

*file*

## Inter-Office Correspondence

MISSOURI HIGHWAY AND TRANSPORTATION DEPARTMENT

---

DATE: October 10, 1990

TO: Jim Roberts  
Division Engineer, Design

FROM: Marcia Mims  
Administrative Secretary

SUBJECT: Commission Secretary  
Agreement  
Page Avenue Extension  
Route D, St. Charles County

Attached, executed on behalf of the Commission by the Assistant Chief Engineer, are five copies of an agreement with St. Charles County regarding the Page Avenue Extension.

The Commission approved this agreement on October 5, 1990, and authorized the Assistant Chief Engineer to execute the documents.

Attachment

*we kept original*

Route D, St. Charles County  
Page Avenue Extension

AGREEMENT

This agreement entered into by and between St Charles County (hereinafter called "County") and the STATE OF MISSOURI, acting by and through the MISSOURI HIGHWAY AND TRANSPORTATION COMMISSION (hereinafter called "Commission"), WHITNESSETH, THAT:

WHEREAS, County and Commission desire to preserve the corridor for the Page Avenue Extension from Route 94 west to Route 40, the general location of the project is shown on the sketch marked Exhibit "A" attached hereto and made a part hereof, and

WHEREAS, County and Commission are willing to cooperate in the implementation of the Page Avenue Corridor Preservation Pilot Program using federal Right-of-Way Revolving Funds.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed as follows:

(1) The Commission will apply for Federal Right of Way Revolving Funds from the Federal Highway Administration in an amount not to exceed \$10,000,000 and will identify and try to purchase properties which will facilitate preserving the corridor for the Page Avenue Extension.

(2) In the event the Commission cannot make a commitment to construct the Page Avenue Extension within ten years the County will reimburse the Federal Highway Administration for those costs incurred up to \$10,000,000 in the acquisition of property deemed necessary to preserve the corridor for the Page Avenue Extension and the Commission will deed all property acquired to the County.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective officers.

Executed by County the 27 day of September, 1990.

Executed by Commission the 10th day of October, 1990.

MISSOURI HIGHWAY AND  
TRANSPORTATION COMMISSION

ATTEST:

(SEAL)

BY

W. C. Sandelust  
Assistant Chief Engineer

Mavis Anne Zivertors  
Secretary

APPROVED AS TO FORM:

Robert Paul  
Counsel

COUNTY OF ST. CHARLES, MISSOURI  
Acting by and through its  
County Commission

BY

Gerald E. Colby  
Presiding Commissioner

ATTEST:

(SEAL)

Nancy C. Becker  
District Commissioner

John P. Penning  
County Clerk

Robert A. Persovic  
District Commissioner

*file*

Inter-Office Correspondence

MISSOURI HIGHWAY AND TRANSPORTATION DEPARTMENT

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DATE: February 10, 1993

TO: Bob Sfreddo  
Division Engineer, Design

Attention: Gary Vandelight  
Field Liaison Engineer

FROM: Betty J. Lynes  
Administrative Secretary

SUBJECT: Commission Secretary  
Amended Agreement - Revolving Funds  
Route D, St. Charles County  
Job No. J6U0803

Attached, executed on behalf of the Commission by the Assistant Chief Engineer, are five copies of an amended agreement with St. Charles County which increases the maximum amount of the revolving funds from \$10 million to \$15 million.

The Commission approved the original contract on October 5, 1990 and the supplemental agreement on January 8, 1993, and authorized the Assistant Chief Engineer to execute the document. The original has been retained for filing

Attachments

AMENDMENT TO AGREEMENT

This amendment to Agreement entered into by and between St. Charles County (hereinafter "County") and the Missouri Highway and Transportation Commission (hereinafter "Commission").

WITNESSETH:

Now, therefore, in consideration of the mutual covenants contained herein, it is agreed as follows:

1. Purpose: The purpose of this amendment is to amend certain money amounts which appear in an agreement executed by County on September 27, 1990 and executed by Commission on October 10, 1990. Said agreement is hereinafter called "Original Agreement".

2. Funds: The amounts of \$10,000,000 mentioned in paragraphs 1 and 2 of the Original Agreement are increased to \$15,000,000 in each paragraph.

3. Full Force and Effect: Except as modified, amended or supplemented herein, the Original Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to agreement to be executed by their respective officers.


Executed by County this 24 day of December, 1992.

Executed by Commission this 9<sup>th</sup> day of February,  
1993.

MISSOURI HIGHWAY AND  
TRANSPORTATION COMMISSION

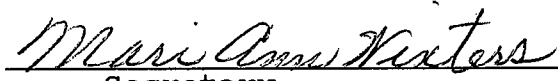
COUNTY OF ST. CHARLES,  
MISSOURI, Acting by and  
through its County Commission

BY:   
Title: Assistant Chief Engineer

BY:   
Presiding Commissioner

ATTEST: (SEAL)

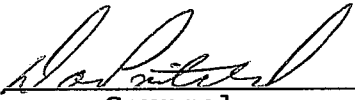
  
District Commissioner

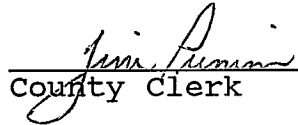
  
Secretary

\_\_\_\_\_  
District Commissioner

APPROVED AS TO FORM:

ATTEST (SEAL)

  
Counsel

  
County Clerk


lw/j1/Rtdamend

# Inter-Office Correspondence

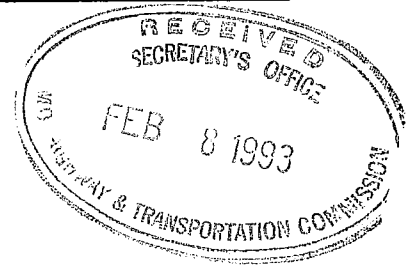
## MISSOURI HIGHWAY AND TRANSPORTATION DEPARTMENT

DATE: February 8, 1993

TO: Mari Ann Winters  
Secretary to the Commission

FROM: Dan Pritchard  
Sr. Assistant Counsel 

SUBJECT: Chief Counsel's Office  
Design  
Contracts Approved as to Form  
Route D, St. Charles County  
Job No. J6U0803  
Amended Agreement with St. Charles County - Revolving Funds



Please find attached copies of the above-noted agreement which I have approved as to form and am forwarding to you for your further handling.

lm

Attachments

Copy: Bob Sfreddo-de

lw/c3/contapp4

Inter-Office Correspondence

1-8-93

MISSOURI HIGHWAY AND TRANSPORTATION DEPARTMENT

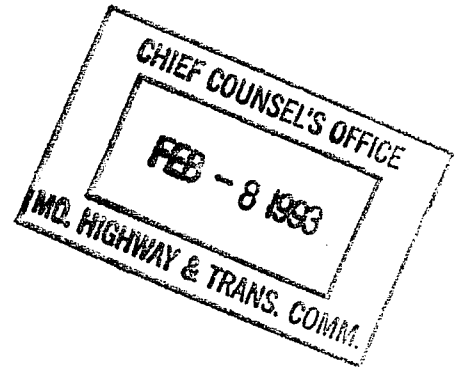
DATE: February 5, 1993

TO: Rich Tiemeyer  
Chief Counsel

ATTENTION: Dan Pritchard

FROM: Gary Vandelicht *GWN*  
Field Liaison Engineer

SUBJECT: Design  
Route D, St. Charles County  
Job No. J6U0803  
Amended Agreement with St. Charles County - Revolving Funds



Attached are six copies of an amendment to the Right of Way Revolving Funds agreement that have been executed by St. Charles County. The amended agreement increases the maximum amount of the revolving funds to \$15 million from \$10 million.

The original agreement was approved by the Commission on October 10, 1990.

*Oct 5, 1990  
pg. 35*

Please approve these as to form and forward them to the commission secretary for execution.

kd

Attachment

*file*

## Inter-Office Correspondence

MISSOURI HIGHWAY AND TRANSPORTATION DEPARTMENT

---

**DATE:** April 8, 1996

**TO:** Bob Sfreddo  
Division Engineer, Design

Attention: Gary Vandelight  
Field Liaison Engineer

**FROM:** Betty J. Lynes  
Administrative Secretary

**SUBJECT:** Commission Secretary  
Page Avenue Agreement  
Route D, St. Charles County  
Job No. J6U1028

Attached, executed on behalf of the Commission by the Deputy Chief Engineer are five copies of an agreement between the Commission and St. Charles County, for the design of Page Avenue.

The Commission approved this agreement at the March 6, 1996, Commission Meeting, and the Deputy Chief Engineer was authorized to execute the document. The original agreement is being retained in this office for our file.

Attachments

# Inter-Office Correspondence

## MISSOURI HIGHWAY AND TRANSPORTATION DEPARTMENT

---

DATE: April 5, 1996

TO: Mari Ann Winters  
Secretary to the Commission

FROM: Gregory W. Schroeder  
Senior Administrative Counsel

SUBJECT: Chief Counsel's Office  
Route D, St. Louis County  
Page Avenue  
Job No. J6U1028

*Gregory W. Schroeder*

I have approved the attached six (6) copies of the above-referenced agreement as to form and I am forwarding them to you for execution. Authorization to execute this agreement was granted at the March 1996 commission meeting.

After these agreements have been fully executed, please retain one and forward all other originals to Gary Vandelight in the Design Division. I will ask Gary to provide one photocopy of the fully executed agreement to me.

Please let me know if I can be of further assistance.

jg

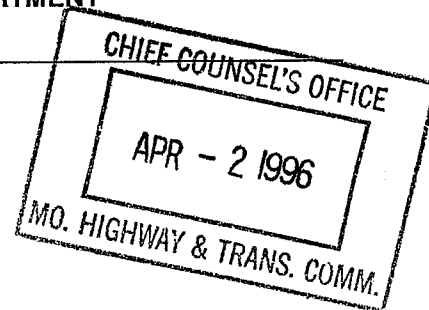
Attachments

Copy: Gary Vandelight-de

*March 6, 1996  
Comm. Meeting*

# Inter-Office Correspondence

## MISSOURI HIGHWAY AND TRANSPORTATION DEPARTMENT



DATE: March 29, 1996

TO: Rich Tiemeyer  
Chief Counsel

FROM: Gary Vandelicht *GWV*  
Field Liaison Engineer

SUBJECT: Design  
Route 364, St. Charles County  
Job No. J6U1028  
Agreement with St. Charles County

Attached are six copies of the agreement between St. Charles County and MHTD for the design of Page Avenue on the above referenced project which have been executed by St. Charles County.

The commission approved authorization to execute this contract at the March commission meeting.

We request your approval as to form and please forward the copies of the agreement to the secretary to the commission to be executed by the chief engineer or assistant chief engineer.

maj

Attachment

CCO FORM:  
Approved: 01/96 (MGB)  
Revised:  
Modified: 03/96 (GWS)

Route D  
St. Charles County  
Job No. J6U1028

## AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highway and Transportation Commission (hereinafter, "Commission") and St. Charles County, Missouri, a municipal corporation (hereinafter, "County").

### WITNESSETH:

WHEREAS, the Commission has proposed to build Route D (Page Avenue Extension) in St. Charles County as part of the State Highway System; and

WHEREAS, the parties desire to proceed with design of Route D, from Route 94 at Mid Rivers Mall Drive to Route 40 near Route N; and

WHEREAS, said project has a priority for services to the general area and the County is willing to provide funds toward the design of said improvements subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations, the parties agree as follows:

(1) PROPOSED IMPROVEMENT: The improvement contemplated herein and designated by the Commission as Job No. J6U1028 provides for the design of Route D starting at a point west of Route 40 at Route N and continuing in an easterly direction 9.0 miles to Route 94 and Route N (Mid Rivers Mall Drive).

The general location of the project is shown on the attachment marked "Exhibit A," which is incorporated in this Agreement by reference.

(2) COUNTY FUNDING: The County agrees to contribute funds to the Commission up to the amount of Two Million Dollars (\$2,000,000.00) for costs incurred in the design of this project. Any cost above \$2,000,000.00 will be incurred by the Commission. If the design cost is less than \$2,000,000.00, the difference will be refunded to the County upon completion of the consultant contract.

(3) COMMISSION'S RESPONSIBILITY: The Commission will assume the responsibility for the performance of the preparation of detailed right of way and final design plans, specifications and cost estimate. The Commission has the right to reject and accept any and all consultant proposals and the proposals shall not be subject to concurrence by the County.

### (4) DEPOSIT OF FUNDS

(A) Starting on March 31, 1996, the County shall deposit with the Commission, quarterly, the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) to pay for the design cost. All deposits under this Agreement shall be made payable to the "Missouri Highway and Transportation Commission - Local Funds."

(B) The County agrees that all funds deposited with the Commission may be commingled with other similar monies deposited from other sources. Any deposits may be invested at the discretion of the Commission in such investments allowed for other state funds. Any interest shall only be accrued on the deposit while unexpended County funds remain in the "Missouri Highway and Transportation Commission - Local Funds" account and then, only to the extent of interest actually earned. All interest monies shall be payable to the fund and credited to the project. Any interest credited to the project and not expended for project costs described in paragraph (3) of this agreement shall be refunded to the County upon completion of the consultant contract.

(C) No interest shall accrue on the County funds that have been expended by the Commission from the "Missouri Highway and Transportation Commission - Local Funds" for the project costs described in paragraph (3) of this agreement.

(5) COMMISSION PAYMENTS: The Commission will pay the total amount back to the County in two installments. The first installment for One Million Dollars (\$1,000,000.00) will be made in January, 2002. The second installment for the remainder up to One Million Dollars (\$1,000,000.00) will be made in January, 2003. Should additional state funding sources become available for the design of this project prior to the year 2002, the pay back will be made when the funds become available.

(6) AMENDMENTS: Any change in this Agreement, whether by modification and/or supplementation, must be accomplished by a formal agreement amendment signed and approved by the duly authorized representative of the County and the Commission.

(7) COMMISSION'S REPRESENTATIVE: The Commission's district engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement.

(8) COUNTY'S REPRESENTATIVE: The County Executive is designated as the County's representative for the purpose of administering the provisions of this Agreement.

(9) ASSIGNMENT: The County 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 County and the Commission shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(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.

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

Executed by the County this 12 day of March, 1996

Executed by the Commission this 5<sup>th</sup> day of April, 1996

MISSOURI HIGHWAY AND  
TRANSPORTATION COMMISSION

ST. CHARLES COUNTY, MISSOURI

*Gay Chulms*  
Title Deputy Chief Engineer

By *Joe O'Connell*  
Title County Executive

*Marilynn Winters*  
Secretary to the Commission

By \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to Form:

Approved as to Form:

*Gregory W. Schroeder*  
Commission Counsel

Title \_\_\_\_\_

Bill No. 709  
Requested by:  
Sponsor:

Craig Tajkowski  
Shirley Sisco

Ordinance No. 96-28

AN ORDINANCE APPROVING AN AGREEMENT WITH THE MISSOURI HIGHWAY AND TRANSPORTATION DEPARTMENT FOR THE CONSTRUCTION OF ROADS.

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 Highway and Transportation Department for a loan from St. Charles County to the Missouri Highway and Transportation Department of \$2,000,000.00 for the design of Phase III of the Page Avenue Extension pursuant to the attached agreement. Said funds will be drawn from the St. Charles County Transportation sales tax funds, beginning in FY 96, in an amount not to exceed \$2,000,000.00 across all fiscal years reflected in the agreement. This agreement with the Missouri Highway and Transportation Department shall be subject to appropriation in the County's 1996 and succeeding year budgets. Failure to appropriate the funds in a fiscal year automatically terminates the agreement at the point at which the appropriation is not passed. The terms for repayment of these funds is set out in Exhibit A.

<u>Project</u>	<u>Project Limits</u>	<u>Amount</u>	<u>Exhibit</u>
Page Avenue Design Loan	Phase III	\$2,000,000.00	A

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

Section 3. Compliance with all the terms of the agreement shall be the responsibility of the Road Board Director.

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

March 11, 1996  
DATE PASSED

March 12, 1996  
DATE APPROVED BY COUNTY EXECUTIVE

Sally A. Fark  
CHAIR OF THE COUNCIL

Joe Atwell  
COUNTY EXECUTIVE

ATTEST:

Joni Pomeroy  
COUNTY CLERK

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.

[Signature]  
Director of Finance

3/12/96  
Date



# MEMORANDUM

Missouri Department of Transportation  
Commission Secretary's Office  
General Headquarters

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**TO:** Gary Vandelight-de

**FROM:** Marcia Mims  
Executive Secretary

**DATE:** May 1, 2000

**SUBJECT:** Design  
Route 364, St. Charles County  
Job No. J6U1028B  
Page Avenue at Woodstone Drive

Attached, executed on behalf of the Commission by the Chief Engineer, are six copies of an Agreement for Construction of Improvements with the city of St. Peters. The original has been retained for filing in this office.

The Chief Engineer has been designated to execute agreements with counties and municipalities for design, right-of-way acquisition, and/or construction of local roads and streets. These documents have been executed in keeping with the Execution of Documents Policy summary dated June 5, 1998.

mm

j:\mimsm\contract\de2co.sam

Attachments



# MEMORANDUM

Missouri Department of Transportation  
Chief Counsel's Office  
General Headquarters

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**TO:** Mari Ann Winters  
Secretary to the Commission

**CC:** Gary Vandelicht - de  
L. Harvey - de

**FROM:** Robert M. Hibbs *RMH*  
Senior Assistant Counsel

**DATE:** April 27, 2000

**SUBJECT:** Chief Counsel's Office  
Design  
St. Charles County, Rt. 364  
Job No. J6U1028B  
Construction Agreement (MHTC/City of St. Peters)

I have approved the attached agreement(s) the above referenced project as to form and I am forwarding it to you for execution.

Please let me know if I may be of further assistance.

mt

Attachments

j:\tellimm\robert\astod.sam



# MEMORANDUM

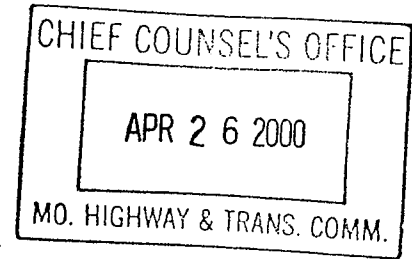
Missouri Department of Transportation  
Design  
General Headquarters

**TO:** Dennis Redel  
Assistant Chief Counsel, Administration

**FROM:** Gary Vandelicht <sup>GNV</sup>  
Liaison Engineer, Design

**DATE:** April 25, 2000

**SUBJECT:** Project Development  
Contract Title: Construction Agreement  
Parties: MHTC and the City of St. Peters  
Route 364, St. Charles County  
Job No. J6U1028B



4/26/00  
X assignment  
to prob.  
E

This serves to request CCO approval as to form, for a construction agreement with the City of St. Peters.

This contract can be executed by the chief engineer, under paragraph 24 (b), Execution of Documents. After approval, please forward the contract to the commission secretary for execution.

If there are any questions, please contact me at 751-8716.

maj

J:\ROEWED\GARY\0425028B

Attachment

CCO FORM:  
Approved: 11/99 (RMH)  
Revised:  
Modified:

Route 364, St. Charles County  
Page Avenue at Woodstone Drive

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
AGREEMENT FOR CONSTRUCTION OF IMPROVEMENTS AT  
PAGE AVENUE AND WOODSTONE DRIVE IN ST. PETERS, MISSOURI

THIS AGREEMENT is entered by the Missouri Highways and Transportation Commission, (hereinafter, "Commission") and the City of St. Peters, a municipal corporation in the State of Missouri (hereinafter, "City").

WITNESSETH:

WHEREAS, the City desires to build Woodstone Drive north and south of Page Avenue in St. Charles County and the Commission desires to build a bridge and one way outer roads along Page Avenue; and

WHEREAS, the Commission is willing to cooperate with the City under the terms and conditions set out in this Agreement; and

WHEREAS, the general location of the improvement is shown on the sketch marked Exhibit "A". Details of the project are shown on the mosaic marked Exhibit "B". Exhibits A and B are attached hereto and incorporated herein by reference.

NOW THEREFORE, in consideration of the mutual promises, covenants, and representations contained herein, the parties agree as follows:

(1) CITY RESPONSIBILITIES: The City shall:

(A) Prepare the detailed plans and specifications for the Woodstone Drive improvements as shown on Exhibit "B".

(B) Secure all right of way for the Woodstone Drive improvements.

(C) Construct Woodstone Drive to the state right of way both north and south of Page Avenue.

(D) Inspect the Woodstone Drive project.

(2) COMMISSION RESPONSIBILITIES: The Commission shall:

(A) Prepare the plans and specifications for the one way outer road system along Page Avenue including the bridge over Woodstone Drive and the traffic signals for the one way outer roads and Woodstone Drive.

(B) Secure the right of way for the Page Avenue improvements including the one way outer roads.

(C) Inspect the improvements along Page Avenue within the state right of way.

(3) COST: The parties recognize that the Page Avenue improvements will be funded by the Commission and the Woodstone improvements outside of the state right of way will be funded by the City.

(4) IMPROVEMENTS: It is understood by the City and the Commission that any improvements placed on the Commission's right of way become the property of the Commission. Effective upon completion of the construction of Woodstone Drive, the Commission shall keep control, maintain as part of the State Highway System any improvements on state right of way.

(5) NONDISCRIMINATION: The City for themselves, their representatives, successors, in interest and assigns, as part of the consideration hereof, do hereby covenant and agree as a covenant running with the property that no person on the grounds of race, color, religion, creed, national origin, sex, or age shall be denied by them the benefits of, or otherwise be subjected to them, to discrimination in the construction or use of the interchange contemplated herein.

The City shall comply with all provisions of Executive Order No. 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, which executive order is incorporated herein by reference and is made a part of this Agreement. This Executive Order promulgates a Code of Fair Practices for the Executive Branch of Missouri Government and prohibits discrimination against recipients of services, and employees or applicants or employment of state contractors and subcontractors, on the grounds of race, color, religion, national origin, sex, age, disability, or veteran status. The City shall also comply with all state and federal statutes applicable to City 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. Sections 2000d and 2000e, et seq.).

(6) FHWA APPROVAL: This Agreement is entered into subject to approval by the Federal Highway Administration ("FHWA").

(7) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved on or between the duly authorized representatives of the City and Commission.

(8) COMMISSION REPRESENTATIVE: The Commission's chief engineer is designated as 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.

(9) 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 upon receipt by personal or facsimile delivery, addressed as follows:

(A) To the City:  
William P. Charnisky, City Administrator  
City of St. Peters  
P.O. Box 9, One St. Peters Centre Blvd.  
St. Peters, Missouri 63376

Facsimile No: (636) 477-9077

(B) To the Commission:  
Stephen Knobbe, District Engineer  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, Missouri 63017-5712

Facsimile No: (314) 340-4119

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that.

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

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

(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) AUDIT OF RECORDS: The City and the Commission 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 either party and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three years from the date of completion of both projects under this Agreement.

(14) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

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

Executed by City this 15<sup>th</sup> day of February, 2000.

Executed by the Commission this 1<sup>st</sup> day of May, 2000.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

By *J. Yarnell*  
Title Chief Engineer

Attest:

*Mari Ann Winters*  
Secretary

Approved as to Form:

*Robert M. Hills*  
Commission Counsel

CITY OF ST. PETERS

By *W. B. Quay*  
Title City Administrator

Attest:

By *Jamie Fischer*  
Title Administrative Coordinator

Approved as to Form:

\_\_\_\_\_  
Title \_\_\_\_\_

j:\hibbsr\contract\peters1.sam

CCO Form:  
Approved: 10/01 (BDG)  
Revised:  
Modified:

Project J6U1028L  
Rte. N Outer Road  
City of O'Fallon, Missouri

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
COST PARTICIPATION AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of O'Fallon, Missouri, a municipal corporation (hereinafter, "City").

WITNESSETH:

WHEREAS, the City desires to accelerate a portion of the Route 364 (Page Avenue Extension) project which consists of constructing a south outer road parallel to Route N between Winghaven Blvd. to Missouri Rte. K; and

WHEREAS, the City is willing to contribute, without reimbursement, the cost of the construction of the project; and

WHEREAS, in addition, the City is willing to accelerate the funding for the Right-of-Way for the project with reimbursement to occur when the Page Avenue phase III project involving this section of road is awarded sometime in the future.

WHEREAS, the Commission is willing to assist in said road project as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

(1) COMMISSION'S RESPONSIBILITY: The Commission bears the following limited responsibility for funding of the roadway project described above as follows:

(A) Reimbursement: The Commission shall reimburse the City 100% of the amount expended by the Commission for the purchase of the R/W necessary to construct the project. The Commission is not responsible and will not pay any interest on money provided by the City to the Commission. If no written notification is otherwise provided, the Commission shall reimburse the City on July 1, 2015. If the award of the Phase III Page Avenue project (Page / Rte. K interchange, now known as J6U1028) has not occurred by this date, the Commission's representative may provide written notification to the City and the Commission's Controller's Office of a later payment date. If the award of the Phase III Page Avenue project (Page / Rte. K interchange, now known as J6U1028) is awarded prior to July 1, 2015, the Commission's representative may provide written notification to the City and the Commission's Controller's Office of an earlier payment date.

(B) The Commission Responsible to Prepare Construction Plans for Project: The Commission shall prepare or have prepared the necessary detailed construction plans for the proposed improvements.

(C) Project Financing Right of Way: The Commission shall use Right of Way funds received from the City for the purpose of paying the costs of Right of Way acquisition of the South Outer Road of Rte. N from Winghaven Blvd. to Missouri Rte. K.

(D) Project Financing Construction: The Commission shall use Construction funds received from the City for the purpose of paying the construction costs of the South Outer Road of Rte. N from Winghaven Blvd. to Missouri Rte. K. If the amount received from the City financing for construction is less than the Contract Award Amount, then the Commission agrees to pay the entire cost of any deficiency from available funds of the Commission. If the amount received is in excess of the Contract Award Amount, the difference will be refunded to the City within 30 days of the award of the Contract.

(E) Advertising for Bids: The Commission shall be responsible for advertising for bids and award of the contract. In the event the Commission deems the responsive bids are excessive in cost, the Commission may reject all bids and cancel this Agreement.

(F) Construction of Project: The Commission shall be responsible for constructing the project in accordance with the plans and specifications. Such responsibility shall include securing any necessary permits for the work.

(2) CITY'S RESPONSIBILITY FOR CONSTRUCTION COST: The City shall finance one hundred percent (100%) plus an additional thirteen percent (13%) of the Final District Construction Estimate. The Final District Construction Estimate will be made available ten (10) weeks before bid letting. The Commission will not reimburse the City any portion of the costs for construction. In the event a court of proper jurisdiction orders the Commission to pay additional money to the Commission's construction contract for any claim for additional compensation, the City shall forward additional funds to fully pay the additional cost to the Commission upon notice given to the City by the Commission.

(3) CITY'S DEPOSIT FOR CONSTRUCTION: The City's deposit of one hundred percent (100%) of the Final District Construction Estimate plus an additional thirteen percent (13%) shall be made by a draft made payable to the "Missouri Department of Transportation - Local Fund." The deposit shall be made prior to project advertisement, which will be five (5) weeks before bid letting. The City agrees that all funds deposited with the Commission may be commingled with other similar monies deposited from other sources. Any deposit may be invested as allowed for other state funds. No interest on said deposit will be credited to the City and no interest will be forwarded by the Commission to the City upon notice given by the Commission to the City.

(4) CITY'S RESPONSIBILITY FOR RIGHT- OF- WAY: The City shall finance one hundred percent (100%) of the Right-of-Way necessary to construct the project. The Commission will reimburse the City for right of way costs as provided in paragraph (1), above. In the event a court of proper jurisdiction orders the Commission to pay additional money for any of the right-of-way to be acquired through the exercise of eminent domain, the City shall forward additional funds to fully pay the additional cost to the Commission upon notice.

(5) CITY'S DEPOSIT FOR RIGHT-OF-WAY: The right-of-way costs are estimated to be Six million dollars (\$6,000,000). The City shall deposit the estimated right-of-way costs by draft made payable to the "Missouri Highways and Transportation Commission – Local Fund" with the Commission's Controller's Office, 105 West Capitol, P.O. Box 270, Jefferson City, Mo 65102-0270. The deposit shall be made by February 18, 2002. Right-of-Way acquisition will not begin until this payment is made and if the City fails to make this deposit, the Commission may cancel this Agreement. If the Commission cancels this Agreement for the City's failure to make the deposit, the City shall reimburse the Commission for all expenses incurred by the Commission prior to the cancellation. In the event that the right-of-way acquisition for this project is less than the six million dollars deposited, the Commission shall refund the City the difference when the project is completed and closed out. In the event the cost of right-of-way acquisition exceeds the City's deposit, the City shall immediately forward the necessary funds to the Commission to fully pay the additional right-of-way costs upon notice given to the City by the Commission. No interest on said deposit will be credited to the City and no interest will be forwarded by the Commission to the City.

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

(7) MAINTENANCE: It is understood by the City that the outer road constructed pursuant to this Agreement will be a part of the state highway system and all future maintenance, construction, or reconstruction of said outer road shall be the responsibility of the Commission. Any improvements placed on the Commission's right-of-way become the property of the Commission. By contributing to the cost of this project, the City gains no interest in the constructed roadway or improvements whatsoever. The Commission shall not be obligated to keep the improvements or roadway in place if the Commission determines removal or modification of the roadway or improvements is in the best interests of the state highway system.

(8) COMMENCEMENT OF WORK: The Commission shall construct the highway in accordance with final detailed plans approved by the Federal Highway Administration (or as they may be changed from time to time by the Commission with the approval of the FHWA). The Commission's reimbursement obligations under this Agreement shall be dependent upon the completion of plans in time to obligate federal funds for such construction, upon approval of the plans by the FHWA, upon the award by the Commission of the contract for the construction, and upon the approval of the award by the FHWA.

(9) FEDERAL HIGHWAY ADMINISTRATION: This Agreement is entered into subject to approval by the Federal Highway Administration, and the Commission's reimbursement obligation under this Agreement is further subject to the availability of federal and state funds for this construction.

(10) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved on or between the duly authorized representatives of the City and Commission.

(11) COMMISSION REPRESENTATIVE: The Commission's District 6 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.

(12) CITY'S REPRESENTATIVE: The City's City Administrator is designated as the City's Representative for the purpose of administering the provisions of the Agreement. The City's Representative may designate by written notice other persons having the authority to act on behalf of the City in furtherance of this agreement.

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

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

(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) 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.

(17) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given upon actual receipt by United States mail, postage prepaid, by courier or other personal delivery, or by facsimile delivery (in compliance with the conditions below), addressed as follows:

(A) Correspondence To the City of O'Fallon:  
Patrick Banger, City Administrator  
100 North Main Street  
O'Fallon, Missouri 63366  
Facsimile No.: (636) 978-4144

(B) Correspondence To the Commission:

District Engineer  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, Missouri 63017-5712  
Facsimile No.: (314) 340-4119

(c) Resource Management  
Missouri Department of Transportation  
105 West Capitol Avenue  
Jefferson City, Missouri 65102  
Facsimile No.: (573) 526-2819

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(18) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(19) SUCCESSORS AND ASSIGNS: The provisions of this Agreement shall apply to and be binding upon the parties executing this Agreement, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including officers, employees, agents, servants, corporations, and any persons acting under, through, or for the parties agreeing hereto.

(20) 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.

(21) 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 City.

(22) SEVERABILITY: If any clause or provision of this Agreement is found to be void or unenforceable by a court or agency of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.

(23) 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.

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

Executed by the City this 29 day of OCTOBER, 2001.

Executed by the Commission this 7<sup>th</sup> day of November, 2001

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

[Signature]  
Title Chief Financial Officer

Mari Ann Winters  
Secretary to the Commission

Approved as to Form:  
[Signature]  
Commission Counsel

CITY OF O'FALLON, MO  
By [Signature]  
Title Mayor

By [Signature]  
Title CITY CLERK

Approved as to Form:  
[Signature]  
Title CITY ATTORNEY

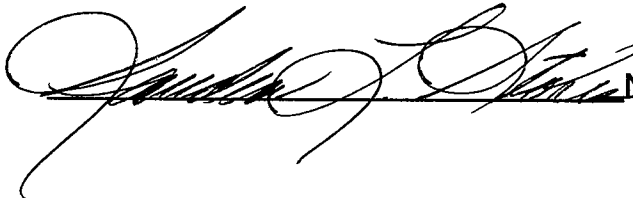
Ordinance Number 4275

**ACKNOWLEDGMENT BY CITY**

STATE OF MISSOURI            )  
                                          )  
COUNTY OF ST. CHARLES    )        ss.

On this 29<sup>TH</sup> day of OCTOBER, 2001, before me appeared PAUL F. BENAUD personally known to me, who being by me duly sworn, did say that he/she is the Mayor of the City of O'Fallon, and that said instrument was signed and sealed on behalf of the City of O'Fallon, and that he/she acknowledged said instrument to be the free act and deed of the City of O'Fallon, and that it was executed for the consideration stated therein and no other.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, on the day and year written above.

 Notary Public, State of Missouri

My Commission Expires:

\_\_\_\_\_  
Sandra L. Stokes  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Charles County  
My Commission Expires: Nov. 11, 2003

**ACKNOWLEDGMENT BY COMMISSION**

STATE OF MISSOURI            )  
                                          )  
COUNTY OF COLE            )        ss.

On this 7<sup>th</sup> day of November, 2001, before me appeared G.A. Goff personally known to me, who being by me duly sworn, did say that he/she is the Chief Financial Officer of the Missouri Highways and Transportation Commission, and that said instrument was signed and sealed on behalf of the Commission by authority of the Missouri Highways and Transportation Commission, and that he/she acknowledged said instrument to be the free act and deed of the said Commission, and that it was executed for the consideration stated therein and no other.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, on the day and year written above.

\_\_\_\_\_ Notary Public, State of Missouri

My Commission Expires:

### MHTC Contract Submittal Form

This form should travel with the contracts. (Cover letter unnecessary.)

Date: September 12, 2001 To: Ingrid Miles - rm From: Linda Harthcock - cs

Date: \_\_\_\_\_ To: \_\_\_\_\_ From: \_\_\_\_\_

Date: \_\_\_\_\_ To: \_\_\_\_\_ From: \_\_\_\_\_

Contract Title:	<u>Cost Participation Agreement</u>		
Contract With Whom:	<u>St. Charles County</u>		
Route: <u>364</u>	County: <u>St. Charles</u>	Job/Project Number:	<u>J6U1028J</u>

I. **Specific MHTC Authority:** Agreement was completed by specific Commission Action on 9/7/01

If completed, skip remaining questions. Attach to contracts for submittal.

II. **Delegation of Authority Policy:**

To view the policy, go to "Commission Secretary" in the MoDOT Policy Manual.

A. General Provision

This contract was contemplated in the FY 2002 budget year. Yes  No

Would this contract represent an actual or perceived conflict of interest for any Commission member? Yes  No  If yes, name of Commissioner. Click Arrow for Options  
Nature of Conflict \_\_\_\_\_

**Check and complete the lettered section below (only one), which cites the authority for execution of this document.**

- B. Statewide Transportation Improvement Program (STIP)  
Type of Contract: Click Arrow for Options
- C. Operating Budget  
Type of Contract: Click Arrow for Options
- D. Funds Transfers and Reimbursement Agreements  
Type of Contract: Click Arrow for Options
- E. Conveyance of Commission Assets  
Type of Contract: Click Arrow for Options
- F. Commission Use of Private and Other Public Assets  
Type of Contract: Click Arrow for Options
- G. Operations  
Type of Contract: Click Arrow for Options

COMMENTS: Ingrid - In the future, please use this form when submitting an agreement for execution. The form may be found in Microsoft Word - FILE, NEW, MODOT, MHTC CONTR.. Thanks.

CCO Form:  
Approved: 6/01 (BDG)  
Revised:  
Modified:

Route 364  
St. Charles County  
Job No. J6U1028J

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
COST PARTICIPATION AGREEMENT**

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

WITNESSETH:

WHEREAS, the Commission has proposed to build Rte. 364 (Page Avenue Extension) in St. Charles County as part of the State Highway System; and

WHEREAS, the parties desire to proceed with final design of Rte. 364, from west of Harvester Road to west of Central School Road; and

WHEREAS, said project has a priority for services to the general area and the County is willing to provide funds toward the design of said improvements subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained in this Agreement, the parties agree as follows:

(1) PROPOSED IMPROVEMENT: The improvement contemplated herein and designated by the Commission as Job No. J6U1028J provides for the design of Rte. 364 starting at a point west of Harvester Road and continuing in a southerly direction along existing Rte. 94 approximately 1.5 miles to a point west of Central School Road. The general location of the project is shown on the attachment marked "Exhibit A," which is incorporated in this Agreement by reference.

(2) COUNTY FUNDING: The County agrees to contribute one hundred percent (100%) of the amount of funds necessary for the final design. The County will deposit with the Commission of Eight Hundred Thousand Dollars (\$800,000) for costs incurred in the preparation of the final design for this project as stated in section 4A. Upon request from the Commissions Representative, the County shall promptly deposit with the Commission any additional funds over the \$800,000 that are incurred for the design. If the cost is less than \$800,000,

the difference will be refunded to the County upon completion of the consultant contract.

(3) COMMISSION'S RESPONSIBILITY: The Commission will prepare, or have prepared by a consultant, final design plans, specifications and cost estimate. The Commission has the right to reject and accept any and all consultant proposals and the proposals shall not be subject to concurrence by the County. In addition, by preparing the final design plans, the Commission is not committing that the plans will actually be used for the construction of the contemplated construction improvement or that the contemplated construction improvement will actually be built.

(4) DEPOSIT OF FUNDS

(A) All deposits under this Agreement shall be made payable to the "Missouri Highways and Transportation Commission – Local Funds." The County will make deposits with the Commission in two installments to pay for final design costs. On Nov. 30, 2001, the County shall make the first installment and deposit with the Commission the sum of \$200,000. On January 31, 2002, the County shall make the second installment and deposit with the Commission the sum of \$600,000. If the County fails to provide the second installment to the Commission, the Commission is under no obligation to proceed with the preparation of the final design plans.

(B) The County agrees that all funds deposited with the Commission may be commingled with other similar monies deposited from other sources. Any deposits may be invested at the discretion of the Commission in such investments allowed for other state funds. Any interest shall only be accrued on the deposit while unexpended County funds remain in the "Missouri Highways and Transportation Commission – Local Funds" account and then, only to the extent of interest actually earned. All interest monies shall be funded to the County upon completion of the consultant contract.

(C) No interest shall accrue on the County funds that have been expended by the Commission from the "Missouri Highways and Transportation Commission – Local Funds" for the project costs described in paragraph (3) of this Agreement.

(5) COMMISSION PAYMENTS: The Commission shall reimburse the County 100% of the amount financed by the County upon the award of the contract for the construction project J6U1028J. The estimated date of the reimbursement is on July 1, 2008. If the award has not occurred by this date, written notification will be provided to the County and the Commission's Controller's office of an alternative date, which will be based upon the award of the contract.

(6) AMENDMENTS: Any change in this Agreement, whether by modification and/or supplementation, must be accomplished by a formal agreement amendment signed and approved by the duly authorized representative of the County and the Commission.

(7) COMMISSION'S REPRESENTATIVE: The Commission's District 6 Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement.

(8) COUNTY'S REPRESENTATIVE: The County Executive is designated, as the County's representative for the purpose of administering the provisions of this Agreement.

(9) NOTICES: All notices or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid, addressed as follows:

(a) If to the Commission:

Missouri Highways and Transportation Commission  
105 West Capitol Avenue, P.O. Box 270  
Jefferson City, Missouri 65102  
Attention: Resource Management

and to:

Missouri Department of Transportation District 6  
1590 Woodlake Drive  
Chesterfield, Missouri 63017  
Attention: District Engineer

(b) If to the County:

County Executive  
Executive Office Building  
100 N. 3<sup>rd</sup> Street  
Suite 318  
St. Charles, MO 63301

and to:

St. Charles County Government  
ATTN: County Road Board Director

201 N. Second Street, Room 423  
St. Charles, Missouri 63301  
Telephone: (636) 949-7490  
Facsimile: (636) 949-7307

All notices given by first class, certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed. A duplicate copy of each notice or other communication given hereunder by any party hereto shall also be given to the other parties. The Commission and the County may from time to time designate, by notice given hereunder to the other such parties, another address to which subsequent notices or other communications shall be sent.

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

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

(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) 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.

(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 County

(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.

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

Executed by the County this 31 day of July, 2001

Executed by the Commission this 10<sup>th</sup> day of September, 2001

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

J. Michael Salden  
Title: **Chief Operating Officer**

ST. CHARLES COUNTY

By Joe Ostwalt  
Title: County Executive

ATTEST:

Mary Ann Winters  
Secretary to the Commission

ATTEST:

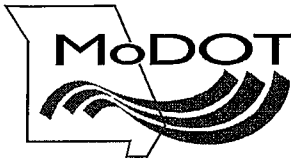
Charlene Johnson  
By \_\_\_\_\_  
Title: County Clerk, Acting

Approved as to Form:

Byron Gambler  
Commission Counsel

Approved as to Form:

By \_\_\_\_\_  
Title: \_\_\_\_\_



# MEMORANDUM

Missouri Department of Transportation  
Resource Management  
Support Center, Jefferson City

100  
08/16  
ASD

**TO:** Bryce Gamblin-cc

**CC:** Patty Purves-rm

**FROM:** Ingrid Miles  
Financial Analyst

*Ingrid*

**DATE:** August 16, 2001

**SUBJECT:** Cost Participation Agreement to Accelerate the final design of Rte 364 (Page Avenue Extension), St. Charles County

Attached are six copies of the above referenced agreement signed by St. Charles County. The Commission will consider approving the agreement at its September meeting. If approved by the Commission, please review, approve as to form and then forward for appropriate execution.

Thank you for your assistance on behalf of the innovative finance program.

Attachments

|

*Miles  
9/10*



## MEMORANDUM

Missouri Department of Transportation  
Chief Counsel's Office

---

**TO:** Mari Ann Winters  
Secretary to the Commission

**Copy To:** Ingrid Miles  
Financial Analyst

**FROM:** Bryce Gambin <sup>df for</sup>  
Assistant Counsel

**DATE:** August 16, 2001

**SUBJECT:** Chief Counsel's Office  
Cost Participation Agreement to Accelerate the final design of Rte. 364  
(Page Avenue Extension), St. Charles County

I have approved the attached agreements for the above referenced projects and am forwarding to you for execution. Thank you for your assistance.

Please let me know if I may be of further assistance.

Attachments

J:\GAMBLB\contracts approved\MilesRM.doc

CCO Form:  
Approved: 5/03 (BDG)  
Revised:  
Modified:

Project J6U1028L  
Rte. N Outer Road  
City of O'Fallon, Missouri

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
FIRST SUPPLEMENTAL AGREEMENT**

THIS FIRST SUPPLEMENTAL AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of O'Fallon, Missouri, a municipal corporation (hereinafter, "City").

WITNESSETH:

WHEREAS, the City and the Commission entered into an agreement dated November 7, 2001, relating to the purchase of right of way and the construction of the South Outer Road of Page Avenue (hereinafter, "Original Agreement"); and

WHEREAS, under the Original Agreement, right of way acquisition costs were estimated to be Six Million dollars (\$6,000,000), but the purchased property plus the condemned properties commissioners awards totaled Ten Million Six Hundred Eighty Four Thousand Fifty-Five dollars (\$10,684,055).

WHEREAS, due to right of way costs being much more expensive than originally anticipated, both parties agree to amend the Original Agreement as provided in this First Supplemental Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree to the following amendments:

(1) COMMISSION'S RESPONSIBILITY: The Commission bears the following limited responsibility for funding of the roadway project described above as follows:

(A) Reimbursement: The Commission shall reimburse the City 100% of the amount deposited by the City for right of way purchase and expended by the Commission for the purchase of the right of way necessary to construct the project. The Commission is not responsible and will not pay any interest on money provided by the City to the Commission. If no written notification is otherwise provided, the Commission shall reimburse the City on July 1, 2015. If the award of the Phase III Page Avenue project (Page / Rte. K interchange, now known as J6U1028) has not occurred by this date, the Commission's representative may provide written notification to the City and the Commission's Controller's Office of a later payment date. If the award of the Phase III Page Avenue project (Page / Rte. K interchange, now known as J6U1028) is awarded prior to July 1, 2015, the Commission's representative may provide written notification to the City and the Commission's Controller's Office of an earlier payment date.

(B) The Commission Responsible to Prepare Construction Plans for Project: The Commission shall prepare or have prepared the necessary detailed construction plans for the proposed improvements.

(C) Project Financing Right of Way: The Commission agrees to presently contribute One Million Eight Hundred Thousand dollars (\$1,848,720.26) from monies available to the Commission towards the purchase of right of way. The Commission shall use right of way funds received from the City for the purpose of paying the costs of right of way acquisition of the South Outer Road of Rte. N from Winghaven Blvd. to Missouri Rte. K.

(D) Project Financing Construction: The Commission shall use construction funds received from the City for the purpose of paying the construction costs of the South Outer Road of Rte. N from Winghaven Blvd. to Missouri Rte. K. The amount of the construction contract award was \$6,312,993.57. The amount previously received from the City is in excess of the actual contract award amount. The difference between the amount deposited by the City, minus the agreed amount held back for right of way purchases, and the award, will be refunded to the City within 30 days of the execution of this amendment. The break down of the refund is as follows:

O'Fallon construction deposit	\$7,913,757.83
Contract Award	- \$6,312,993.57
R/W purchase retained	- \$1,135,334.74
<b>Total refunded to City</b>	<b>\$ 465,429.52</b>

(2) CITY'S RESPONSIBILITY FOR RIGHT- OF- WAY: The City shall finance approximately eighty three percent (83%) of the right of way necessary to construct the project. The Commission will reimburse the City for right of way costs as provided in paragraph (1), above. In the event a court of proper jurisdiction orders the Commission to pay additional money for any of the right-of-way to be acquired through the exercise of eminent domain, the Commission will be responsible to pay the additional cost. If the final right of way cost (through either settlement, jury verdict, or other court order) in the condemnation proceedings is less than the \$10,684,055, the surplus will be shared equally by the Commission and the City until the Commission receives the \$1,848,720.26 put forth for the right of way, then the remaining surplus will go to the City. No interest on said deposit will be credited to the City and no interest will be forwarded by the Commission to the City.

(3) CITY'S FUNDING FOR RIGHT-OF-WAY: The right-of-way costs are estimated to be \$10,684,055. The City shall be responsible for **\$8,835,334.74** of the Right of Way cost. The City deposited \$6,000,000 in October, 2001 and deposited another \$1,700,000 on Feb. 6, 2003. The City shall be responsible for an additional funding amount of \$1,135,334.74 for right of way acquisition. This money shall be obtained by the Commission by deducting the amount from reimbursement to the City under "Project Financing Construction" as mentioned in paragraph (1)(D), above.

(4) ORIGINAL AGREEMENT: Except as amended, modified, or supplemented by this First Supplemental Agreement, terms and conditions of the

Original Agreement between the parties shall remain in full force and effect and shall extend and apply to this First Supplemental Agreement.

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

Executed by the City this 22 day of MAY, 2003.

Executed by the Commission this 3 day of JULY, 2003.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

[Signature]

Title DISTRICT ENGR.

CITY OF O'FALCON, MO  
By [Signature]

Title MAYOR

ATTEST:

[Signature]  
Secretary to the Commission

ATTEST:

By [Signature]  
Title CITY CLERK.

Approved as to Form:

[Signature]  
Commission Counsel

Approved as to Form:

[Signature]  
Title CITY ATTORNEY

Ordinance Number \_\_\_\_\_