

BILL NO. 2785

ORDINANCE NO.

ORDINANCE APPROVING A PROJECT COST SHARE AGREEMENT AMONG ST. LOUIS COUNTY, THE CITY OF MARYLAND HEIGHTS AND THE CITY OF CHESTERFIELD FOR THE EXTENSION OF ROUTE 141 AND AUTHORIZING EXPENDITURE OF FUNDS FOR THE CITY OF CHESTERFIELD'S SHARE OF THE TOTAL COST

WHEREAS, the City of Chesterfield has long desired to extend Route 141 within the City of Chesterfield and north to the City of Maryland Heights; and

WHEREAS, the City of Chesterfield, the City of Maryland Heights and St. Louis County in 2006 began the planning and design of an extension of Route 141; and

WHEREAS, the City of Chesterfield, the City of Maryland Heights and St. Louis County now desire to construct the extension of Route 141, and

WHEREAS, the completion of the project is projected to generate substantial economic development for the west St. Louis County region; and

WHEREAS, an economic development study has been completed that estimates completion of the project will facilitate and encourage economic activity of over twenty billion dollars (\$20,000,000,000) near the project area; and

WHEREAS, completion of the project will provide substantial traffic benefits to the cities along the project route and the entire St. Louis metropolitan region; and

WHEREAS, St. Louis County was awarded funding from the American Recovery and Reinvestment Act to proceed with the project, and

WHEREAS, the City of Chesterfield, the City of Maryland Heights and St. Louis County have each agreed to pay specific amounts of the local match required for this project; and

WHEREAS, the City of Chesterfield, the City of Maryland Heights and St. Louis County all desire to be reimbursed for the costs of this project, and

WHEREAS, the cost share agreement establishes a means to reimburse the City of Chesterfield, the City of Maryland Heights and St. Louis County for their respective costs to construct this project.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The City Council of the City of Chesterfield hereby authorizes the Mayor to enter into the Project Cost Share Agreement in a form similar to the Project Cost Share Agreement marked "Exhibit A" attached hereto and made a part hereof relative to the construction of Route 141 and the reimbursement of the cost.

Section 2. The City of Chesterfield's payment of \$4,250,000.00 for the costs of this project is to be paid from the proceeds of the \$ 5,000,000.00 Certificates of Participation Series 2010A.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this _____ day of _____, 2010.

MAYOR

ATTEST:

CITY CLERK

FIRST READING HELD: _____

St. Louis County
Approved:
Revised:
Modified:

Page - Olive Connector
Project No. AR-1236
St. Louis County

ST. LOUIS COUNTY PROJECT COST SHARE AGREEMENT

THIS AGREEMENT is entered into by St. Louis County, Missouri (hereinafter, "County"), the City of Maryland Heights, Missouri (hereinafter, "Maryland Heights"), and the City of Chesterfield, Missouri (hereinafter, "Chesterfield").

WITNESSETH:

WHEREAS, the County, Maryland Heights and Chesterfield desire to complete a connection roadway from Mo. Route 340 (Olive Boulevard) to River Valley Drive, known as the Page-Olive Connector (hereinafter, "Project"); and

WHEREAS, the completion of the project is projected to generate substantial economic development for the west St. Louis County region; and

WHEREAS, an economic development study has been completed that estimates completion of the project will facilitate and encourage economic activity of over twenty billion dollars (\$20,000,000,000) near the project area; and

WHEREAS, completion of the project will provide substantial traffic benefits to the cities along the project route and the entire St. Louis metropolitan region; and

WHEREAS, on March 2, 2009, the County was awarded funding from the American Recovery and Reinvestment Act (ARRA) to proceed with the Project with certain deadlines; and

WHEREAS, the purpose and intent of the ARRA is to spur economic activity and long-term economic growth by investing in transportation;

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 coordinate the participation by the County, Maryland Heights and Chesterfield in sharing in the cost of the Project and to establish means to reimburse these agencies for their contributions.

(2) LOCATION: The transportation improvement Project that is the subject of this Agreement is proposed as a connector roadway starting at the proposed intersection of the relocated Hwy. 141 and Olive Boulevard to an interchange at Missouri Route 364

and connecting to the Maryland Heights Expressway Extension at River Valley Drive. 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 County, Maryland Heights and Chesterfield.

(4) PARTY REPRESENTATIVES:

- i) The County's Director of Highways & Traffic and Public Works, Sheryl L. Hodges, is designated as the County's representative for the purpose of administering the provisions of this Agreement.
- ii) Chesterfield's City Administrator, Michael Herring is designated as the Chesterfield representative for the purpose of administering the provisions of this Agreement.
- iii) Maryland Heights' Director of Public Works, Bryan Pearl, is designated as the Maryland Heights representative for the purpose of administering the provisions of this Agreement.

Each party's representative may designate by written notice other persons having the authority to act on behalf of the party in furtherance of the performance of this Agreement.

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

(6) PLANS AND CONSTRUCTION: The County shall be responsible for preparation of plans, specifications and construction for the herein improvements. This includes the letting of a design-build contract and the inspection of the Project.. The plans shall be prepared in accordance with and conform to requirements established by the County. The Project is subject to Federal Highway Administration (FHWA) approval. The determination for the Design-Build Contract award lies solely with the County.

(7) FINANCIAL RESPONSIBILITIES: With regard to work under this Agreement, the County, Maryland Heights, and Chesterfield agree as follows:

- A. The total Project cost is estimated to be Sixty Four Million Dollars (\$64,000,000).
- B. Maryland Heights shall pay County Four Million, two hundred fifty thousand Dollars (\$ 4,250,000). Maryland Heights shall remit payment by June 9,

2010

- C. Chesterfield shall pay County Four Million, two hundred fifty thousand Dollars (\$ 4,250,000). Chesterfield shall remit payment by June 9, 2010.
- D. The County is responsible for the remaining portion of the Project cost after deducting the payments from Maryland Heights and Chesterfield. Of the remaining portion, Twenty Million Dollars (\$20,000,000) will originate from the ARRA. While it is estimated that County's share of the Project costs will be Thirty-Five Million, five hundred thousand Dollars (\$35,500,000.00), County's obligation pursuant to this Agreement shall not exceed Fifty-five million, five hundred thousand Dollars (\$55,500,000).
- E. The obligations listed above are equal to the current Estimate. Should the actual cost be more than the obligation, the County will be responsible for the additional funding unless the increase is due to changes desired by Chesterfield or Maryland Heights. No changes or additions to the Project will be made without written consent of the County. In any disagreement over the necessity of a change to the Project, the parties will meet to attempt to reach a mutual agreement. In the event a mutual agreement cannot be made, the County decision will be final.
- F. The County will apply for Cost Share/Economic Development funds through the Missouri Department of Transportation (MoDOT) for the Project in the amount of not less than \$15 million dollars to reduce the responsibility of the parties to this Agreement up to the amount of their contribution and shall be credited equally to Maryland Heights and to Chesterfield. Any remaining Cost Share/Economic Development funds shall then be credited to the County. County will make such application at such time(s) as it deems appropriate, or at the conclusion of the Project. If no funds are received from this source, then the County has no further obligation. The County may make additional applications at its sole discretion but is under no obligation to do so. It is acknowledged that these funds may not be available during the construction of this Project and that reimbursement of the parties' responsibilities may not occur before 2014. Provided In the event that the County secures Cost Share/Economic Development funding, the reimbursements will begin when County receives monies from MoDOT.
- G. The parties agree to establish a Transportation Development District (hereinafter referred to as the "TDD") for areas that derive benefits and economic development from this project. The exact boundaries will be mutually agreed upon at the time of TDD creation. However, the general boundaries of the TDD are Ladue Road to the south, Marine Ave. to the north, and points 1.5 miles to the east and to the west of the final alignment of the Page-Olive Connector and also 1.5 miles to the east and west of MHE excluding parcels in St. Charles County, and parcels that are

to remain residentially and agriculturally zoned.

The County, Maryland Heights and Chesterfield agree that within four years after this Agreement is executed they will each individually and cooperatively begin efforts to form a multijurisdictional TDD in the area indicated above, for the purpose of reimbursing Maryland Heights, Chesterfield, and the County. The TDD will reimburse Maryland Heights and Chesterfield for \$4,250,000.00 each, plus the cost of borrowing money used to execute this project, and the cost of any additional improvements that Maryland Heights and Chesterfield have paid for in conjunction with the Project and approved by the 3 parties of this agreement unless any portion of those funds have been or are expected to be reimbursed by Cost/Share or Economic Development funds. The TDD will reimburse County \$30,000,000 plus the cost of borrowing money used to execute this project, and the cost of any additional improvements that County has paid for in conjunction with the Project unless any portion of those funds have been or are expected to be reimbursed by Cost/Share or Economic Development funds. The reimbursements will be distributed on a proportional basis based on each party's contribution as compared to the combined contributions for the project.

The County, Maryland Heights and Chesterfield, in their capacity as local transportation authorities, within the meaning of R.S. Mo Section 238.202.1 (4), shall within 4 years each adopt resolutions calling for the establishment of the TDD. The County, Maryland Heights and Chesterfield shall cooperate fully to establish the TDD.

The TDD will generate only such revenues as are needed to reimburse the County, Chesterfield, and Maryland Heights for their share of the Project costs and such other amounts as they have expended on the Project as previously described.

- H. Any other Transportation Development District established within the boundary of the TDD contemplated in this agreement shall not preclude nor negate either its creation or its minimum levy assessment of 0.5%.

(8) COMMINGLING OF FUNDS: The County, Maryland Heights and Chesterfield agree that all funds deposited by Maryland Heights and Chesterfield pursuant to this Agreement with the County, may be commingled by the County with other similar monies deposited from other sources to be used for this Project only. Any deposit may be invested at the discretion of the County in such investments allowed for other County funds. All interest monies shall be payable to the fund and credited to the Project. Upon completion of the Project, any excess funds or interest credited shall be refunded to the County, Maryland Heights, and Chesterfield up to the amount of their contribution designated in Paragraph 7B, 7C, and 7D. Refund shares shall be based on the proportion of each party's contribution to the Project.

(9) AUDIT OF RECORDS: The County shall maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records will be available at all reasonable times to Maryland Heights and Chesterfield and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final settlements made under this Agreement. All parties agree that these records and any records required by FHWA or their designees will be made available to FHWA or their designees.

(10) 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 St. Louis County, Missouri.

(11) 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 County, Maryland Heights and Chesterfield.

(12) NO INTEREST: By contributing to the cost of this Project or improvement, Chesterfield and Maryland Heights gain no interest in the constructed roadway or improvements whatsoever. The County shall not be obligated to keep the constructed improvements or roadway under its maintenance if County deems it in its best interest to transfer maintenance and control of the improvements, rights-of-way, and easements to the State of Missouri.

(13) 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.

(14) 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.

(15) ADDITIONAL FUNDING: In the event the County obtains additional federal, state, local, private or other funds to construct the Project pursuant to this Agreement that are not obligated at the time of execution of this Agreement, these funds will be used to reduce the responsibility of County.

(16) 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.

(17) 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.

(18) 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.

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

ST. LOUIS COUNTY

By _____

Title _____

ATTEST:

By _____

Director, Highways & Traffic and Public Works

Approved as to Form:

County Counselor

Ordinance No _____

I hereby certify that sufficient funds to pay the project sum of \$64,000,000 will be deposited in the appropriation accounts against which this obligation is to be charged.

By _____
Accounting Officer

CITY OF MARYLAND HEIGHTS

By _____

Title _____

ATTEST:

By _____

Title _____

Approved as to Form:

Title: _____

Ordinance No _____

CITY OF CHESTERFIELD

By _____

Title _____

ATTEST:

By _____

Title _____

Approved as to Form:

Title: _____

Ordinance No _____

