AN ORDINANCE AUTHORIZING THE COUNTY EXECUTIVE OR HIS DESIGNEE TO EXECUTE A BUILDING LEASE AGREEMENT WITH THE CITY OF WENTZVILLE, MISSOURI FOR A PORTION OF THE PREMISES LOCATED AT 1605 WENTZVILLE PARKWAY

WHEREAS, the City of Wentzville, Missouri and St. Charles County, Missouri have agreed to enter into a Building Lease Agreement for a portion of the premises located at 1605 Wentzville Parkway which is the former location of the St. Charles County Department of Emergency Communications, Dispatch and Alarm; and

WHEREAS, the Building Lease Agreement between the parties outlines the duties of the City of Wentzville, Missouri and St. Charles County, Missouri; and

WHEREAS, it is in the public interest for St. Charles County to participate in the Building Lease Agreement with the City of Wentzville as it will benefit residents of St. Charles County; and

WHEREAS, Chapter 70, Revised Statutes of Missouri, authorizes intergovernmental agreements 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 Building Lease Agreement with the City of Wentzville, Missouri related to a portion of the premises located at 1605 Wentzville Parkway in Wentzville, Missouri.

Section 2. The Building Lease Agreement shall be substantially the same in form and content as that attached hereto as EXHIBIT A.

Section 3. Compliance with all the terms of the Building Lease Agreement shall be the responsibility of the St. Charles County Executive’s office.

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

_______________________________________
DATE PASSED

_______________________________________
DATE APPROVED BY COUNTY EXECUTIVE

____________________________
CHAIR OF THE COUNCIL

____________________________
COUNTY EXECUTIVE

ATTEST:

____________________________
COUNTY REGISTRAR
BUILDING LEASE AGREEMENT

between

ST. CHARLES COUNTY, MISSOURI,

and

THE CITY OF WENTZVILLE, MISSOURI

for

A PORTION OF THE PREMISES LOCATED AT 1605 WENTZVILLE PARKWAY
This BUILDING LEASE AGREEMENT (the "Lease") is made this ____ day of ___________________, 2020, by and between the following parties:

1. ST. CHARLES COUNTY, MISSOURI (the "County"), a constitutional charter county and political subdivision of the State of Missouri; and

2. CITY OF WENTZVILLE, MISSOURI (the “City”), a fourth-class city and political subdivision of the State of Missouri.

In consideration of the mutual obligations of the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
PREMISES, TERM, RENT, OTHER CONSIDERATION AND UTILITIES

Section 1.1. Description of Premises. The County hereby leases to City and City hereby leases from the County the portions of the building located at 1605 Wentzville Parkway, Wentzville, Missouri 63385 (the “Building”) and described as “Primary Leased Space, 2,952 sft” (hereafter the “Leased Premises”), and a non-exclusive right along with the County to use the area of the building cross-hatched in green as “Shared Space, 1,748 sft” in Exhibit A, which is attached hereto and incorporated by reference, and the parking lot on the property. City’s rights are subject to all restrictions, encumbrances, covenants, easements and rights-of-way of record and applicable zoning regulations including, but not limited to, rights of ingress and egress. The County represents to the City that the Leased Premises are safe in good order and repair, including but not limited to all HVAC systems, plumbing, electrical and structural systems and is fit for use as municipal police department detective bureau and related purposes.

Section 1.2. Term of this Lease. This Lease is for a term of five (5) years, commencing on ________________ 1, 2020. At the expiration of the original Lease term, City shall have, at its option, the privilege of renewing this lease for five (5) separate, additional terms of one (1) year each. City shall advise County, in writing, of its intentions with respect to renewal, at least ninety (90) days before expiration of any lease term. However, if no notice is given by either party, the lease will automatically renew and continue to be in effect for the next renewal period, if any. Either County or City may terminate this Lease, whether during the original or a renewal term, by providing written notice to the other party at least six (6) months prior to the end of the then-current original or renewal term.

Section 1.3. Rent. The City shall pay to the County a monthly rent, in advance, in the amount of $2,900.00 on the first day of each month.

Section 1.4. Use of Leased Premises. City shall have the exclusive right to use the Leased Premises as office and related space for its municipal police department detective bureau and related purposes. City and County shall have joint access to the common areas (consisting of
restrooms and a conference room), i.e., the “Shared Space, 1,748 sft” as cross-hatched in green on Exhibit A. City will have lockers within the Leased Premises. County will have lockers in the restrooms. County and City will both have access to the twenty-one (21) parking spaces in the parking lot. Unless there is a dispatch or emergency communications equipment response or a meeting in the Wentzville Conference Room, County expects to have access to three (3) to four (4) spaces for routine maintenance. Once a quarter County Dispatch exercises the back-up equipment for running the Dispatch room for 48 hours. The room also serves as a resource for municipalities which have scheduled or unscheduled outages. During those times there could be five (5) to six (6) dispatcher cars on the lot. City is aware that the remainder of the building is a site of the radio and 911 system equipment and that City will be unable to cut power to the building without scheduling such outage with County through its Department of Emergency Communications. Further, the building is the site of emergency back-up for the Dispatch function of the Department of Emergency Communications and at times may be an active dispatch center. County will have access at all times to the tower behind the building. City shall not park behind the building.

Section 1.5. Utilities. From and after the commencement date of this Lease, the County shall pay all charges for electricity, water, trash collection, gas, internet access via the Gateway Green Light network back to the Wentzville Police Department and all taxes and charges on such utilities which are used on or attributable to the Leased Premises. City shall pay all charges for its cable television or like service.

ARTICLE II
LEASED PREMISES

Section 2.1. Damage by the City to County’s Property. If the City, at any time during the term of this Lease, damages or destroys any portion of the Building or personal property located in the Building owned by the County, the City shall save and hold the County harmless from any and all loss, cost or expense relating to the repair of the damaged portion of the County’s property. In its sole discretion, the County may effect any repairs and receive reimbursement from the City within ninety (90) days, or the County may direct the City to repair the damage within a period determined by the County. Should the City fail to reimburse the County for such damages, or if the City fails to make such repairs as directed by the County, the City may be deemed by the County to be in default.

Section 2.2. Building and Property Maintenance Duties.

(a) The City shall keep and maintain in good order, condition and repair (including any replacement and restoration as is required for that purpose) the Leased Premises. City shall be responsible for any redecorating or painting within the Leased Premises, i.e., the Primary Leased Space in Exhibit A. City shall also be responsible for its own general cleaning and trash removal from the Leased Premises. The City is authorized to use trash dumpster provided by the County.
(b) The City shall keep and maintain the Leased Premises building in a clean, sanitary and safe condition and, at the sole cost and expense of the City, and the City shall comply with all requirements of law, by statute, ordinance or otherwise, affecting the Leased Premises.

(c) The County shall also perform or otherwise pay all charges for pest control, snow removal, generator maintenance, parking lot and common area maintenance, and UPS (Uninterruptible Power Supply) maintenance. The County shall keep and maintain the common areas (Shared Space) of the Building in a clean, sanitary and safe condition. County shall provide a list to City to identify UPS-protected outlets. County will leave the existing power in the raised floor and offices. Data ports currently running to the County Demarcation area will terminated at a location to accommodate a new rack for City in its Demarcation area to be established by the City, or as otherwise directed by City within the Leased Premises.

(d) The County will maintain the exterior walls, roof and structural supports of the Building of which the Leased Premises are a part in good order and repair throughout the initial term and any renewal term of this Lease, and County shall perform the preventative maintenance and repairs for the HVAC, generator, plumbing, hot water, lighting, electrical, gas, and structural systems in the Building.

Section 2.3. Mechanic’s Liens. The City shall have no authority, express or implied, to create or place any lien of any kind or nature whatsoever upon, or in any manner to bind, the fee interest of County or the leasehold interest of the City in the Leased Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with the City, including those who may furnish materials or perform labor for any construction or repairs on the Building. The City covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Leased Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Leased Premises and, to the extent permitted by law, that it will save and hold the County harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, fee title and interest of the County in the Leased Premises under the terms of this Lease. The City agrees to give the County immediate written notice of the placing of any lien against the Leased Premises and, if such lien or encumbrance is not released or discharged within thirty (30) days, the City shall furnish the County with security reasonably satisfactory to the County.

Section 2.4. Access to the Leased Premises and Inspection. The County and its duly appointed agents shall have the right, at all reasonable times and upon reasonable advance notice, to enter the Leased Premises and to examine and inspect the same.

Section 2.5. Alterations, Additions or Improvements to the Leased Premises. During the term of this Lease, the City agrees that no material alterations, additions or improvements to the interior of the Leased Premises, or to any portion of the Building other than the interior, shall be made by the City unless the County will have consented to same in advance in writing. The City shall submit design drawings and material samples for any material alteration, addition or improvement to the County Facilities Management Department prior to commencing
any such work, in sufficient completeness and detail to show that the alteration, addition or improvement will be in general conformance with the provisions of this Lease. Any objection by the County that the design of the alterations, additions or improvements do not appear to be in conformance with this Lease shall be delivered to the City, in writing, not later than twenty (20) days after the County's receipt of such design drawings from the City. Upon being notified of such a design objection, the City shall make such reasonable changes to the general design of the alterations, additions or improvements to the Leased Premises as are necessary to conform to this Lease. The City shall submit revised design drawings to the County for approval prior to commencing the work. Any further objections of the County to the revised design drawings shall be delivered to the City, in writing, within twenty (20) days after the County's receipt of the revised design drawings.

Section 2.6. Damage to the Leased Premises; Insurance.

(a) County will insure the Building, including the Leased Premises, for fire and allied perils (tornado, lightning, water, etc.). City shall be responsible for maintaining general liability and property damage insurance coverage insuring its interior space within the Leased Premises including its contents and equipment.

(b) The City will maintain, at all times during the term of this Lease, the following minimum amounts of automobile, general liability, and property damage insurance coverage: $1,000,000 for bodily injury or death to any one person and $3,000,000 per occurrence for automobile and general liability coverage; and property damage coverage of at least $1,000,000. A Combined Single Limit Policy in the amount of $3,000,000 is an acceptable alternative. Automobile coverage must include non-owned vehicles. The Automobile and General Liability policies shall be endorsed to include the County as an additional insured and provide for thirty (30) days advance written notice of any material change. A Waiver of Subrogation in favor of the County shall be endorsed on the respective policies. The required insurance shall be primary insurance with respect to any other insurance or self-insurance programs maintained by the County.

(c) The City and County shall each maintain worker's compensation as required by the statutes of the State of Missouri (or a qualified self-insurer) and Employer’s Liability covering all City or County personnel at the Building, in an amount no less than $1,000,000.

(d) A certificate of insurance evidencing the foregoing coverage(s) together with a copy of the required endorsements shall be provided to the County or City prior to the commencement date of this Lease.

(e) The City and County may each obtain such other insurance as it deems necessary in its reasonable discretion.

Section 2.7. Exemption from Property Taxes. Both the County as a constitutional charter county and political subdivision of the State of Missouri and the City as a fourth-class city and political subdivision of the State of Missouri are exempt from the payment of real and personal property ad valorem taxes.
ARTICLE III
ASSIGNMENT AND PROHIBITED ACTION

Section 3.1. County's Right to Assign. The County shall have the right to assign or otherwise transfer its rights and obligations under this Lease to any other entity to perform the same functions as the County, and upon such assignment or other transfer, this Lease shall be binding upon and inure to the benefit of such assignee or assignees.

Section 3.2. No Right of City to Assign. The rights, duties and obligations of the City under this Lease shall be not be assignable.

Section 3.3. Prohibited Action. Any attempted mortgaging or placing a deed of trust upon the Leased Premises shall be void and be deemed an Event of Default under Article IV.

ARTICLE IV
DEFAULT AND RE-ENTRY

Section 4.1. Default by the City. The following events shall be deemed to be Events of Default by the City under this Lease:

(a) If the City shall fail to comply with any term, provision or covenant of this Lease, and shall not cure such failure within thirty (30) days after written notice thereof to the City (or such longer period as is expressly set forth herein or in the County's written notice); or

(b) If the City shall desert, abandon or vacate any substantial portion of the Leased Premises for thirty (30) days or longer; or

(c) If the City violates any provision of this Lease of which the County has previously notified the City in writing more than once in any period of twelve (12) consecutive months; or

(d) If the City: (i) makes an assignment or other arrangement for the benefit of creditors or takes any other similar action for the protection or benefit of creditors without the County's consent; (ii) ceases doing business as a going concern; (iii) generally does not pay its debts as they become due; (iv) admits in writing its inability to pay its debts as they become due; (v) takes any action pertaining to dissolution or liquidation; (vi) gives written notice to any governmental body of insolvency, or pending insolvency, or suspension or pending suspension of operations; or (vii) takes any action in connection with any of the foregoing.

Section 4.2. Remedies of the County. Upon the occurrence of any such Event of Default by the City, the County shall have the option to pursue any one or more of the following remedies (as well as any other remedies provided by law or equity) without any further notice or demand whatsoever:
(a) Enter upon and take possession of the Leased Premises without terminating this Lease and without relieving the City of its obligations under this Lease, and expel or remove the City and any other person who may be occupying the Leased Premises or any part thereof and any personal property or trade fixtures located therein, and change or alter the locks and other security devices, without notice to the City and relet the Leased Premises on behalf of the City, at any rental readily obtainable, and receive the rent therefor. The County shall have no obligation to furnish a new key to the City unless and until the City cures all existing defaults and delivers to the County additional security satisfactory to the County to secure the City's performance of its obligations under this Lease. In such event, the City shall pay to the County on demand the expenses of such reletting [as described in Section 4.2(b) hereof], and any deficiency which may arise by reason of such reletting for a period of six months following the City’s expulsion from the Leased Premises. The City shall not be entitled to any excess obtained by the County in reletting over the Rent.

(b) Terminate this Lease forthwith. In the event of such termination, the City shall immediately surrender the Leased Premises to the County and if the City fails to do so, the County may enter upon and take possession of the Leased Premises and expel or remove the City and any other person who may be occupying the Leased Premises or any part thereof, and any personal property or trade fixtures located therein.

(c) Cure any default of the City hereunder and the City shall immediately reimburse the County for the cost thereof.

(d) If this Lease be terminated by summary proceedings or otherwise, or if the Leased Premises is abandoned or becomes vacant, and whether the Leased Premises be relet, the County shall be entitled to recover from the City, and the City shall pay to the County, in addition to any damages becoming due under this Article IV the following: an amount equal to all expenses, if any, including attorney’s fees, incurred by the County in recovering possession of the Leased Premises, (whether or not litigation be commenced in aid thereof).

Section 4.3. Default by the County. The following events shall be deemed to be Events of Default by the County under this Lease:

(a) If the County shall fail to comply with any term, provision or covenant of this Lease, and shall not cure such failure within thirty (30) days after written notice thereof to the County (or such longer period as is expressly set forth herein or in the City's written notice); or

(b) If the County violates any provision of this Lease of which the City has previously notified the County in writing more than once in any period of twelve (12) consecutive months.

Section 4.4. Remedies of the City. Upon the occurrence of any such Event of Default by the County, the City shall have the option to pursue any one or more of the following remedies (as well as any other remedies provided by law or equity) without any further notice or demand whatsoever:
(a) Terminate this Lease forthwith. In the event of such termination, the City shall immediately surrender the Leased Premises to the County and if the City fails to do so, the County may enter upon and take possession of the Leased Premises with no further Rent or other payments being due from City to County.

Section 4.5. Surrender of the Leased Premises. Any items remaining in the Leased Premises on the expiration or termination date of this Lease, shall be deemed abandoned for all purposes and shall, at the County’s option exercised by written notice to the City, become the property of the County and the latter may dispose of the same at the City's expense without liability of any type or nature.

ARTICLE V
COUNTY’S RIGHT OF ENTRY

Section 5.1. Right of Entry. The County reserves the right at all reasonable times during the Term of this Lease for the County or the County’s agents to enter the Leased Premises for the purpose of inspecting and examining the same, and to make such repairs, alterations, improvements or additions as the County may deem necessary or desirable to protect its interests (it being agreed upon between the parties that in the event of an emergency, the County may enter at any time). Except in an emergency, the County shall attempt to notify the City in advance of entering the Leased Premises. If the City shall not be personally present to open and permit an entry into said Leased Premises, at any time, when for any reason an entry therein shall be necessary, the County or the County’s agents may enter the same by a master key, (or in the event of an emergency, may forcibly enter the same), without rendering the County or such agents liable therefore, and without in any manner affecting the obligations and covenants of the City set forth in this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon the County any obligation, responsibility or liability whatsoever for the care, maintenance, safety or repair of the Leased Premises or any part thereof, except as otherwise specifically provided in this Lease.

ARTICLE VI
GENERAL PROVISIONS

Section 6.1. Quiet Enjoyment. If the Rent is being paid in the manner and at the time prescribed and the covenants and obligations of the City are being all and singularly kept, fulfilled and performed, the City shall lawfully and peaceably have, hold, possess, use, occupy and enjoy the Leased Premises so long as this Lease remains in force, without hindrance, disturbance or molestation from the County, subject to the specific provisions of this Lease.

Section 6.2. Waiver. No failure to exercise, nor any delay in exercising any right, power or remedy hereunder by the County shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right. Waiver by the County of any default, breach or failure of the City under this Lease shall not be construed as a waiver of any subsequent or
different default, breach or failure. In the case of a breach by the City of any of the covenants or undertakings of the City, the County nevertheless may accept from the City any payment or payments hereunder without in any way waiving the County’s rights with respect thereto as herein provided or any rights or remedies available at law or in equity by reason of any other breach or lapse which was in existence at the time such payment or payments were accepted by the County.

Section 6.3. Force Majeure. Neither the County nor the City nor any successor in interest shall be considered in breach or default of their respective obligations under this Lease, and times for performance of obligations hereunder shall be extended, in the event of any delay, experienced during the construction period, directly caused by force majeure, including, without limitation, damage or destruction directly to the Leased Premises by the following: fire or casualty; condemnation; strike; lockout; civil disorder; terrorist activities, war; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other causes beyond the parties' reasonable control. Force majeure shall also include any litigation, court order or judgment resulting from any litigation affecting the validity of this Lease; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or unreasonably sustained by the County. The party claiming such event of force majeure must notify the other parties in writing that they are claiming force majeure relief within 10 days of the commencement of such claimed event of force majeure.

Section 6.4. Notices. Any notice, demand or other communication required by this Lease to be given by each party hereto to any other party shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, or delivered personally:

(a) In the case of the County, to:

St. Charles County
100 North Third Street, Suite 318
St. Charles, Missouri 63301

Attention: County Executive

with a copy to:

St. Charles County
100 North Third Street, Suite 216
St. Charles, Missouri 63301

Attention: County Counselor

(b) In the case of the City, to:

City of Wentzville
1001 Schroeder Creek Boulevard
Wentzville, Missouri 63385

Attention: City Administrator

with a copy to:

James C. Hetlage, Esq.
City Attorney
Lashly & Baer, P.C.
714 Locust Street
St. Louis, Missouri 63101

or to such other address or contact person with respect to any party as that party may, from time to time, designate in writing and forward to the other parties as provided in this Section. Said notices shall be deemed received on the third business day after deposit in the United States mail if such notice was placed in the United States mail, or on the actual date such notice is delivered if such notice was delivered by any other means.

Section 6.5. Release and Indemnification.

(a) The indemnifications and covenants contained in this Section shall survive termination or expiration of this Lease.

(b) The City agrees that neither the County, or any of its governing body members, officers, agents, servants and employees shall be liable for any loss, injury, death, or damage occurring at, or resulting from any defect in the construction or operation of, the Leased Premises, including, but not limited to, location of hazardous wastes, hazardous materials or other environmental contaminants on the Leased Premises (hereinafter “City Claims”). The City further releases, indemnifies, and agrees to hold harmless the County, its governing body members, officers, agents, servants and employees against all City Claims, including all costs of defense, including attorney’s fees, expert witness fees, and litigation expenses.

(c) The County, or its governing body members, officers, agents, servants and employees shall not be liable for any damage or injury to the persons or property of the City or its officers, agents, servants or employees or any other person who may be located on, or in any way involved with, the Leased Premises.

(d) All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the County, and not of any of its respective governing body members, officers, agents, servants or employees in their individual capacities.

(e) No elected or appointed official, employee or representative of the County shall be personally liable to the City in the event of a default or breach by any party under this Lease.
(f) The City releases from, and covenants and agrees that the County and its governing body members, officers, employees, agents and independent contractors shall not be liable for, and agrees to indemnify and hold the County or its governing body members, officers, employees, agents and independent contractors harmless from and against any and all suits, claims and cost of attorney’s fees (other than suits, claims and cost of attorney’s fees resulting from the sole negligence or willful misconduct of the County and its governing body members, officers, employees, agents and independent contractors), resulting from, arising out of, or in any way connected with: (1) this Lease, (2) the negligence or willful misconduct of the City, its employees, agents or independent contractors in connection with the management of the Leased Premises, (3) the compliance by the City with all applicable state, federal and local environmental laws, regulations and ordinances, (4) the operation of all or any part of the Leased Premises, or (5) negotiations, inspections, acquisitions, preparations, construction, leasing, operations, and other activities of the City or its agents in connection with or relating to the Leased Premises.

Section 6.6. Good Faith. The parties agree to use and exercise good faith in connection with the implementation of the terms and provisions of this Lease.

Section 6.7. Choice of Law and Venue. This Lease shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State of Missouri for all purposes and intents. All parties voluntarily submit to the jurisdiction and venue of the Circuit Court of St. Charles County, Missouri.

Section 6.8. Entire Agreement; Amendment. The parties agree that this Lease constitutes the entire agreement among the parties and that no other agreements or representations have been made by the parties. This Lease shall be amended only in writing and effective when signed by the authorized agents of the parties.

Section 6.9. Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

Section 6.10. Severability. In the event any term or provision of this Lease is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

Section 6.11. Time of the Essence. The parties hereto agree that time and exact performance are of the essence under this Lease.

Section 6.12. Enforcement of Lease. The parties agree that irreparable damage will occur if any provision of this Lease is not performed in accordance with its specific terms or is otherwise breached. It is accordingly agreed that the parties shall be entitled to obtain an injunction or injunctions to prevent breaches of this Lease to enforce specifically the terms and provisions hereof.

IN WITNESS WHEREOF, the County and the City have caused this Lease to be executed in their respective names and their respective seals to be affixed thereto, and attested as to the date
first above written.

"COUNTY"

ST. CHARLES COUNTY, MISSOURI

By ________________________________________________
        Steve Ehlmann, County Executive

ATTEST: __________________________________________
        Brenda Hinton, County Registrar

"CITY"

CITY OF WENTZVILLE, MISSOURI

By ________________________________________________
        Nickolas Guccione, Mayor

ATTEST: __________________________________________
        Kathryn Bowman, City Clerk