

Bill No. 4711

Ordinance No. _____

Requested by: Amanda Brauer

Sponsored by: Council as a Whole

AN ORDINANCE APPROVING EXECUTION OF COST APPORTIONMENT AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION (“COMMISSION”) TO COORDINATE THE PARTICIPATION OF ST. CHARLES COUNTY IN THE COST OF THE COMMISSION’S PUBLIC IMPROVEMENT FOR I-70 IN ST. CHARLES COUNTY, WHICH INCLUDES MOWING AND LITTER PICK UP ALONG I-70, FROM THE WARREN COUNTY LINE TO THE MISSOURI RIVER, JOB NO. WMSCF18Q

WHEREAS, the Missouri Highways and Transportation Commission has plans for public improvement for I-70 in St. Charles County, from the Warren County line to the Missouri River; and

WHEREAS, the public improvement involves mowing and litter pick up along I-70; and

WHEREAS, the total length of the public improvement is approximately 33 miles; and

WHEREAS, St. Charles County shall remit a check made payable to the Director of Revenue – Credit State Road Fund in the amount of eighty-three thousand three hundred seventy dollars (\$83,370) no later than May 31, 2019; and

WHEREAS, the Missouri Highways and Transportation Commission shall be responsible for the cost of the first 4 of the 6

mowing and litter pickups; and

WHEREAS, upon receipt of funds from St. Charles County, the Commission will issue a change order to its contractor to include the additional 2 mowing and litter pick ups.

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 the Cost Apportionment Agreement between St. Charles County and the Missouri Highways and Transportation Commission for the public improvement along I-70 from the Warren County line to the Missouri River for mowing and litter pick up along I-70.

Section 2. The Cost Apportionment 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 2019.

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: 04/18 (BDG)
Modified: 04/19 (BDG)

Cost Apportionment Agreement
Route: I-70
County: St. Charles
Job No.: WMSCF18Q

**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 (hereinafter, "Entity").

WITNESSETH:

WHEREAS, the Commission owns and maintains I-70 in St. Charles County as part of the State Highway System;

WHEREAS, the Entity is willing to provide assistance in the mowing and litter pick up contract starting at the Warren County line to the Missouri River, 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 I-70, in the County of St. Charles. This public improvement will involve mowing and litter pick up along I-70.

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

along I-70 from the Warren County line to the Missouri River.

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) USE OF RIGHT-OF-WAY: The Entity grants the right to use the right-of-way of public roads, streets, and alleys as necessary for construction and maintenance of said public improvements.

(5) COMMISSION REPRESENTATIVE: The Commission's 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.

(6) MOWING RESPONSIBILITIES: With regard to mowing and litter responsibilities under this Agreement, the parties agree to contribute as follows:

(A) As a result of this Agreement, the parties contemplate 6 mowing and litter pick up events along the corridor identified in (2), above. The Commission will be responsible for the cost of the first 4 of the 6 mowing and litter pick ups. The Entity will be responsible for the cost of the additional 2 mowing and litter pick ups. Upon receipt of the funds identified in (7)(A), below, the Commission will issue a change order to its contractor to include the additional 2 mowing and litter pick ups.

(B) Other than contributing funds as provided in (7)(A), below, the Entity will have no responsibility regarding the mowing and litter pick up.

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

(A) The Entity shall remit a check in the amount of eighty three thousand three hundred seventy dollars (\$83,370) no later than May 31, 2019. This check should be made payable to *Director of Revenue - Credit State Road Fund*. If the Entity fails to make the deposit, the Commission is under no obligation to continue with the project.

(B) If for any reason less than 6 rounds of mowing and litter pick up occur, the Entity would be refunded the savings from the funds deposited in (7)(A), above.

(C) If for any reason a reduction of acreage would occur, the Entity would be refunded the savings.

(D) If for any reason, a negotiated savings with MoDOT's contractor, the Entity would be refunded the savings.

(E) If for any reason, the Entity would participate in litter pick up, the Entity would be refunded the savings.

(F) The savings will be based on 397 acres per round at a cost of seventy-five dollars (\$75) per acre for mowing and thirty dollars (\$30) per acre for litter pick up.

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

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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.

(22) 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.

(23) 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: District Engineer
1590 Woodlake Drive
Chesterfield, MO 63017
Facsimile No.: (573) 522-6475

Entity to: County Executive
St. Charles County
201 N. Second Street
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

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title: _____

Ordinance No _____

EXHIBIT A

