AN ORDINANCE AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE THE COST SHARE AGREEMENT FOR PROJECT NO. J6S3507 FOR ROUTE I-64 OUTER ROAD (INTERSTATE DRIVE) FROM PROSPECT ROAD TO QUAIL RIDGE PARK, WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR REIMBURSEMENT OF FIFTY (50) PERCENT OF TOTAL PROJECT COST UP TO AND NOT TO EXCEED THE MAXIMUM AMOUNT OF $1,539,500

WHEREAS, the Missouri Highways and Transportation Commission is the agency designated to receive and dispense funds for transportation related projects; and

WHEREAS, the Missouri Highways and Transportation Commission has determined that the work associated with the Cost Share Agreement for I-64 Outer Road (Interstate Drive) from Prospect Road to Quail Ridge Park as identified in Exhibit A, Project Number: J6S3507 is consistent with the goals with said funding; and

WHEREAS, St. Charles County Government has the resources to develop and provide such services through execution of an intergovernmental agreement with the Missouri Highways and Transportation Commission; and

Bill No. 4802 Requested by: Craig Tajkowski Sponsored by: Council as a Whole

 Ordinance No. ________
WHEREAS, the intergovernmental agreement will provide for reimbursement of 50 percent of eligible project costs up to a maximum reimbursement of $1,539,500; and

WHEREAS, Section 70.220 Revised Statutes of Missouri authorizes an intergovernmental agreement 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 or his designee is hereby authorized to execute the Cost Share Agreement with the Missouri Highways and Transportation Commission for work associated with I-64 Outer Road (Interstate Drive) from Prospect Road to Quail Ridge Park as identified in Exhibit A, and by this Project Number: J6S3507.

Section 2. The agreement shall be substantially the same in form and content as that attached hereto as Exhibit A and incorporated herein.

Section 3. The County Executive has indicated that compliance with all the terms of the agreement 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 agreement shall be valid upon the lawful execution of the
agreement by the County Executive or his designee and appropriate officials of the State of Missouri 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

CERTIFICATE OF DIRECTOR OF FINANCE

I certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this ordinance 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.

______________________________
Director of Finance

______________________________
Date

Highway Cost Share Agreement Interstate Drive Prospect Rd to Quail Ridge Park 12-19 O
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 June 20, 2019, 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 J6S3507.

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

I-64 Outer Road (Interstate Drive) from Prospect Road to Quail Ridge Park.

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 contribute as follows:

(A) The Entity shall be responsible for the preparation of detailed right-of-way and construction plans and project specifications. This includes design, acquisition of right of way, relocation of utilities, letting of the project, and inspection of the project. The plans shall be prepared in accordance with and conform to the Commission’s requirements, standards, and specifications. Said plans shall not be changed in concept or scope without prior written approval of the Commission.

(B) The Entity shall acquire any additional necessary right of way 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, as amended and any regulations promulgated in connection with the Act.

(C) The Commission will review and approve the legal descriptions, which are required prior to the deeds being executed by property owners. Commission review of the parcels being acquired is required to ensure the Uniform Act was followed.

(D) The Commission will provide preliminary engineering review, right of way review and construction engineering review.

(E) The Entity shall be responsible for letting the work for the herein improvement, which includes advertising the project for bids and awarding the construction contract. The Entity shall 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 order to carry out the work as contemplated. The Entity shall not award the construction contract without obtaining Commission’s written concurrence in the award. The Entity shall submit all required bid concurrence documentation to the Commission at least two (2) weeks prior to the Commission Meeting in which the Entity seeks to request award. If the Entity does not comply with this provision, the Commission is
under no obligation to continue with this project.

(F) 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, 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.

(G) The Entity shall 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 the current criteria, specifications and requirements established and adopted by the Commission and in accordance with the current applicable manuals and policies of the Commission and the Federal Highway Administration (FHWA), if applicable, which shall be furnished by the Commission upon request, and, absent the foregoing, with manuals and policies of the American Association of State Highway and Transportation Officials (“AASHTO”).

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

(A) The estimated total cost of the Project is three million seventy nine thousand dollars ($3,079,000). The total project cost will include preliminary engineering, preliminary engineering review, right of way, right of way review, utilities, construction, construction engineering and construction engineering review. 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 financial responsibilities is one million five hundred thirty nine thousand five hundred dollars ($1,539,500). The Entity’s responsibility includes six hundred thirty nine thousand five hundred dollars ($639,500) cash and nine hundred thousand dollars ($900,000) Surface Transportation Block Grant (STBG) funds.

(C) The Commission will pay for fifty percent (50%) of the total project cost up to and not to exceed the maximum amount of one million five hundred thirty nine thousand five hundred dollars ($1,539,500). Of this amount, the Commission will provide one million five hundred twenty four thousand five hundred dollars ($1,524,500) from the Commission’s Cost Share program, available in State Fiscal Year 2022 and preliminary engineering review, right of way review and construction engineering review services by MoDOT District personnel estimated to total fifteen thousand dollars ($15,000). The Commission’s Cost Share funds shall only be used on the State Highway System (SHS).

(D) The Entity shall be responsible for the balance of the project in
excess of three million seventy nine thousand dollars ($3,079,000). The Entity shall be responsible for all cost overruns. The Entity shall be responsible for all costs of any work off the SHS. Underruns will be based on the pro rata share.

(E) The Entity may invoice the Commission monthly after the costs are incurred beginning July 1, 2021 or after the project is complete.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) **NO ADVERSE INERENCE:** 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.

(18) **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.

(19) **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.

(20) **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  
Facsimile No.: 573-522-6475  
Email: thomas.blair@modot.mo.gov

Entity to: Steve Ehlmann  
St. Charles County Executive  
201 N. Second Street  
St. Charles, MO 63301  
Facsimile No.: 636-949-7521  
Email: executive@sccmo.org

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

(21) **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
(22) 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 $3,000,000 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.

(23) ROADWAY RELINQUISHMENT: The Entity agrees that it shall enter into a separate Roadway Relinquishment Agreement with the Commission following the Entity’s completion of this Project J6S3507 to transfer ownership and maintenance of I-64 Outer Road (Interstate Drive) from the Commission to the Entity. The Entity shall be responsible for surveying the right of way to be transferred and the development of a Location Survey Plan that serves as the recordable survey plat.

*Remainder of Page Intentionally Left Blank; Signatures and Execution Appear on Following Page*
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:

__________________________________________  By ________________________________
Secretary to the Commission  Title ________________________________

Approved as to Form:

__________________________________________  Approved as to Form:
Commission Counsel  ________________________________
Title:______________________________

Ordinance No ________________________________
Exhibit B

Project Name: I-64 Outer Road (Interstate Drive)

MoDOT Project Number: J6S3507

Description: I-64 Outer Road (Interstate Drive) from Prospect Road to Quail Ridge Park

Total Project Cost Estimate: $3,079,000

Local Entity: St. Charles County

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<th>Current Estimate</th>
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Project Responsibilities:

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Financial Responsibilities:

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<tr>
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<tr>
<td>Cost Share Funds</td>
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<td>Entity</td>
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<tr>
<td>STBG</td>
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</tr>
<tr>
<td>Total:</td>
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<td>100%</td>
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</table>

How are overruns and underruns handled? The Entity, the County, shall be responsible for overruns on the project. Underruns will be based on the pro rata share.