

Bill No. 5182

Ordinance No. \_\_\_\_\_

Requested by: Amanda Brauer

Sponsored by: Matt Swanson

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF WENTZVILLE FOR DESIGN AND RIGHT-OF-WAY FOR THE FUTURE CONSTRUCTION OF DAVID HOEKEL PARKWAY PHASE 3

WHEREAS, Ordinance 95-185 provides that the County Executive, in consideration of the recommendations of the Road Board submit a three-year Transportation Improvement Plan to the County Council; and

WHEREAS, the 2023-2025 Transportation Improvement Plan provides for the commitment of the Transportation Improvement Tax to projects for these years and was approved by Ordinance 22-093; and

WHEREAS, the 2023-2025 Transportation Improvement Plan included the approval of County Highway project David Hoekel Parkway Phase 3 and the 2023 budget funding for such project; and

WHEREAS, the City of Wentzville has agreed to proceed with the project as outlined in County Highway's 2022 application; and

WHEREAS, the County Highway Department has relinquished the 2023 budget funds related to the David Hoekel Parkway

Phase 3 project; and

WHEREAS, the City of Wentzville has applied for David Hoekel Parkway Phase 3 project; and

WHEREAS, it is necessary for the funds previously approved David Hoekel Parkway Phase 5 be allocated to the City of Wentzville David Hoekel Parkway Phase 3; and

WHEREAS, it is necessary for St. Charles County to enter into intergovernmental agreements with various jurisdictions for road improvements provided in the three-year Transportation Improvement Plan; and

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 intergovernmental agreement with the City of Wentzville to provide the funding requested by the City of Wentzville to support the construction of David Hoekel Parkway Phase 3.

Section 2. The intergovernmental agreement between the County and the City of Wentzville shall be in substantially the same form as **EXHIBIT 1**, attached hereto and incorporated herein by reference.

Section 2. Compliance with all the terms of the agreements authorized by this ordinance shall be the responsibility of the Roads and Traffic Manager.

Section 3. 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 4. This ordinance shall be in full force and effect from and after the date of its passage and approval. Each agreement with another political subdivision shall not be valid until after passage of an authorizing ordinance or resolution of the governing body of that political subdivision, as required by Chapter 70 of the Revised Statutes of the State of Missouri.

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DATE PASSED

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DATE APPROVED BY COUNTY EXECUTIVE

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CHAIR OF THE COUNCIL

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COUNTY EXECUTIVE

ATTEST:

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COUNTY REGISTRAR

# EXHIBIT 1

## AGREEMENT BY AND BETWEEN ST. CHARLES COUNTY, MISSOURI AND THE CITY OF WENTZVILLE FOR USE OF ST. CHARLES COUNTY TRANSPORTATION SALES TAX FUNDS FOR PROPOSED IMPROVEMENTS FROM WEST MEYER ROAD TO US 61

This agreement is entered into by St. Charles County, Missouri, hereinafter referred to as “County” and City of Wentzville, 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 extensions to **David Hoekel Parkway** for efficient traffic flow and for orderly development, which has been generally organized into phases, specifically:

Phase 3 – West Meyer Road to North Pointe Prairie Road

Phase 5 – North Pointe Prairie Road to US 61

Together, these phases of David Hoekel Parkway improvements shall be considered the “Project.”

The parties hereto agree as follows:

### SECTION ONE PREAMBLE

The County Executive has been authorized by Ordinance \_\_\_\_ - \_\_\_\_ to execute this agreement with the Municipality, and the Municipality has authorized the execution of this Agreement by Ordinance \_\_\_\_\_ for the use beginning in fiscal year 2023 of St. Charles County Transportation Sales Tax funds for improvements to the Project in an amount not to exceed **\$2,830,000.00** (“County Contribution Amount”).

### SECTION TWO SCOPE OF WORK AND COUNTY FINANCIAL CONTRIBUTION

- A. The Municipality shall be responsible for the Scope of Work, as outlined in Paragraph B below, necessary to prepare construction and bid documents for the Project, which shall include road improvements substantially similar to those described in the Municipality's Road Board Application RB23-000005 originally dated March 31, 2023 and attached hereto as **Exhibit A** (hereinafter, "Application").
- B. The Scope of Work shall include: **(1) preparation of design plans and (2) purchase of right-of-way.**
- C. The total cost of the Scope of Work is estimated as **\$3,150,000.**
- D. The Municipality will be reimbursed by the County for **90%** of actual costs, up to a maximum of the County Contribution Amount. The Municipality will be responsible for the remainder of actual costs not reimbursed by others including those that exceed the estimate recited above and any decorative enhancements.

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## SECTION THREE PLAN SUBMISSION AND REVIEW

### A. Conceptual Plans.

1. Conceptual Plans Submittal. Prior to proceeding with any drafting of preliminary construction plans, the Municipality shall submit to the County Roads and Traffic Division Conceptual Plans for approval.
  - i. Conceptual Plans shall include, at minimum, a location sketch of proposed roadway, pedestrian, and bicycle improvements.
2. Review by the County. The County Roads and Traffic Department will provide comments for the Municipality to address. Upon receipt of comments, the Municipality must provide the following:
  - i. Confirm that revisions will be made with the next plan submittal and/or specific clarification as to why revisions will not be made.
3. Approval of Conceptual Plans. Once the County Roads and Traffic Department reviewer has accepted that all comments have been sufficiently addressed and/or reasons why any comment will not be addressed, the County Roads and Traffic Manager shall provide a letter of approval of the Conceptual Plans for the Municipality to proceed with preliminary design.

### B. Preliminary Plans

1. Preliminary Plan Submittal. Prior to proceeding with right-of-way acquisition and/or final design, the Municipality shall submit to the County Roads and Traffic Division Preliminary Plans for approval.
  - i. Preliminary Plan Submittal shall include all available preliminary plans, including Current Engineer's Estimate.
2. Review by the County. The County Roads and Traffic Department will review to ensure all comments were addressed from the Conceptual Phase and may also provide additional comments for the Municipality to address. Upon receipt of any additional comments, the Municipality must provide the following:
  - i. Confirm that revisions will be made with the next plan submittal and/or specific clarification as to why revisions will not be made.
3. Approval of Preliminary Plans. Once the County Roads and Traffic Department reviewer has accepted that all comments have been sufficiently addressed and/or reasons why any comment will not be addressed, the County Roads and Traffic Manager shall provide a letter of approval of the Preliminary Plans for the Municipality to proceed with land acquisition and final design.

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- C. Right-of-Way Plans. If Right-of-Way is required for the project, the Municipality shall submit to the County Roads and Traffic Division Right-of-Way Plans to keep staff informed of project progress and for our department records only.
- D. Draft Final Plans.
1. Draft Final Plan Submittal. Prior to proceeding with bidding for construction, the Municipality shall submit to the County Roads and Traffic Division Draft Final Plans for approval.
    - i. Final Plans shall include the entire final draft set of plans, including Current Final Engineer's Estimate.
  2. Review by the County. The County Roads and Traffic Department will review to ensure all comments were addressed from the Preliminary Phase and may also provide additional comments for the Municipality to address. Upon receipt of any additional comments, the Municipality must provide the following:
    - i. Confirm that revisions will be made with final PS&E submittal and/or specific clarification as to why revisions will not be made.
  3. Approval of Draft Final Plans. Once the County Roads and Traffic Department reviewer has accepted that all comments have been sufficiently addressed and/or reasons why any comment will not be addressed, the County Roads and Traffic Manager shall provide a letter of approval of the Draft Final Plans for the Municipality to proceed with bidding.
- E. Final Signed PS&E Plans. Once all final reviews have been completed and the Municipality proceeds to bid the project to construction, the Municipality shall submit all final signed/sealed plans and bid documents to the County Roads and Traffic Division for our department records. Upon award of project to the Contractor, the Municipality shall submit bid tabs and final bid award amount.
- F. Plan Submission Format. All Plan Submissions described above shall be submitted as an electronic copy (pdf format). Electronic submission can be provided via email (20MB limit). Anything over that limit shall utilize the County's file transfer system or any other sufficient document transfer method of the Municipalities preference.
- G. Refusal to Address Plan Comments. If the Municipality refuses to address plan comments during any phase of design, or if responses to comments do not satisfy the County, then the County shall have the right to terminate this Agreement and shall have no obligations to pay under this Agreement, by issuing a written notice of termination pursuant to this Section Three to the Municipality.

### **SECTION FOUR** **MEETING ATTENDANCE**

The Municipality shall have a representative attend the Road Board meetings. This representative should be knowledgeable of the project status, utility conflicts, and funding. The Municipality shall complete

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the project update forms as required for these meetings.

### **SECTION FIVE** **TRAFFIC COUNTS**

In an effort to better understand traffic patterns and how these patterns change with road improvements and development, the County has developed a Travel Demand Model. This model can be used to evaluate the effectiveness of an improvement towards reducing congestion and enhancing regional mobility. To ensure the model accurately represents changes within municipal limits, the Municipality shall provide traffic count and land use information as requested. A minimum of five (5) count locations will be requested on an annual basis. The County reserves the right to terminate this agreement if the Municipality does not provide traffic count data as required in this Section Five.

### **SECTION SIX** **RIGHT-OF-WAY**

The Municipality shall acquire right-of-way and other property interests needed for this Project in accordance with applicable law and the current Missouri Department of Transportation's Local Public Agency Land Acquisition Manual. For any such property interests located in the unincorporated area of the County, Municipality shall only acquire such interests in the County's name. All such property interests acquired within the unincorporated area shall be vested in the County.

### **SECTION SEVEN** **STAFF TIME**

Staff time incurred by the Municipality is not reimbursable from the County and shall not be considered as part of any required Municipality match.

### **SECTION EIGHT** **TERM**

This agreement shall become effective upon execution by all parties hereto and shall continue through the end of the County's 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.

This agreement shall renew automatically for an indefinite number of one-year terms, each beginning on the first and ending on the last day of the County's fiscal year, until the scope of services has been completed unless the agreement is terminated as provided in this Agreement.

### **SECTION NINE** **OTHER FUNDING**

Should any other funds be received by the Municipalities from other sources for the Scope of Work outlined herein, cost covered by those funds shall not be reimbursable by the County.

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## SECTION TEN 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 disclose: The Municipality's failure to disclose any other public funding sources than those listed in the Application already approved by the County Pursuant to this Agreement.
  - c. 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.
  - d. In the event the Municipality fails to start and complete the Project outlined herein, Municipality shall pay damages to the County for failing to deliver the public services or improvements contemplated by this agreement while encumbering public funds and preempting their application to other projects. In the case when the County has made any reimbursement to the Municipality for any costs towards the Project, the Municipality shall reimburse the County back the entire amount the Municipality has received from the County, plus 10% of said amount. In the case the County has not made any disbursement to the Municipality, the Municipality shall forfeit the entire amount it would have otherwise received towards the cost of the project under this Agreement.
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 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



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Municipality at the address stated in Section Twelve 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 ELEVEN** **PROJECT SCHEDULE**

Timely completion is an essential element of this contract, and every effort shall be made to meet the project schedule provided in this agreement. The County and Municipality will review the project schedule on a regular basis to ensure the Scope of Work will be completed by June 30, 2025.

### **SECTION TWELVE** **COST OVERRUNS**

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

### **SECTION THIRTEEN** **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. 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 15<sup>th</sup> 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.

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### **SECTION FOURTEEN** **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 at 201 North Second Street, Suite 560, St. Charles, MO 63301. Notice to the Municipality shall be sent to its City Administrator at 1001 Schroeder Creek Boulevard, Wentzville, MO 63385.

### **SECTION FIFTEEN** **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's employees shall not be considered employees of the County. 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 SIXTEEN** **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. **Nothing within this Agreement shall be construed as a waiver of the County's sovereign immunity.**

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 SEVENTEEN** **AUDIT**

The Municipality's records, including, but not 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

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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 EIGHTEEN** **EXHIBITS**

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

1. Exhibit "A": The Municipality's Road Board Application RB23-000005 originally dated March 31, 2023.
2. Exhibit "B": County Highway's Road Board Application RB22-000012 originally dated March 31, 2022.

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

**EXHIBIT 1**

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\_\_\_\_

CITY OF WENTZVILLE, MISSOURI

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: \_\_\_\_\_