with the project.

(C) The Commission will pay for fifty percent (50%) of the total project cost up to a maximum amount of six million six hundred five thousand dollars (\$6,605,000). The current estimate of the Commission's responsibilities is six million six hundred five thousand dollars (\$6,605,000). Of this amount, the Commission will provide five million five hundred forty-five thousand dollars (\$5,545,000) from the Commission's

Cost Share program, specifically with sixty-nine thousand thirty-four dollars (\$69,034) available in State Fiscal Year (SFY) 2023, two million five hundred thousand dollars (\$2,500,000) available in SFY 2024, two million five hundred thousand dollars (\$2,500,000) available in SFY 2025, four hundred seventy-five thousand nine hundred sixty-six dollars (\$475,966) available in SFY 2026, and preliminary review, ROW review and construction inspection services by Missouri Department of Transportation (**MoDOT**) personnel estimated to total one million sixty thousand dollars (\$1,060,000) from MoDOT's Internal Budget.

(D) If the Cost Share funds are not available at the time of letting, the Entity will accelerate the Cost Share funds with a payback from the Commission when the Cost Share funds are available.

(E) The Entity is responsible for the balance of the project in excess of thirteen million two hundred ten thousand dollars (\$13,210,000). Underruns will be based on a pro rata share.

(F) If, at the time of the letting, the lowest responsive bid is higher than the estimated construction and inspection cost amount, the Entity, upon written notification from the Commission shall remit a check in the amount of its share of the difference between the estimated amount and the lowest responsive bid no later than one (1) day prior to the date of the Commission meeting wherein the subject bid will be considered for award or a later date set by the Commission in its sole discretion. In the event the Commission, in its sole discretion, extends the day the Entity payment is due, it shall notify the Entity of the new due date in writing, which shall be binding immediately upon the Entity's receipt of the written notice. The check must be made payable to the *Director of Revenue – Credit Local Fund*. The Commission, in its sole discretion, reserves the right to take action at the said Commission meeting and either reject all bids if the Entity fails to make the payment by the due date, or award the contract to the lowest responsive bidder contingent upon receipt of the additional funds from the Entity by the extended due date. If the Commission makes a contingent award of the contract and the Entity fails to make the required deposit(s) by the extended due date, the contingency of the contract award by the Commission shall be deemed unsatisfied, the award of the contract shall be deemed null and void and the Commission shall be under no obligation to continue with the project.

(10) **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.

(11) 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.

(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) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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: Thomas Blair
St. Louis District Engineer
1590 Woodlake Drive
Chesterfield, MO 63017
Email: thomas.blair@modot.mo.gov

Entity to: St. Charles County
Attn: Amanda Brauer
201 N. Second Street, Suite 560
St. Charles, MO 63301
Email: abrauer@sccmo.org

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

(22) AUDIT OF RECORDS: The Entity must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final payment made under this Agreement.

(23) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the Entity 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 Entity's wrongful or negligent performance of its obligations under this Agreement.

(B) The Entity will require any contractor procured by the Entity to work under this Agreement:

(1) To obtain a no cost permit from the Commission's District Engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's District Engineer will not be required for work outside of the Commission's right-of-way); and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$500,000 per claimant and \$4,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) 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.

(24) CONTINGENCIES: The Entity agrees to the following items and that the following items shall be strictly enforced:

(A) The Entity shall obtain Federal Highway Administration (**FHWA**) and MoDOT approval of an Access Justification Report including analysis of the proposed "through" movement at the I-70 North Outer Road/Route 94 interchange, future connections to the local system, etc. that is satisfactory to MoDOT and FHWA. Any deviations from these listed items must be presented to and approved by the Commission's Cost Share Committee.

(B) The Entity shall obtain Proof of Concept in the form of a Conceptual Report and Plan including a narrative of how the conceptual solution is in-line with the already established goals of the current Design-Build project and documentation of informed consent through public engagement.

(C) The Entity shall obtain approval by the Commission via a Statewide Transportation Improvement Program (STIP) amendment and East West Gateway via a Transportation Improvement Program (TIP) amendment.

(D) If the Entity fails to satisfy the items within this paragraph (24) to the Commission's satisfaction, the Entity shall forfeit all Commission Cost Share funds and such failure will constitute a material breach of this Agreement by the Entity. This Agreement will become null and void.

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

Title _____

By _____
Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____
Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title: _____

Ordinance No _____

Exhibit A

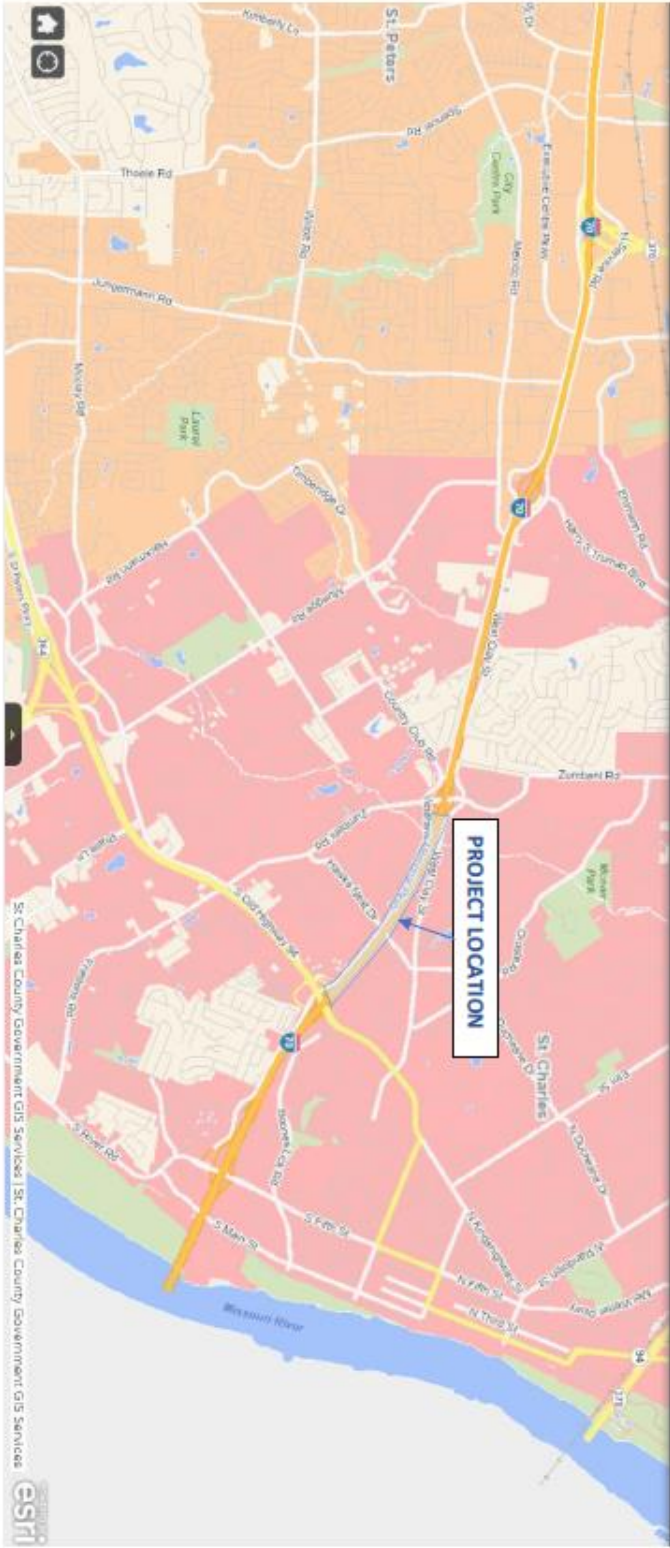


Exhibit 1 – Location Map

Exhibit B

Project Name: I-70 North Outer Road Extension

MoDOT Project Number: SL0119 / SL0161

Description: I-70 North Outer Road extension and relocation of ramps from Route 94 to Zumbahl Road

Total Eligible Project Cost Estimate: \$13,210,000

Local Entity: Entity, St. Charles County

	Current Estimate
Preliminary Engineering	\$1,300,000
Preliminary Engineering Review (MoDOT)	\$5,000
Right of Way Acquisition	\$95,000
Right of Way Incidentals	\$5,000
Right of Way Review (MoDOT)	\$5,000
Utilities	\$250,000
Construction	\$10,500,000
Construction Engineering	\$1,050,000
Total	\$13,210,000

Project Responsibilities:

Preliminary Engineering	Entity
Right of Way Acquisition	Entity
Utility Coordination	Entity
Letting/Construction	MoDOT
Construction Engineering	MoDOT

Financial Responsibilities:

MoDOT Internal Budget	\$1,060,000	8%
Cost Share Funds	\$5,545,000	42%
Entity	\$6,605,000	50%
Total:	\$13,210,000	100%

How are overruns and underruns handled? The Entity shall be responsible for all cost overruns. Underruns will be based on a pro rata share.