AN ORDINANCE AUTHORIZING EXECUTION OF MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION’S EMERGENCY AIRPORT AID AGREEMENT, PROJECT AIR 196-111A-1, TO REPAIR RUNWAY LIGHTING SYSTEM AND REPLACE PAPIS, AND TO ACCEPT A GRANT IN THE AMOUNT OF $43,380, WHICH REPRESENTS ONE HUNDRED PERCENT (100%) OF FUNDING AVAILABLE FOR QUALIFYING EXPENSES

WHEREAS, pursuant to Section 135.410, Ordinances of St. Charles County, Missouri (“OSCCMo”), St. Charles County has applied for the grant identified in this ordinance; and

WHEREAS, in 2017 the County Council adopted Ordinance 17-035 for the design of the rehabilitation of the airport’s airfield lighting system, and Ordinance 17-078 was adopted to cover Amendment #1 for the construction costs of the improvements; and

WHEREAS, the Missouri Highways and Transportation Commission has offered an Emergency Airport Aid Agreement, Amendment #1 to State Block Grant Agreement, CFDA Number CFDA #20.106 for Project No. 16-111A-2, a copy of which is attached hereto as EXHIBIT A; and

WHEREAS, the Emergency Airport Aid Agreement from the Missouri Highways and Transportation Commission is
for removal and replacement of all airfield lighting and the construction of a new electrical vault which was damaged during the May and June 2019 flooding; and

WHEREAS, during the flooding in 2019, all of the airfield’s 155 runway and taxiway lights went underwater requiring cleaning of the lenses and replacement of the light sockets and bulbs; and

WHEREAS, in addition, the Precision Approach Path Indicator (PAPI) system was damaged beyond repair and needs replacement; and

WHEREAS, the combined cost of the repairs is $43,380, and the state is offering a grant in this amount; and

WHEREAS, this is a 100% State-funded grant and no County matching funds are required;

WHEREAS, providing these services and receiving funds from the FAA provides St. Charles County Airport with improvements and benefits the residents of St. Charles County; and

WHEREAS, the St. Charles County Charter, Article VI, Section 6.208 authorizes the County Council to provide by ordinance any and all procedures for administering the budget that are necessary and that do not conflict with the language contained in the Charter.

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 EXHIBIT A attached hereto, Emergency Airport Aid Agreement, Amendment #1 to State Block Grant Agreement, CFDA #20.106 for Project No. 16-111A-2.

Section 2. Compliance with the terms of Emergency Airport Aid Agreement, Amendment #1 to State Block Grant Agreement, CFDA #20.106 for Project No. 16-111A-2 shall be the responsibility of the Highway Department.

Section 3. This ordinance shall be in full force and effect from and after the date of its passage and approval and such grant agreements shall be valid upon its execution by the appropriate officials of each governmental entity entering into the agreement as required by Chapter 70 of the Revised Statutes of Missouri.

____________________
DATE PASSED

____________________
DATE APPROVED BY COUNTY EXECUTIVE

____________________
CHAIR OF THE COUNCIL

____________________
COUNTY EXECUTIVE

ATTEST:

____________________
COUNTY REGISTRAR
EXHIBIT A

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
EMERGENCY AIRPORT AID AGREEMENT

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

WITNESSETH:

WHEREAS, the Sponsor has applied to the Commission for a grant of funds under §305.230 RSMo; and

WHEREAS, the Commission has agreed to make funds appropriated for the purpose of capital improvements or maintenance of airports immediately available to the Sponsor under the provisions of subsection 5 of §305.230 RSMo with the understanding that such funds will be used for the emergency designated project pursuant to this Agreement for only the purposes specifically described as immediately follows and in this Agreement:

Repair Runway Lighting System and Replace PAPIs;

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 provide financial assistance to the Sponsor under subsection 5 of §305.230 RSMo, for the emergency designated project to repair the runway lighting system and replace the PAPIs that were damaged by flooding in the spring and summer of 2019.

(2) AMOUNT OF GRANT: The amount of this grant is Forty-Three Thousand Three Hundred Eighty Dollars ($43,380), which represents One Hundred Percent (100%) of the total eligible costs to repair the runway lighting and replace the PAPIs as referenced in Paragraph (1) of this Emergency Agreement that were caused by severe weather. The designation of this grant does not create a lump sum quantity contract, but rather only represents the amount of funding available for qualifying expenses. In no event will Commission provide the Sponsor funding for improvements or work that are not actually performed. The release of all funding under this Agreement is subject to review and approval of all project expenses to ensure that they are qualifying expenses under this program.

(3) PROJECT TIME PERIOD: The project period shall be from July 1, 2019
until June 30, 2020. The Commission's representative may, in writing, extend the project time period for good cause as shown by the Sponsor. The grant funds in paragraph (2) not expended or duly obligated during the project time period shall be released for use in other projects under §305.230 RSMo.

(4) TITLE EVIDENCE TO EXISTING AIRPORT PROPERTY: By signing this Agreement, the Sponsor certifies that it holds satisfactory evidence of title to all existing airport property and avigation easements.

(5) CONTROL OF AIRPORT: The Sponsor agrees to continue to control the airport, either as owner or as lessee, for twenty (20) years following receipt of the last payment from this grant.

(6) WITHDRAWAL OF GRANT OFFER: The Commission reserves the right to amend or withdraw this grant offer at any time prior to acceptance by the Sponsor.

(7) PAYMENT: Payments to the Sponsor are made on an advance basis. The Sponsor may request incremental payments during the course of a project or a lump sum payment upon completion of the work. However, this advance payment is subject to the limitations imposed by paragraph (7)(B) of this Agreement.

(A) The Sponsor may request payment at any time subsequent to the execution of this Agreement by both parties. Requests for reimbursement shall be supported with invoices. After the Sponsor pays incurred costs, copies of checks used to pay providers must be submitted to the Commission.

(B) It is understood and agreed by and between the parties that the Commission shall make no payment which could cause the aggregate of all payments under this Agreement to exceed ninety percent (90%) of the maximum state (Aviation Trust Fund) obligation stated in this Agreement or eighty-one percent (81%) of actual total eligible project cost, whichever is lower, until the Sponsor has met and/or performed all requirements of this grant Agreement to the satisfaction of the Commission.

(C) Within ninety (90) days of final inspection of the project funded under this grant, the Sponsor shall provide to the Commission a final payment request and all financial performance and other reports as required by the conditions of this grant.

(D) If the Commission determines that the Sponsor was overpaid, the amount of overpayment shall be remitted to the Commission by the Sponsor.

(E) If the Sponsor is able to obtain other federal emergency funding to cover the cost of these emergency repairs, the Sponsor shall repay the Commission the funds issued under this Agreement.

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(8) **AUDIT OF RECORDS:** The Sponsor 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.

(9) **FINANCIAL SUMMARY:** Upon request of the Commission, the Sponsor shall provide to the Commission a financial summary of the total funds expended. The summary must show the source of funds and the specific items for which they were expended.

(10) **NONDISCRIMINATION CLAUSE:** The Sponsor shall comply with all state and federal statutes applicable to the Sponsor relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. §2000d and §2000e, et seq.); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. §12101, et seq.).

(11) **CANCELLATION:** The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the Sponsor 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 Sponsor.

(12) **LACK OF PROGRESS:** Any lack of progress which significantly endangers substantial performance of the project within the specified time shall be deemed a violation of the terms of this Agreement. The determination of lack of progress shall be solely within the discretion of the Commission. The Commission shall notify the Sponsor in writing once such a determination is made.

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

(15) **WORK PRODUCT:** All documents, reports, exhibits, etc. produced by the Sponsor at the direction of the Commission and information supplied by the Commission shall remain the property of the Commission.

(16) **CONFIDENTIALITY:** The Sponsor shall not disclose to third parties confidential factual matters provided by the Commission except as may be required by statute, ordinance or order of court, or as authorized by the Commission. The Sponsor shall notify the Commission immediately of any request for such information.
(17) **NONSOLICITATION:** The Sponsor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Sponsor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

(18) **DISPUTES:** Any disputes that arise under this Agreement shall be decided by the Commission or its representative.

(19) **INDEMNIFICATION:**

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

(B) The Sponsor will require any contractor procured by the Sponsor 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.

(20) **NOTIFICATION OF CHANGE:** The Sponsor shall immediately notify the
Commission of any change in conditions or law which may significantly affect its ability to perform the project in accordance with the provisions of this Agreement.

(21) **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 Sponsor and the Commission.

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

(23) **BANKRUPTCY:** Upon filing for any bankruptcy or insolvency proceeding by or against the Sponsor, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the Sponsor responsible for damages.

(24) **COMMISSION REPRESENTATIVE:** The Commission's assistant chief 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.

(25) **SAFETY INSPECTION:** The Sponsor shall eliminate all deficiencies identified in its most recent safety inspection letter. If immediate elimination is not feasible, as determined by the Commission, the Sponsor shall provide a satisfactory plan to eliminate the deficiencies.

(26) **AIRPORT USE:** The Sponsor agrees to operate the airport for the use and benefit of the public. The Sponsor further agrees that it will keep the airport open to all types, kinds, and classes of aeronautical use on fair and reasonable terms without discrimination between such types, kinds and classes. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Commission. Otherwise, at no time shall the airport be closed to accommodate a non-aeronautical event or activity.

(27) **SAFE OPERATION OF AIRPORT:** The Sponsor agrees to operate and maintain in a safe and serviceable condition the airport and all connected facilities which are necessary to serve the aeronautical users of the airport other than facilities owned or controlled by the United States. The Sponsor further agrees that it will not permit any activity on the airport's grounds that would interfere with its safe use for airport purposes. Nothing contained in this Agreement shall be construed to require that the airport be operated for aeronautical uses during temporary periods when snow, ice, or other climatic conditions interfere with safe operations.

(28) **RESPONSIBILITY FOR PROJECT SAFETY:** During the full term of the project, the Sponsor shall be responsible for the installation of any signs, markers, or
other devices required for the safety of the public. All markers or devices required on
the airport will conform to Federal Aviation Administration (hereinafter, "FAA")
regulations or specifications that may apply. The Sponsor shall issue, through the
applicable FAA Flight Service Station, any and all Notices to Airmen that may be
required.

(29) PROMPT PAYMENT: The Commission and the Sponsor require all
contractors to pay all subcontractors and suppliers for satisfactory performance of
services in compliance with Section 34.057 RSMo, Missouri's prompt payment statute.
Pursuant to section 34.057 RSMo, the Commission and the Sponsor also require the
prompt return of all retainage held on all subcontractors after the subcontractors' work is
satisfactorily completed, as determined by the Sponsor and the Commission.

(30) STATE WAGE LAWS: The Sponsor and its subcontractors shall pay the
prevailing hourly rate of wages for each craft or type of worker required to execute this
project work as determined by the Department of Labor and Industrial Relations of
Missouri, and they shall further comply in every respect with the minimum wage laws of
Missouri. The Sponsor shall take those acts which may be required to fully inform itself
of the terms of, and to comply with, any applicable state wage laws.

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

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

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By: __________________________
Title: ________________________

ATTEST:

______________________________
Secretary to the Commission

APPROVED AS TO FORM:

______________________________
Commission Counsel

COUNTY OF ST. CHARLES

By: __________________________
Title: ________________________

ATTEST:

______________________________

APPROVED AS TO FORM:

______________________________
Title:                        

Ordinance No. ____________________
(if applicable)