AN ORDINANCE APPROVING AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR IMPROVEMENTS NEEDED TO REDUCE CONGESTION ON I-70 FROM CAVE SPRINGS BOULEVARD TO FAIRGROUNDS ROAD

WHEREAS, the Missouri Department of Transportation (MoDOT) has identified improvements needed to reduce congestion on I-70 from Cave Springs Boulevard to Fairgrounds Road; and

WHEREAS, the stretch of the I-70 corridor from Cave Springs Boulevard to Fairgrounds Road is one of the first segments of interstate highway system constructed in the country. It has been upgraded over time, but the basic configuration has not changed significantly, and it can no longer meet the traffic demand requirements. The corridor has experienced ever increasing congestion along the mainline alignment and significant congestion at both the Cave Springs Road and Zumbehl Road interchanges as the adjacent area has continued to develop; and

WHEREAS, these improvements may include completing the outer roadway connection on the north side of I-70, an overpass between Zumbehl and Cave Springs, and new outer road connectivity for the existing Hawk's Nest overpass. With interchange spacing averaging 1.5 miles in this area, these improvements would provide alternative access points for many residents and remove
significant traffic volumes from the congested interchanges at Zumbehl and Cave Springs. Significant improvements at the Zumbehl and Cave Springs interchanges could remove two signals at each interchange, greatly improving traffic flow. At First Capitol Drive, a DDI concept identified in the study, has already been recommended for CMAQ funding for 80% of its cost.; and

WHEREAS, the cost for these improvements will be shared between the County and MoDOT as provided in the Cost Share Agreement; and

WHEREAS, construction of the improvements can start within this year (2020) should the County decide to finance the funds to be provided by MoDOT.

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 agreement with the Missouri Highways and Transportation Commission that is substantially the same in form and content as EXHIBIT A.

Section 2. The agreement identified above shall be subject to appropriation in budget year 2020.
Section 3. Compliance with all the terms of the agreement authorized in Section 1 shall be the responsibility of the Roads and Traffic Manager.

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

Section 5. 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
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 September 26, 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 in the cost of the Commission's Project J6I3337/J6I3337Z.

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

I-70 from Cave Springs to Fairgrounds Rd

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: The Commission shall be responsible for preparation of plans, specifications and construction for the herein improvements. This includes design, acquisition of right of way, letting of project, and inspection of project. The plans shall be prepared in accordance with and conform to Commission requirements.

(9) FINANCIAL RESPONSIBILITIES: The total cost of the project is estimated at sixty-two million four hundred twenty-seven thousand dollars ($62,427,000). With regard to work under this Agreement, the Entity agrees as follows:

(A) The Entity shall remit a check in the amount of ten million dollars ($10,000,000) no more no less no later than five (5) days prior to the Commission’s advertisement of the project for bids or if this project is approved for Design/Build, the Entity shall remit a check ten (10) days before the advertisement of the Request for Proposal (RFP). 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) The Commission will pay for remaining total project cost, currently estimated at fifty-two million four hundred twenty-seven thousand dollars ($52,427,000). Of this amount, the Commission shall provide a maximum of two million eighty-eight thousand five hundred ninety-six dollars ($2,088,596) in Federal Highway Administration (FHWA) Congestion Mitigation and Air Quality (CMAQ) program funds, forty million three hundred thirty-eight thousand four hundred dollars ($40,338,404) from the St. Louis District’s Statewide Transportation Improvement Program (STIP) and personnel budget and ten million dollars ($10,000,000) from the Commission’s Cost Share program in the manner as follows: two million five hundred thousand ($2,500,000) is available in State Fiscal Year 2021, two million five hundred thousand ($2,500,000) is available in State Fiscal Year 2022, two million five hundred thousand ($2,500,000) is available in State Fiscal Year 2023, two million five hundred thousand ($2,500,000) is available in State Fiscal Year 2024. Commission Cost Share Program funds shall not be used off of the State Highway System.

(C) If the balance of the project cost is in excess of the ten million
dollars ($10,000,000) paid by the County plus the fifty-two million four hundred twenty-seven thousand dollars ($52,427,000) paid by the Commission as provided for above in this Agreement, the Commission will pay for the balance of the project above the estimated total of sixty-two million four hundred twenty-seven thousand dollars ($62,427,000).

(D) Because the Entity has chosen to accelerate the Cost Share funds that are not available until 2022, 2023 and 2024, the Entity shall deposit the seven million five hundred thousand dollars ($7,500,000) no later than five (5) days prior to the Commission’s advertisement of the project for bids or if this project is approved for Design/Build, the Entity shall remit a check ten (10) days before the advertisement of the Request for Proposal (RFP). This check should be made payable to Director of Revenue - Credit State Road Fund. The Commission will reimburse the Entity two million five hundred thousand ($2,500,000) each year when Cost Share funds are available in State Fiscal Year 2022, State Fiscal Year 2023 and State Fiscal Year 2024 but no earlier than August 1, through project number J6I3337Z, regardless of funding levels.

(E) If the Entity adds significant scope, the Entity shall be one-hundred percent (100%) responsible for the cost of the additional scope through a formal contract amendment as stated in Section (3) AMENDMENTS of this Agreement. The determination of what constitutes significant scope is within the discretion of the Commission. If the scope adds to the State Highway System, the Entity may be required to take over ownership and maintenance of roads on the State Highway System that the Commission relinquishes to the Entity. Roadway relinquishment will be agreed upon by both the Commission and the Entity through a Missouri Highways and Transportation Commission Roadway Relinquishment Agreement.

(10) COMMINGLING OF FUNDS: The Entity agrees that all funds deposited by the Entity, pursuant to this Agreement with the Commission, may be commingled by the Commission with other similar monies deposited from other sources. Any deposit may be invested at the discretion of the Commission in such investments allowed by its Investment Policy. All interest monies shall be payable to the State Road Fund. If the amount deposited with the Commission shall be less than the actual obligation of the Entity for this project, the Entity, upon written notification by the Commission, shall tender the necessary monies to the Commission to completely satisfy its obligation.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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.
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:

______________________________  By ____________________________
Secretary to the Commission  Title __________________________

Approved as to Form:  Approved as to Form:

______________________________
Commission Counsel

______________________________  Title:____________________________

Ordinance No __________________________
Exhibit A
Exhibit B

**Project Name:** I-70 Improvements

**MoDOT Project Number:** J6I3337/J6I3337Z

**Description:** I-70 from Cave Springs to Fairgrounds Rd

**Total Project Cost Estimate:** $62,427,000

**Local Entity:** St. Charles County

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<th>Current Estimate</th>
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<td>Preliminary Engineering</td>
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**Project Responsibilities:**

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<tr>
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**Financial Responsibilities:**

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<td>CMAQ</td>
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<tr>
<td>Total:</td>
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**How are overruns and underruns handled?** The Commission shall be responsible for overruns and underruns on the project.