

AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A COST SHARE AGREEMENT BY AND BETWEEN THE CITY OF WILDWOOD, MISSOURI, AND THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION TO OBTAIN STATE FUNDING FOR THE DESIGN AND CONSTRUCTION OF TURN LANE IMPROVEMENTS ON STATE ROUTE 100 AT MANCHESTER ROAD/BOONESS LANE, WOODLAND MEADOWS DRIVE, HENCKEN ROAD, AND HAWKS REST ROAD/WINDY HOLLOW LANE IN THE CITY.

WHEREAS, Sections 70.210 and 70.220, RSMo., as amended, authorize municipalities and political subdivisions to contract and cooperate with a duly authorized agency of this state for the planning, development, or construction of any public improvement; and

WHEREAS, pursuant to Section 70.230, RSMo., “Any municipality may exercise the power referred to in section 70.220 by ordinance duly enacted . . . [;]” and

WHEREAS, the City of Wildwood, Missouri (the “City”), is proposing to design and construct the Route 100 Turn Lane Improvement Project (#SL0092), which is proposed to include the construction of turn lanes on State Route 100 at Manchester Road/Booness Lane, Woodland Meadows Drive, Hencken Road and Windy Hollow Lane/Hawks Rest Road in the City (the “Project”); and

WHEREAS, the Project was approved as part of the City Council’s Strategic Plan; and

WHEREAS, the City applied to the Missouri Highways and Transportation Commission and was approved to receive fifty percent (50%) State funding, not to exceed the amount of \$1,405,000.00, to construct the Project under the Cost Share Program as administered by the Missouri Department of Transportation (“MoDOT”); and

WHEREAS, to obtain the State funds for the Project through MoDOT, the City is required to execute a Cost Share Agreement with the Missouri Highways and Transportation Commission; and

WHEREAS, the Administrative and Public Works Committee recommended that the City enter into a Cost Share Agreement with the Missouri Highways and Transportation Commission to obtain the State funds for the Project; and

WHEREAS, the City Council desires to enter into a Cost Share Agreement with the Missouri Highways and Transportation Commission to obtain the State funds for the Project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:

Section One. That the form, terms and provisions of the Cost Share Agreement by and between the City of Wildwood, Missouri, and the Missouri Highways and Transportation Commission,

attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and they hereby are approved, and the Mayor shall be and is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

Section Two. Effective Date. This Ordinance shall be in full force and effect from and after its final passage and approval.

Section Three. Savings. Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subjected matter hereof, unless expressly set forth herein.

Section Four. Severability. If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Council of the City of Wildwood that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

This Bill was passed and approved on the _____ day of _____, 2022, by the Council of the City of Wildwood, Missouri, after having been read by the title or in full two (2) times prior to passage.

Presiding Officer

ATTEST:

City Clerk

James R. Bowlin, Mayor

ATTEST:

City Clerk

Exhibit A
[attach Agreement]

CCO Form: FS08
Approved: 03/04 (BDG)
Revised: 03/17 (MWH)
Modified: 02/22 (MWH)

Route 100, St. Louis County
Project No. SL0092
City of Wildwood

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

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and City of Wildwood (hereinafter, "Entity").

WITNESSETH:

WHEREAS, the Entity applied to the Commission's Cost Share Committee for participation in the Commission's *Cost Share Program*; and

WHEREAS, on December 17, 2021, the Cost Share Committee approved the Entity's application to the *Cost Share Program* subject to the terms and conditions of this Agreement.

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

(1) PURPOSE: The purpose of this Agreement is to co-ordinate the participation by the Commission in the cost of the Entity's Project SL0092.

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

Route 100 at the intersections of Manchester Road/Booness Lane, Woodland Meadows Drive, Hencken Road and Windy Hollow Lane/Hawks Rest Road.

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

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

(4) COMMISSION REPRESENTATIVE: The Commission's St. Louis District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

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

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

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

(8) PLANS AND CONSTRUCTION: With regard to project responsibilities under this Agreement, the parties agree to the following:

(A) The Entity shall be responsible for all aspects of the project including preliminary engineering, acquisition of right of way, relocation of utilities, letting of the project, construction, and inspection of the project.

(B) The Entity shall follow the Commission's Local Public Agency (LPA) process.

(C) The Entity shall provide preliminary engineering for the preparation of detailed right-of-way and construction plans and project specifications. The plans shall be prepared in accordance with and conform to the Commission's requirements, standards, and specifications. Said plans shall not be changed in concept or scope without prior written approval of the Commission.

(D) The Entity shall acquire any additional necessary right of way required for the project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act (**Uniform Act**), as amended and any regulations promulgated in connection with the Act.

(E) The Commission will provide preliminary engineering review, right of way review and construction engineering review.

(F) The Entity shall be responsible for letting the work for the herein improvement, which includes advertising the project for bids and awarding the construction contract. The Entity shall solicit bids for the herein improvement in accordance with plans developed by the Entity, or as the plans may from time to time be modified in order to carry out the work as contemplated. The Entity shall not award the construction contract without obtaining Commission's written concurrence in the award. The Entity shall submit all required bid concurrence documentation to the Commission at least two (2) weeks prior to the Commission Meeting in which the Entity seeks to request

award. If the Entity fails to comply with this provision, the Commission is under no obligation to continue participation in the project.

(G) The Entity or the Entity's representative shall secure all required federal, state, and local permits as required for design and construction of the improvements. Prior to entering onto the Commission right of way to perform any obligation under this Agreement, the Entity or the Entity's representative shall obtain any applicable permit from the Commission, unless the performance of such obligations under this Agreement would not ordinarily require a permit from the Commission.

(H) The Entity shall be responsible for construction of the herein improvements, which includes administration of the construction contract and inspection of the project work. The project shall be constructed in accordance with and conform to the current criteria, specifications and requirements established and adopted by the Commission and in accordance with the current applicable manuals and policies of the Commission and the Federal Highway Administration (FHWA), if applicable, which shall be furnished by the Commission upon request, and, absent the foregoing, with manuals and policies of the American Association of State Highway and Transportation Officials ("AASHTO").

(9) FINANCIAL RESPONSIBILITIES: With regard to work under this Agreement, the Entity agrees as follows:

(A) The estimated total cost of the project is two million eight hundred ten thousand dollars (\$2,810,000). The project cost will include preliminary engineering, preliminary engineering review, construction, construction engineering, and construction engineering review. The project cost will not include right of way acquisition, right of way incidentals and utilities and will be one-hundred percent (100%) the responsibility of the Entity. The details of the estimated costs breakdown are listed below and in "Exhibit B", which is attached and made part hereof.

(B) The Entity shall be responsible for fifty percent (50%) of the total project cost. The current estimate of the Entity's responsibilities is one million four hundred five thousand dollars (\$1,405,000).

(C) The Commission will pay for fifty percent (50%) of the total project cost in an amount not to exceed one million four hundred five thousand dollars (\$1,405,000). Of this amount, the Commission shall provide one million three hundred ninety-five thousand dollars (\$1,395,000) from the Commission's Cost Share program, of which fifty-three thousand two hundred seventeen dollars (\$53,217) will be available in State Fiscal Year 2022; fifty-six thousand two hundred eighty-three dollars (\$56,283) will be available in State Fiscal Year 2023; and one million two hundred eighty-five thousand five hundred dollars (\$1,285,500) will be available in State Fiscal Year 2025. In addition, preliminary engineering review and construction engineering review services will be provided by MoDOT personnel estimated to total ten thousand dollars (\$10,000).

(D) The Entity shall be responsible for the balance of the project in excess of two million eight hundred ten thousand dollars (\$2,810,000). Underruns will be based on a pro rata share.

(E) The Entity may request reimbursement from the Commission for fifty-three thousand two hundred seventeen dollars (\$53,217) after July 1, 2021, fifty-six thousand two hundred eighty-three dollars (\$56,283) after July 1, 2022 and one million two hundred eighty-five thousand five hundred dollars (\$1,285,500) after July 2024 when the Cost Share funds referenced above in paragraph (9)(C) in the amount of one million three hundred ninety-five thousand dollars (\$1,395,000) are available for Cost Share Program eligible project costs. Requests for reimbursement shall be submitted no more than monthly or after the project is complete.

(F) The Entity shall be responsible for adding this project to the East West Gateway Transportation Improvement Program (TIP) after the execution of this Agreement.

(10) COMMISSION RIGHT OF WAY: All improvements made within the state-owned right-of-way shall become the Commission's property, and all future alterations, modifications, or maintenance thereof, will be the responsibility of the Commission.

(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.

(12) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the Entity.

(13) NO INTEREST: By contributing to the cost of this project or improvement, the Entity gains no interest in the constructed roadway or improvements whatsoever. The Commission shall not be obligated to keep the constructed improvements or roadway in place if the Commission, in its sole discretion, determines removal or modification of the roadway or improvements, is in the best interests of the state highway system. In the event the Commission decides to remove the landscaping, roadway, or improvements, the Entity shall not be entitled to a refund of the funds contributed by the Entity pursuant to this Agreement.

(14) 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.

(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) ADDITIONAL FUNDING: In the event the Commission obtains additional federal, state, local, private or other funds to construct the improvement being constructed pursuant to this Agreement that are not obligated at the time of execution of this Agreement, the Commission, in its sole discretion, may consider any request by the Entity for an off-set for the deposited funds, a reduction in obligation, or a return of, a refund of, or a release of any funds deposited by the Entity with the Commission pursuant to this Agreement. In the event the Commission agrees to grant the Entity's request for a refund, the Commission, in its sole discretion, shall determine the amount and the timing of the refund. Any and all changes in the parties' financial responsibilities resulting from the Commission's determination of the Entity's request for a refund pursuant to this provision must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Entity and the Commission.

(17) 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.

(18) 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.

(19) 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.

(20) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or immediately after delivery in person, or by facsimile or electronic mail addressed as follows:

Commission to: Missouri Department of Transportation
Attn: Thomas Blair
St. Louis District Engineer
1590 Woodlake Drive
Chesterfield, MO 63017

Entity to: City of Wildwood
Attn: Rick Brown
Director of Public Works
16860 Main Street
Wildwood, MO 63040
Email: rick@cityofwildwood.com

or to such other place as the parties may designate in accordance with this Agreement.

(21) AUDIT OF RECORDS: The Entity 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 the Commission 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 payment made under this Agreement.

(22) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the Entity 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 Entity's wrongful or negligent performance of its obligations under this Agreement.

(B) The Entity will require any contractor procured by the Entity 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.

*Remainder of Page Intentionally Left Blank; Signatures and Execution Appear on
Following Page*

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

Executed by the Entity on _____(DATE).

Executed by the Commission on _____(DATE).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF WILDWOOD, MISSOURI

Title _____

By _____
Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____
Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title: _____

Ordinance No _____

Exhibit A

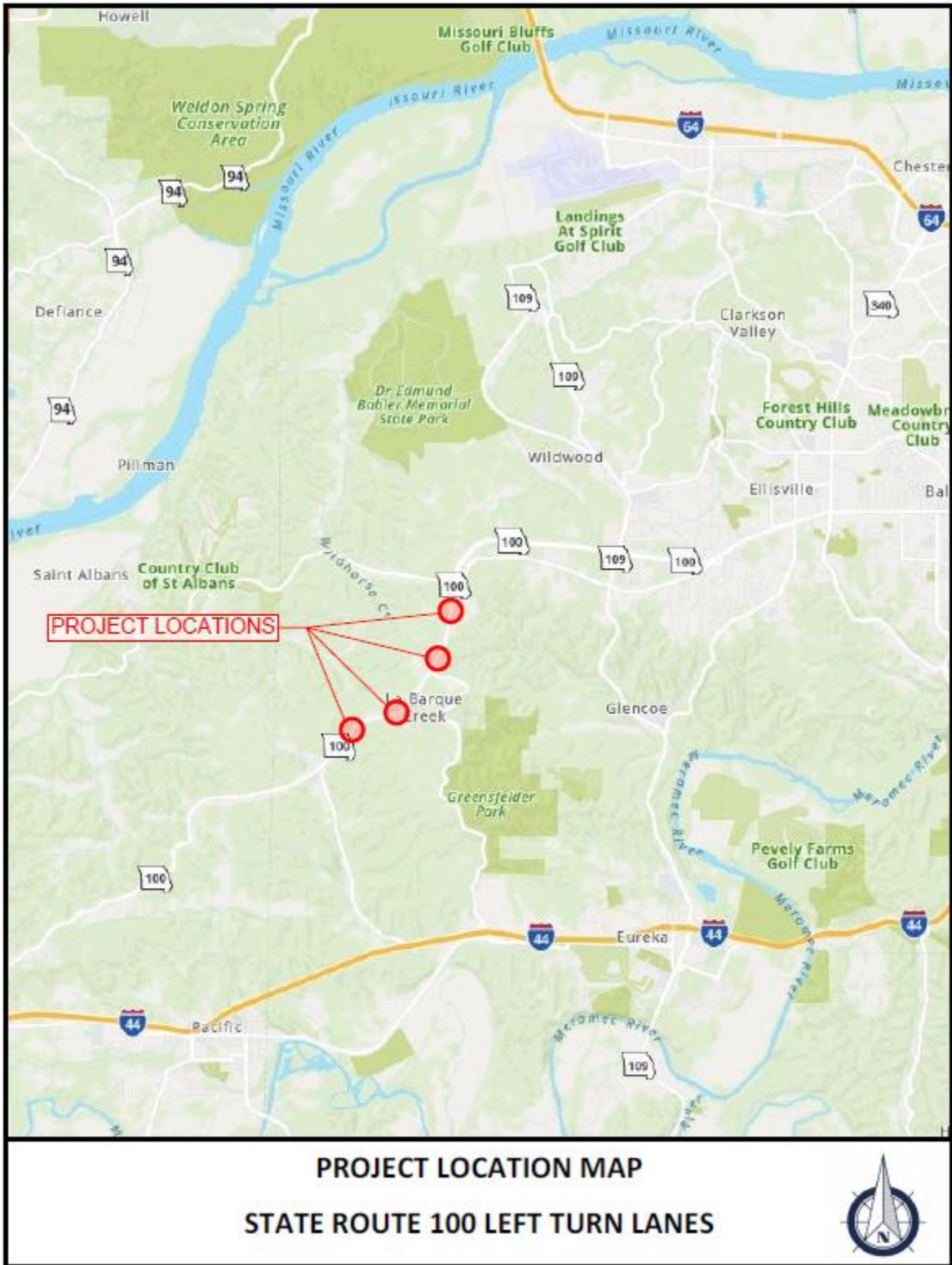


Exhibit B

Project Name: Route 100 Left Turn Lanes

MoDOT Project Number: SL0092

Description: Construct left turn lanes on Route 100 at the intersections of Manchester Road/Booness Lane, Woodland Meadows Drive, Hencken Road and Windy Hollow Lane/Hawks Rest Road.

Total Eligible Project Cost Estimate: \$2,810,000

Local Entity: City of Wildwood

	Current Estimate	Cost Share Eligible
Preliminary Engineering	\$224,000	\$224,000
Preliminary Engineering Review (MoDOT)	\$5,000	\$5,000
Right of Way Acquisition	\$0	\$0
Right of Way Incidentals	\$0	\$0
Right of Way Review (MoDOT)	\$0	\$0
Utilities	\$0	\$0
Construction	\$2,307,000	\$2,307,000
Construction Engineering	\$269,000	\$269,000
Construction Engineering Review (MoDOT)	\$5,000	\$5,000
Total	\$2,810,000	\$2,810,000

Project Responsibilities:

Preliminary Engineering	Entity
Right of Way Acquisition	Entity
Utility Coordination	Entity
Letting	Entity
Construction	Entity
Construction Engineering	Entity

Financial Responsibilities:

MoDOT Internal Budget	\$10,000	1%
Cost Share Funds	\$1,395,000	49%
Entity	\$1,405,000	50%
STBG funds	\$0	
Total:	\$2,810,000	100%

How are overruns and underruns handled? The Entity shall be responsible for all cost overruns. Underruns will be based on a pro rata share.