

**III.C.**

**Memorandum**

**Department of Planning, Public Works & Parks**

**To:** Michael G. Herring, CA  
**From:** Mike Geisel, DPPW & P  
**Date:** 2/27/2012  
**Re:** Daniel Boone Bridge



As you know, the Missouri Department of Transportation (MoDOT) has initiated the process to solicit design bid proposals for the construction of a new Missouri River Bridge at the west end of our City. Also, as you have directed and as we have done consistently, staff has worked with MoDOT project staff to preserve our ability to incorporate enhancements into the project when designed. Accordingly, MoDOT has prepared the attached municipal agreement, similar in scope and content to previous agreements for the Clayton Road project and Route 141 project, which defines the responsibilities and processes associated with the potential added amenities.

The attached agreement simply defines the structure of cooperation between the City and MoDOT. [It does not obligate the City to accept or fund the enhancements.] It does, however, provide for the City to fund the enhancements if the City so elects. It is important to recognize that the project is to be delivered via a design build mode. The consultant teams will be provided a copy of this agreement and made aware of the City's desire to incorporate amenities which may consist of, but not be limited to; areas for landscaping, city identifications signs or logos in MSE walls, concrete form liners, tinted concrete, decorative lighting, and/or sign posts. The design-build team will then offer enhancement proposals, along with an associated cost that the City may accept or reject at its sole discretion.

As such, **I recommend and request that the attached Municipal Agreement be forwarded to the Planning and Public Works Committee for consideration.**

If you have any questions or require additional information, please let me know.

attachment

*OK'd  
JGG  
2/27/12*

CCO Form: DE11  
Approved: 04/93 (CEH)  
Revised: 03/10 (MRA)  
Modified:

Municipal Agreement  
Route: I-64  
County: St. Louis/St. Charles  
Job No.: J6P1436

## **MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION MUNICIPAL AGREEMENT**

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

WITNESSETH:

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

(1) IMPROVEMENT DESIGNATION: The public improvement designated as Route I-64, St. Louis and St. Charles Counties, Job No. J6P1436 shall consist of the construction of a new Missouri River bridge with a shared use path connecting the Monarch Levee Trail with the KATY trail, interchange improvements @ I-64 and Chesterfield Airport Road as well as other roadway improvements on each side of the river.

(2) IMPROVEMENT WITHIN CITY: The improvement within the City is located as follows:

Beginning near the center of the Missouri River at approximately Station 23+00 of I-64 and proceeding east about 5300 feet to east of Chesterfield Airport Road near Station 76+00 of I-64.

(3) EXTENT OF AGREEMENT: This Agreement shall apply only to the portion of the improvement lying within the city limits as they exist on the date this Agreement is executed by the City.

(4) LOCATION: The general location of the public improvement is shown on an attached sketch marked "Exhibit A" and made a part of this Agreement. The design of the public improvement shown in the Final Environmental Impact Statement (EIS), and "Exhibit A", is a concept design only. The actual design of the public improvement may vary and will be shown on the detailed plans prepared by the Commission during the design phase of the above-designated route and project.

(5) PURPOSE: The purpose of this Agreement is to coordinate the Commission's activities on Job J6P1436 with the City. It is the intent of this Agreement that the Commission shall provide without cost to the City, except as otherwise provided

in this Agreement, a highway for traffic in the City and the Commission shall so design and construct the highway to serve operating necessities and requirements of local and through traffic. Should the City request work in addition to the detailed plans approved by the Commission, that work will need to be negotiated with the Commission's contractor as a change order and be at the City's expense. The Commission is under no obligation to perform this additional work if it impacts the contractor's schedule and /or delays the Commission's project.

(6) ADDITIONAL FEATURES TO PROJECT: As part of Job No. J6P1436 (hereinafter, "Project"), the Commission is willing to include certain additional features to the Project. The additional features may include landscape areas, City of Chesterfield identification signage, MSE Wall logos and/or accent lighting. Architectural supports for signage and structures would also be considered. Possible enhancements to the Chesterfield Airport Road overpass could include, but not be limited to: tinted concrete, exterior form liners, Chesterfield identification & logos, and architectural lighting.

The parties recognize and agree that the Project will be designed and constructed by the Commission's contractor that has not yet been selected. As such, the parties agree to the following framework:

(A) In addition to standard design elements to be constructed in accord with Commission's plans and at the Commission's cost, the City desires to include enhancements to the Chesterfield Airport Road interchange and other areas of the project within the City limits. The Commission, working with its chosen contractor, will provide the City with an estimated cost for each of the potential enhancement elements and the City will thereafter notify the Commission and its contractor which specific elements are to be incorporated in the final Project plans pursuant to this Agreement. The City may also request additional enhancement elements not currently contemplated by this Agreement. The Commission agrees to review and consider such requests if submitted at a time when planning and construction progress can reasonably accommodate addition of such features and to not unreasonably withhold approval of same. The Commission agrees to notify the City at least sixty (60) days before the opportunity to request enhancements shall expire.

(B) After meeting with the City and the Commission, the Commission's contractor will prepare a conceptual enhancement plan based on the contractor's proposed configuration of the interchanges. Any such plan shall comply with Commission standards. The contractor shall then submit this conceptual enhancement plan to the Commission and the Commission will, in a timely fashion, then submit such plans, together with cost details, to the City for final approval.

(C) The Commission will facilitate negotiations between the contractor and the City with respect to the cost and scope of the conceptual enhancement plan. If the City believes the Commission's contractor is being unreasonable as to the cost or scope of the enhancements, the Commission agrees to mediate between the parties in an effort to provide reasonable costs and reach reasonable terms. However, under no

circumstances will the Commission be responsible for the cost of these additional features.

(D) If the City and the Commission reach an agreement regarding these additional features, the City will be responsible for One hundred percent (100%) of the total cost of these additional features. The total cost will include preliminary engineering, utilities, construction, inspection, and any costs associated with incorporating these additional features into the Project. The City shall remit a check for such amount within 30 days of the date of the final, written agreement between the City and the Commission. This check should be made payable to the "Missouri Highway and Transportation – Local Fund". If the City fails to make the deposit, the Commission is under no obligation to continue with including the additional features in the Project.

(E) If the City and Commission's contractor are unable to reach an agreement on these additional features within 60 days of City's receipt of the conceptual enhancement plan, the City or Commission may elect to not include those additional features as to which there is no agreement in the Project.

(F) If the City withdraws its request to include the enhancements in the Project or fails to make the deposit as required in subsection (6)(D) above, the City shall remain obligated to reimburse the Commission's contractor for the actual cost of any preliminary engineering work done in response to the City's request on the conceptual enhancement plan, if any.

(G) The City agrees that all funds deposited by the City 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 for other state funds. All interest monies shall be payable to the fund and credited to the City. If the amount deposited plus any applicable credited interest with the Commission shall be less than the actual obligation of the City for this project, the City, upon written notification by the Commission, shall tender the necessary monies to the Commission to completely satisfy its obligation. Upon completion of the project, any excess funds or interest credited to the City shall be refunded to the City based on its pro rata share of the investment.

(H) The City shall maintain the herein contemplated landscaping enhancements, if any, installed upon request of the City without any cost or expense to the Commission. The Commission shall continue to be responsible for maintenance of all landscaping elements of the Project not added as an enhancement at the request of the City pursuant to subsections (6)(A) and (6)(D) of this Agreement. All maintenance by the City shall be done for the safety of the general public and the aesthetics of the area. If the City fails to maintain such herein contemplated additional landscaping, the Commission or its representatives, at the Commission's sole discretion, shall notify the City in writing of the City's failure to maintain the landscaping enhancements. If the City continues to fail in maintaining the landscaping enhancements, the Commission may

remove such herein contemplated additional landscaping. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement. If, in exchange for other consideration by the Commission to the City, the City is willing to agree, at the City's sole discretion, to be responsible for maintenance of other landscaping elements installed on the Commission's Project, as opposed to the additional landscape elements added at the request of the City pursuant to this Agreement, the Commission and the City will enter into a separate agreement for that purpose.

(l) Additional memoranda between or among the City, the Commission, and the Commission's contractor may be required to effectuate this section (6).

(7) 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 (except maintenance of the landscaping enhancements, if any, installed upon the request of the City pursuant to subsections (6)(A) and (6)(F) above), will be the responsibility of the Commission.

(8) NO INTEREST: By contributing to the cost of the Project, the City 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 City shall not be entitled to a refund of the funds contributed by the City pursuant to this

(9) 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.

(10) RIGHT-OF-WAY ACQUISITION: The portion of state highway covered by this Agreement shall be a limited access highway and rights of access between the highway and abutting property shall be procured and the cost classified as right-of-way cost and paid for by the Commission in the same manner as other right-of-way costs. Only such rights of ingress and egress shall be allowed as indicated on the plans approved by the Commission and FHWA.

(11) UTILITY RELOCATION:

(A) The Commission and the City shall cooperate to secure the temporary or permanent removal, relocation, or adjustment of public utilities or private lines, poles, wires, conduits, and pipes located on the right-of-way of existing public ways as necessary for construction of the improvement and the cost shall be borne by such public utilities or the owners of the facilities except where the City is by existing franchise or agreement obligated to pay all or a portion of such cost, in which case the City will pay its obligated portion of the cost.

(B) The Commission shall secure the removal, relocation, or adjustment of any public or private utilities located upon private easements and shall pay any costs incurred therein with the exception of any relocations due to approved enhancements as outlined in section 6 of this Agreement.

(C) In cases of public utilities owned by the City which must be moved, adjusted, or altered to accommodate construction of this improvement, and such city-owned utilities, poles, wires, conduits, and pipes are located within the present city limits and located on an existing city street, not state highway right-of-way, but being taken over by the Commission as a part of its highway right-of-way, the City will perform the necessary removal, adjustment, alterations and relocation, and the Commission will reimburse the City except as otherwise provided. The City shall perform the removal, adjustment, alterations and relocation in accordance with the detail plans, estimates of costs and bills of materials prepared by the City in accordance with Federal Aid Policy Guide, Title 23 CFR Subchapter G, Part 645, Subpart A (FAPG 23 CFR 645A), dated December 9, 1991 and any revision of it, and approved by the Commission's district engineer, and shall perform all work and keep the records of the costs in accordance with FAPG 23 CFR 645A and its revisions. Upon the completion of any such work and on receipt by the Commission of the original and four copies of a bill for the actual costs incurred by the City in making any such removal, adjustment, alteration and relocation, the Commission shall reimburse the City for the actual cost necessitated by construction of this public improvement. The Commission's obligation toward the cost of any such removal, adjustment, alteration and relocation shall extend only to those costs incurred in accordance with FAPG 23 CFR 645A and its revisions.

(D) Should it be necessary to alter, relocate or adjust any city-owned utility facilities outside the present city limits on public right-of-way or on state highway right-of-way within or outside the city limits or within the right-of-way of a public way other than a city street or alley, the alteration, relocation, or adjustment shall be made by the City at its cost.

(E) The City agrees that any installation, removal, relocation, maintenance, or repair of public or private utilities involving work within highway right-of-way included in this project shall be done only in accordance with the general rules and regulations of the Commission and after a permit for the particular work has been obtained from the Commission's district engineer or his authorized representative. Similarly, the City will allow no work on the highway right-of-way involving excavation or alteration in any manner of the highway as constructed, including but not limited to driveway connections, except in accordance with the rules and regulations of the Commission and only after a permit for the specific work has been obtained from the Commission's district engineer or his authorized representative. The City shall take whatever actions that are necessary to assure compliance with this Subsection.

(12) LIGHTING: The Commission will, at its cost and expense, install, operate, and maintain basic highway intersection or interchange lighting at warranted

locations on the improvement. The construction, installation, and maintenance of any other or further lighting system on the public improvement covered by this Agreement shall be only in accordance with the Commission's policy on highway lighting in effect, and to the extent deemed warranted by the Commission, at the time of any such installation. No lighting system shall be installed or maintained by the City on the improvement without approval of the Commission.

(13) TRAFFIC CONTROL DEVICES: The installation, operation and maintenance of all traffic signals, pavement markings, signs, and devices on the improvement, including those between the highway and intersecting streets shall be under the exclusive jurisdiction and at the cost of the Commission. The City shall not install, operate, or maintain any traffic signals, signs or other traffic control devices on the highway or on streets and highways at any point where they intersect this highway without approval of the Commission.

(14) DRAINAGE: The Commission will construct drainage facilities along the improvement and may use any existing storm and surface water drainage facilities now in existence in the area. It is understood by and between the parties that the area of the improvement is within the jurisdiction of the St. Louis Metropolitan Sewer District, however they have ceded oversight of the drainage in this area to the Monarch Levee District.

(15) PERMITS: The Commission shall secure any necessary approvals or permits from the Surface Transportation Board, the Public Service Commission of Missouri, or any other state or federal regulating authority required to permit the construction and maintenance of the highway.

(16) COMMENCEMENT OF WORK: After acquisition of the necessary right-of-way, 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) at such time as federal and state funds are allocated to the public improvement in an amount sufficient to pay for the federal and state government's proportionate share of construction and right-of-way costs. The obligation of the Commission toward the actual construction of the public improvement 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.

(17) MAINTENANCE:

(A) Except as provided in this Agreement, upon completion of the public improvement, the Commission will maintain all portions of the improvement within the Commission owned right-of-way. Maintenance by the Commission shall not in any case include maintenance or repair of sidewalks whether new or used in place, water supply lines, sanitary or storm sewers (except those storm sewers constructed by the

Commission to drain the highway), city-owned utilities within the right-of-way or the removal of snow other than the machine or chemical removal from the traveled portion of the highway.

(B) When it is necessary to revise or adjust city streets, the right-of-way acquired for these adjustments and connections will be deeded to the City.

(18) POLICE POWERS: It is the intent of the parties to this Agreement that the City shall retain its police powers with respect to the regulation of traffic upon the improvement contemplated. However, the City will enact, keep in force, and enforce only such ordinances relating to traffic movement and parking restrictions as may be approved by the Commission and as are not in conflict with any regulations for federal aid. The Commission shall not arbitrarily withhold approval of reasonable traffic regulations, signs, and markings which will permit the movement of traffic in accordance with accepted traffic regulation practices.

(19) OUTDOOR ADVERTISING: No billboards or other advertising signs or devices or vending or sale of merchandise will be permitted within the right-of-way limits of the project.

(20) WITHHOLDING OF FUNDS: In the event that the City fails, neglects, or refuses to enact, keep in force or enforce ordinances specified or enacts ordinances contrary to the provisions in this Agreement, or in any other manner fails, neglects or refuses to perform any of the obligations assumed by it under this Agreement, the Commission may, after serving written request upon the City for compliance and the City's failure to comply, withhold the expenditure of further funds for maintenance, improvement, construction, or reconstruction of the state highway system in the City.

(21) FEDERAL HIGHWAY ADMINISTRATION: This Agreement is entered into subject to approval by the Federal Highway Administration, and is further subject to the availability of federal and state funds for this construction.

(22) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

(1) To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer



will not be required for work outside of the Commission's right-of-way); and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$500,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(23) 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.

(24) COMMISSION REPRESENTATIVE: The Commission's Project Director for the I-64 Boone Bridge Project is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(25) CITY REPRESENTATIVE: The City's Administrator is designated as the City's representative for the purpose of administering the provisions of this 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 the performance of this Agreement.

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

(27) 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.

(28) 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.

(29) 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.

(30) 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.

(31) 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.

*[remainder of page intentionally left blank]*

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

Executed by the City this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Executed by the Commission this \_\_\_ day of \_\_\_\_\_, 20\_\_.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

CITY OF CHESTERFIELD

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

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

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

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

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary to the Commission

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

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

APPROVED AS TO FORM:

APPROVED AS TO FORM:

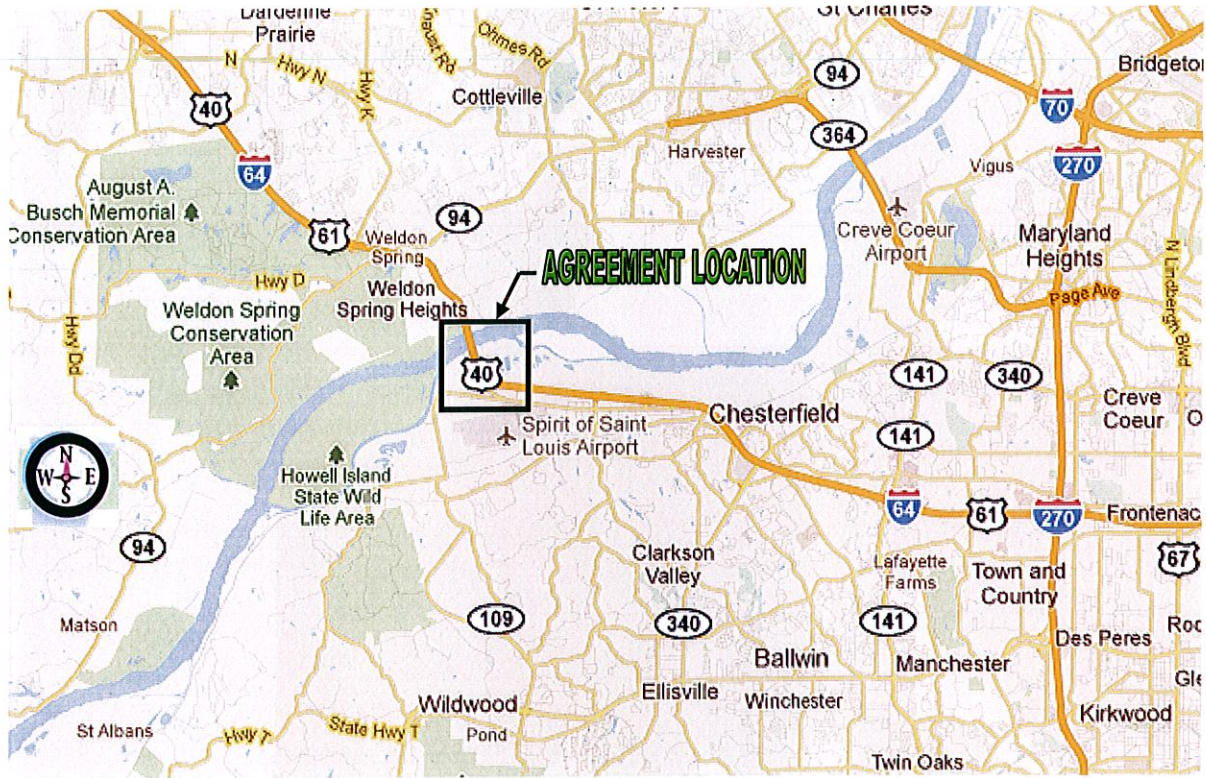
\_\_\_\_\_  
Commission Counsel

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

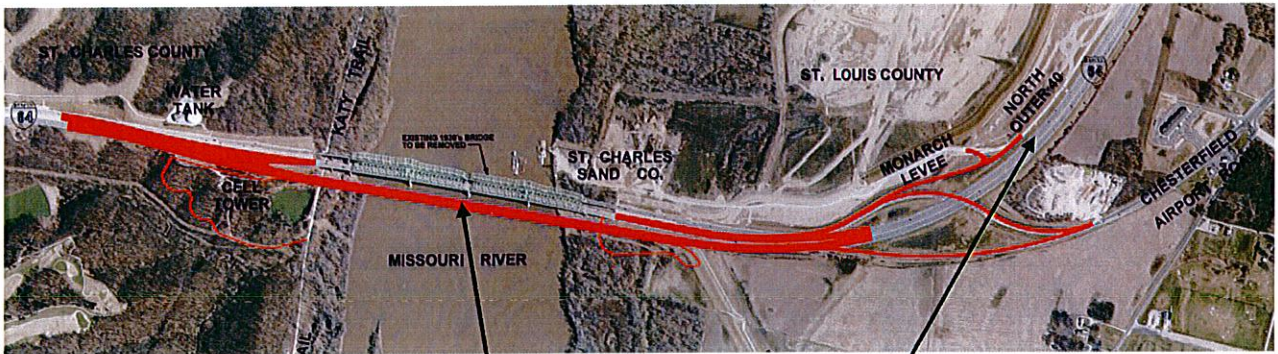
Title: \_\_\_\_\_

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

# EXHIBIT A



## DETAILED VIEW (PREFERRED ALTERNATIVE)



**CITY OF CHESTERFIELD IMPROVEMENTS**  
APPROXIMATE I-64 STA. 23+00 —76+00  
APPROXIMATE LENGTH = 5,300 LF (1 MILE)