

AN ORDINANCE AUTHORIZING THE CITY OF CHESTERFIELD TO ENTER INTO AND EXECUTE A CONTRACT WITH ST. LOUIS COUNTY, MISSOURI, DUKE REALTY LIMITED PARTNERSHIP, AND THE MISSOURI DEPARTMENT OF TRANSPORTATION, FOR COST PARTICIPATION IN THE CONSTRUCTION OF THE SPIRIT OF ST. LOUIS BOULEVARD AND I-64 INTERCHANGE, AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Chesterfield (the "*City*"), the County of St. Louis, Missouri (the "*County*"), and the Duke Realty Limited Partnership (the "*Developer*") applied for participation in the Missouri Highways and Transportation Commission's Cost Share Program; and

WHEREAS, the application for participation was approved subject to the terms of a cost participation agreement (the "*Agreement*") among the City, County, Developer and the Missouri Department of Transportation; and

WHEREAS, the City desires to have this Interchange constructed to improve access to the western portion of Chesterfield Valley and the Chesterfield Valley Athletic Complex; and

WHEREAS, the City's total contribution to the costs of the project will be \$346,300, one-eighth of the total project costs; and

WHEREAS, monies from the closeout of the TIF were allocated to cover the costs of the Agreement so no funds from the City's general revenues will be used to pay the City's contribution to the Agreement; and

WHEREAS, the City Council of the City hereby finds and declares that it is desirable and in the best interests of the City that the City enter into the Agreement, as attached hereto as **Exhibit A**.

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 hereby approves of the Agreement in the form as attached hereto and incorporated by reference herein as **Exhibit A**.

Section 2. The City is hereby authorized to enter into, and the City Administrator of the City of Chesterfield and the City Clerk are hereby authorized and directed to execute, seal, attest and deliver, for and on behalf of the City, the Agreement, such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and with the provisions of the Agreement.

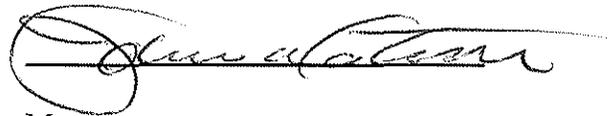
Section 3. The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of the Ordinance are so essential to and inseparably connected with and dependent upon the void portion that it cannot be presumed that the

City has enacted the valid portions without the void ones, or unless the court finds that the valid portions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

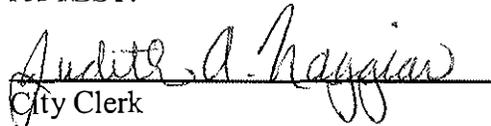
Section 4. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Section 5. This ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 3rd day of SEPTEMBER, 2008.


Mayor

ATTEST:


City Clerk

CCO Form: RM9
Approved: 03/04 (BDG)
Revised: 11/06 (BDG)
Modified: 06/07 (MRA)

Route 40, St. Louis County
Project No. J6P2147
County of St. Louis

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
COST PARTICIPATION AGREEMENT
SPIRIT OF ST. LOUIS BOULEVARD AND I-64 INTERCHANGE**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and St. Louis County, Missouri (hereinafter, "County"), the City of Chesterfield (hereinafter, "City"), and Duke Realty Limited Partnership, an Indiana limited partnership (hereinafter, "Developer").

WITNESSETH:

WHEREAS, the County, City, and Developer applied to the Commission's Innovative Finance Steering Committee for participation in the Commission's *Cost Share Program*; and

WHEREAS, on March 30, 2007, the Innovative Finance Steering Committee approved the County's, City's, and Developer'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 coordinate participation by the County, City, and Developer in the cost of Commission Project No. J6P2147 (hereinafter, "Project").

(2) LOCATION: The transportation improvement (hereinafter "Improvement") that is the subject of this Agreement is contemplated along Missouri Route 40 (I-64) at Spirit of St. Louis Boulevard. It consists of improvements to the Spirit of St. Louis Boulevard bridge over I-64, an east bound on-ramp from Spirit of St. Louis Boulevard to I-64, and a west-bound off-ramp from I-64 to the North Outer Road, with adjustments to the alignment of the North Outer Road. The final configuration of the intersection is considered part of this Agreement. 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, City, Developer, and the Commission.

(4) COMMISSION REPRESENTATIVE: The Commission's District Engineer for the St. Louis Area District 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 County, City, and Developer 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 County, City, and Developer shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(7) CANCELLATION: The Commission may initiate its intent to cancel this Agreement at any time for a material breach of contractual obligation by providing a written Notice of Intent to the representatives of the County, City and Developer as identified in Section (21). The party claimed to be in material breach of its obligations shall have thirty (30) days to cure the claimed breach, and if cured, the Agreement shall not be cancelled for such claimed breach. If the Commission exercises its rights pursuant to this Section, each Party to this Agreement may exercise its rights to pursue its remedies at law or equity.

(8) PLANS AND CONSTRUCTION: The Commission shall be responsible for preparation of plans, specifications and construction for the Improvement. This includes design, letting of project, and inspection of project. The plans shall be prepared in accordance with and conform to Commission requirements. The final design is subject to the approval of the Federal Highway Administration. The County, City and Developer reserve the right to review and approve the plans and specifications for the Improvements, and to request changes to the plans and specifications that would improve the Project. Said changes shall not be in conflict with Commission and Federal Highway Administration requirements. Such approval is not to be unreasonably withheld. Should the Commission's representative, the County, City or Developer fail to reach approval of the plans and specifications for the Improvement, this Agreement may be terminated by providing written Notice of Intent by any of the parties to this Agreement. Upon receipt of Notice of Intent, the Commission, County, City or Developer shall have thirty (30) days to reach approval of the plans and specifications. If approval is reached, the Agreement shall not be terminated.

(9) FINANCIAL RESPONSIBILITIES: With regard to work under this Agreement, the County, City, and Developer agree^[d1.01.5] as follows:

(A) The County, City, and Developer will be responsible for fifty percent (50%) of the total Project cost, as apportioned herein. Each party shall only be responsible for that amount of the costs apportioned to them under this section, plus any additional project costs for which they may be responsible as set out in Sections 9(C), 9(D), and 9(F) below. The total Project cost will include preliminary engineering, right-of-way, utilities, construction and inspection. The estimate of such County, City, and Developer financial responsibility is one million three hundred ninety-two thousand six hundred fifty-nine dollars (\$1,392,659.00), and shall be provided to the Commission

through an automated clearinghouse (ACH) transaction for the Project. The County, City and Developer shall each provide their financial remittance through a separate ACH for the amount of their individual financial responsibility. The financial responsibility is further broken down as follows: the apportioned share of the Developer shall be seven hundred thousand dollars (\$700,000.00); the apportioned share of the City shall be three hundred forty-six thousand three hundred thirty dollars (\$346,330.00), less the value of any right-of-way conveyed to the Commission for the Project as set out in Section 9(C) below; and the apportioned share of the County shall be three hundred forty-six thousand three hundred twenty-nine dollars (\$346,329.00), less the value of any right-of-way conveyed to the Commission for the Project as set out in Section 9(C) below.

(B) The Commission will fund 50% of the total project costs up to a maximum of one million three hundred ninety-two thousand six hundred fifty-nine dollars (\$1,392,659) from the cost share program. The cost share funding will be available on August 3, 2010.

(C) The City and County shall cause any right-of-way for the Project to be conveyed to the Commission for implementation of the Project. Said right-of-way is located on the north side of I-64 at the Project location, and shall consist of approximately one and a half (1.5) acres. Said right-of-way is currently deeded as denoted in the Innovative Finance Cost Share (IFCS) application approved by the Commission. Said right-of-way shall be conveyed to the Commission on behalf of the County and the City by quitclaim deed prior to bidding of the Improvement. The value of the right-of-way to be conveyed to the Commission is two hundred thirty-seven thousand eight hundred thirty-eight dollars (\$237,838) as identified in the approved IFCS application and shall be credited on an equal basis to the City and the County. The County, City and Developer shall remit through ACH their respective cost share to the "Missouri Highways and Transportation Commission – Local Fund" (Local Fund) thirty (30) days prior to the projected bid letting date for the Project. If the County, City, or Developer fails to remit the funds, the Commission is under no obligation to continue with the project. Should the Commission choose not to continue with the project because one or more of the parties fails to remit the funds, the Commission shall cause any and all monies remitted by any party to the Local Fund to be returned to such party.

(D) The County was approved for a loan by the Missouri Transportation Finance Corporation (MTFC) in the amount of one million three hundred ninety-two thousand six hundred and fifty-nine dollars (\$1,392,659) on June 21, 2007 for the purpose of accelerating the Commission's portion of this Project (hereinafter, "MTFC Loan"). The MTFC will deposit one million three hundred ninety-two thousand six hundred fifty-nine dollars (\$1,392,659) into the Local Fund as specifically described in a separate Direct Loan Agreement. As indicated in said Direct Loan Agreement, the County shall pay to the MTFC all interest on the MTFC Loan that accrues between the Closing Date of the loan and August 3, 2010, and the Commission shall pay to the MTFC the principal of the MTFC loan (\$1,392,659) on August 3, 2010.

(E) Once the Commission has let the project and the County has been notified of the amounts bid on the project:

(1) If the bid of the lowest, responsible bidder selected by the Commission is less than or equal to two million seven hundred eighty-five thousand three hundred eighteen dollars (\$2,785,318), the Commission may award the project construction contract to said bidder.

(2) If the bid of the lowest, responsible bidder selected by the Commission is more than two million seven hundred eighty-five thousand three hundred eighteen dollars (\$2,785,318), the County will have seven (7) calendar days in order to reject or recommend award of the project construction contract to said bidder. If the County does not respond within seven (7) calendar days, the County shall be deemed to have automatically concurred in a Commission decision to award the project construction contract. If the Commission has solicited bids twice or more, and these lettings have not resulted in award, the Commission may terminate this Agreement to void all contractual obligations without being in breach hereof, and the contributions of the City, County, and Developer shall be refunded for the discontinued project, excluding interest.

(F) The County shall be solely responsible for all costs associated with actual project costs in excess of two million seven hundred eighty-five thousand three hundred eighteen dollars (\$2,785,318), subject to the provisions set out in Section (9)(E). The Commission, City, and Developer shall not be responsible for any Project costs in excess of two million seven hundred eighty-five thousand three hundred and eighteen dollars (\$2,785,318).

(10) COMMINGLING OF FUNDS: The County, City, and Developer agree that all funds deposited with the Commission by the County, City, and Developer pursuant to this Agreement 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 as allowed for by its investment policy. All interest monies shall be payable to the Local Fund and credited to the Project. If the amount remitted to the Commission is less than the actual obligation of the County, City, and Developer for the Project, the County, City, and Developer, upon written notification by the Commission, shall tender the necessary monies to the Commission to completely satisfy their obligation. Upon completion of the project, any excess funds, and interest credited, shall be refunded to the County, City, and Developer based on their pro rata share of the investment.

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

(12) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

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

(14) NO INTEREST: By contributing to the cost of this project or improvement, the County, City, and Developer gain 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 County, City, and Developer shall not be entitled to a refund of the funds contributed by the County, City, and Developer pursuant to this Agreement.

(15) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement. This Agreement has been authorized by County Ordinance No. _____ and by municipal Ordinance No. _____ of the City.

(16) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(17) ADDITIONAL FUNDING: In the event the Commission obtains additional federal, state, local, private or other funds to construct the improvement being constructed pursuant to this Agreement that are not obligated at the time of execution of this Agreement, the County, City, and Developer shall not receive 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 County, City, and Developer with the Commission pursuant to this Agreement. If the County, City or Developer makes a claim for an off-set, refund, release, reduction or return, any such claim for an off-set, refund, release, reduction, or return shall constitute a breach of this Agreement by the party making such claim and the Commission, in its sole discretion may cancel this Agreement and remove any portion of the constructed improvement from the Commission's right-of-way at the expense of the party making such claim.

(18) NO ADVERSE INFERENCE: This Agreement shall not be construed more strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

(19) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

(20) VOLUNTARY NATURE OF AGREEMENT: Each party to this Agreement warrants and certifies that it enters into this transaction and executes this Agreement freely and voluntarily and without being in a state of duress or under threats or coercion.

(21) NOTICES AND CORRESPONDENCE: All notices hereunder shall be in writing and shall be delivered by first class mail, postage prepaid, to the parties as set forth below. All correspondence hereunder shall be in writing and shall be delivered by hand delivery, e-mail, facsimile or first class mail, postage prepaid to the parties as set forth below:

COUNTY

St. Louis County, Missouri
Office of the County Counselor
Attention: County Counselor
41 South Central Avenue
Clayton, MO 63105
(314) 615-0135
(314) 615-3732 (facsimile)

COUNTY

Stephanie Leon Streeter, P.E.
Deputy Director
Department of Highways and Traffic
121 South Meramec Ave.
Clayton, MO 63105
(314) 615-8119
(314) 615-8156 (facsimile)
SLeonstreeter@stlouisco.com

COUNTY

John J. Hicks, AICP
Transportation Development Analyst
Department of Highways and Traffic
121 South Meramec Ave.
Clayton, MO 63105
(314) 615-8532
(314) 615-8156 (facsimile)
JHicks@stlouisco.com

DEVELOPER

Ryan D. Hodges, P.E.
Development Services Manager
Duke Realty Limited Partnership
520 Maryville Centre Drive
Suite 200
St. Louis, MO 63141
(314) 514-6721
(314) 514-6993 (facsimile)
Ryan.hodges@dukerealty.com

CITY

Michael G. Herring
City Administrator
City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, MO 63017-0760
(636) 537-4711
(636) 537-4798
mherring@chesterfield.mo.us

CITY

Michael Geisel, P.E.
Director of Public Works
City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, MO 63017-0760
(636) 537-4000
(636) 537-4798
mgeisel@chesterfield.mo.us

CITY

James E. Mello
Armstrong Teasdale LLP
2600 Metropolitan Square, Suite 2600
St. Louis, MO 63102-2740
Facsimile No: (314) 621-5065

COMMISSION

District Engineer, District 6
Missouri Department of Transportation
1590 Woodlake Drive
Chesterfield, Missouri 63017-5712
Facsimile No: (314)_340-4186

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

Executed by the County: This ____ day of _____, 2008.

Executed by the City: This ____ day of _____, 2008.

Executed by the Developer: This ____ day of _____, 2008.

Executed by the Commission: This ____ day of _____, 2008.

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

BY:

ATTEST: (SEAL)

Title:

Secretary to the Commission

APPROVED AS TO FORM:

Commission Counsel

ST. LOUIS COUNTY, MISSOURI

BY:

ATTEST: (SEAL)

Charlie A. Dooley
County Executive

County Clerk

ST. LOUIS COUNTY, MISSOURI
ORDINANCE NO. _____
(attach ordinance copy)

APPROVED AS TO FORM:

County Counselor

APPROVED:

APPROVED:

Chief Accounting Officer

Director of Highways & Traffic

CITY OF CHESTERFIELD:

BY:

ATTEST:

(SEAL)

Title:

Title:

CITY OF CHESTERFIELD, MISSOURI
ORDINANCE NO. _____
(attach copy of ordinance)

APPROVED AS TO FORM:

Title:

DUKE REALTY LIMITED PARTNERSHIP

BY:

ATTEST:

(SEAL)

Title:

Title:

APPROVED AS TO FORM:

Title:

Memorandum

To: Michael G. Herring, City Administrator
From: James E. Mello
Marc B. Fried
Date: August 21, 2008
Subject: Cost Share Agreement for Spirit of St. Louis Boulevard/I-64 interchange
cc: Mike Geisel
Libbey Malberg

Mike,

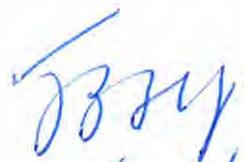
After several months of working with Duke Realty, St. Louis County and the Missouri Department of Transportation, we are pleased to recommend approval by the City Council at its next meeting of the proposed cost share agreement ("*Agreement*") among the above stated parties for the construction of an interchange at I-64 and Spirit of St. Louis Boulevard.

As a result of this Agreement, the City is able to participate in the combined efforts of Duke Realty and St. Louis County to redevelop the old jail site. Not only does this revitalize the old jail site, but it also provides additional benefits to the City by improving access to the west end of Chesterfield Valley and the Chesterfield Sports Complex. Additionally, combining this new interchange with the current improvements being constructed on Eatherton Road should reduce the volume of traffic on Wildhorse Creek Road.

This Agreement accomplishes the City's intent while limiting the City's total obligation to 1/8 of the total cost of the project. Additionally, with a donation of land for the project, the City will reduce its actual cash expenditure to \$227,411. The funds for the City's costs of this project were set aside as part of the TIF budget, and monies were allocated as part of the TIF closeout that occurred last fall. As such, no general revenue funds will be used for this project.

Please contact us if you have any further questions.

JEM
MBF


8/25/08

MEMORANDUM



DATE: August 22, 2008

TO: Michael Herring, City Administrator

FROM: ^{mol} Mike Geisel, DP&PW

RE: SPIRIT BOULEVARD/HIGHWAY 40 INTERCHANGE

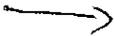
As you are aware, significant progress has been made in developing a four-party agreement for financing the construction of transportation improvements at the Spirit Boulevard overpass at Highway 40. The project will result in a new eastbound access onto the highway, as well as a westbound off ramp, immediately adjacent to the City's athletic complex. This agreement directly involves Duke Realty, Missouri Department of Transportation, St. Louis County, and the City of Chesterfield. In addition, the Monarch-Chesterfield Levee District continues their cooperation with the City by providing right-of-way for this project.

Various members of City Staff have been involved in this project and review of the proposed agreement. You, Ms. Malberg, Mr. Mello, and I have all been actively involved. The attached agreement reflects a maximum financial participation by the City, at an amount not to exceed \$346,330 based on current project estimates. This cost is to be reduced by an amount representing the value of right-of-way provided by the Levee District, resulting in a reasonably estimated City share of \$227,741. Please note, **this funding is to be fully provided from existing TIF proceeds.** An allocation of this amount was included in the funds set aside for Valley infrastructure improvements.

MoDOT has initiated design of the project in anticipation of agency acceptance of the multi-party agreement. I have attached reduced sized drawings of the proposed improvement. However, please note, that the successful negotiation of this agreement has consumed a great deal of time and effort. Mr. Mello has diligently pursued language that strictly limits the City's obligations both initially and in case of default. This language did not come about easily and it was strictly through Mr.



Mello's persistence that the agreement was ultimately drafted in such a favorable way to the City. Unfortunately, the lengthy negotiation has created calendar concerns to assure that MoDOT's funding commitment does not lapse. As such, the timely execution of this agreement has become critical. Ms. Karen Yeomans, MoDOT Area Engineer, has requested that we return the executed agreement within two weeks. They will not proceed to final design or bid until each agency has fully committed. At this juncture, I recommend that City Council consider and ultimately authorize you to execute the agreement as proposed. More importantly, I strongly request that City Council be apprised of the calendar concerns, and potentially suspend their policy such that the proposed ordinance and authorization could be read twice and fully passed at their next regular meeting currently scheduled for September 3rd, 2008.



If you have any questions or require additional information, please advise.

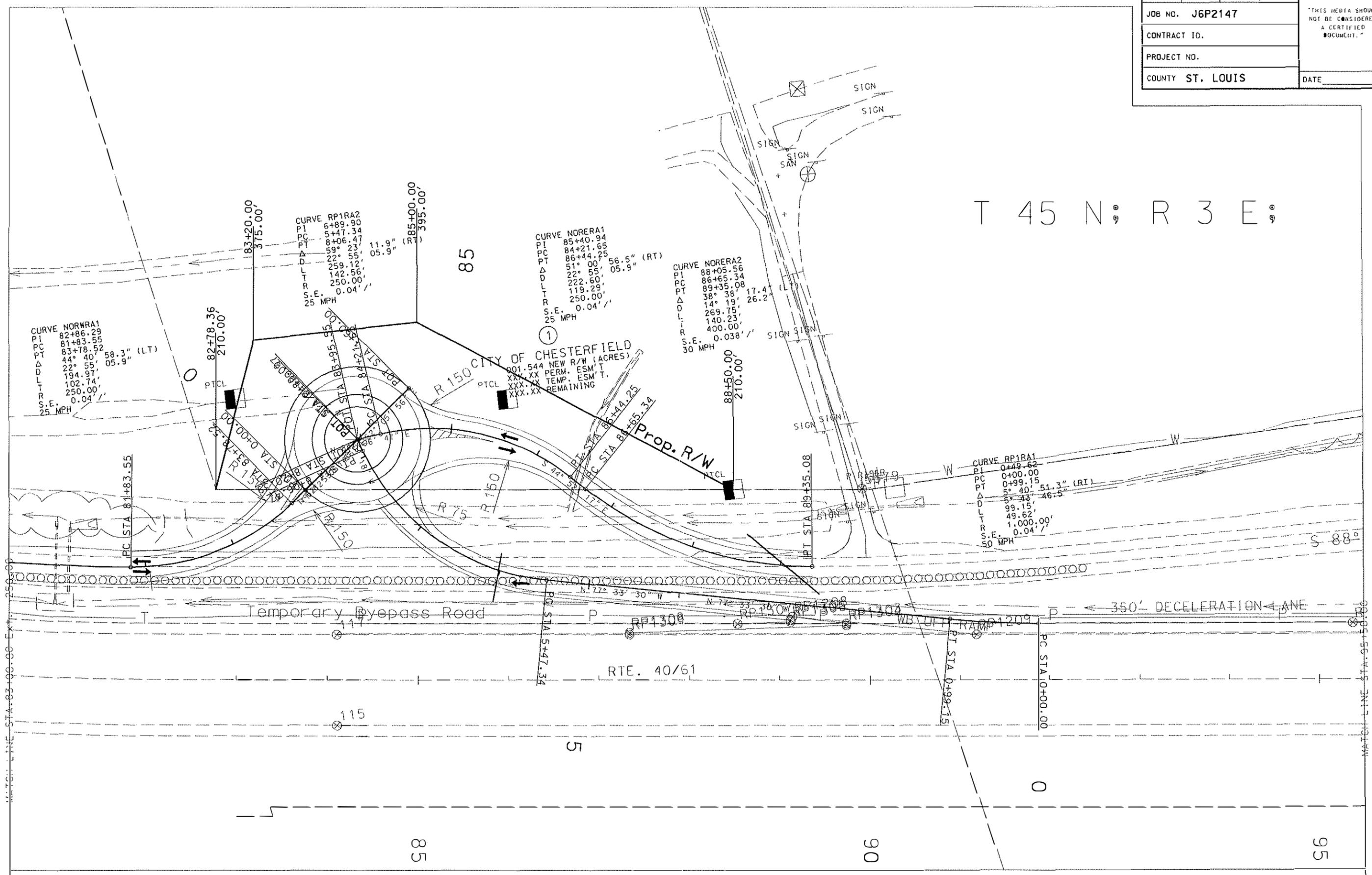
attachments

✓
Jzy
8/25/08

ROUTE	STATE	DISTRICT	SHEET NO.
40-61	MO	6	1
JOB NO. J6P2147			
CONTRACT ID.			
PROJECT NO.			
COUNTY ST. LOUIS			DATE

THIS MEDIA SHOULD NOT BE CONSIDERED A CERTIFIED DOCUMENT.

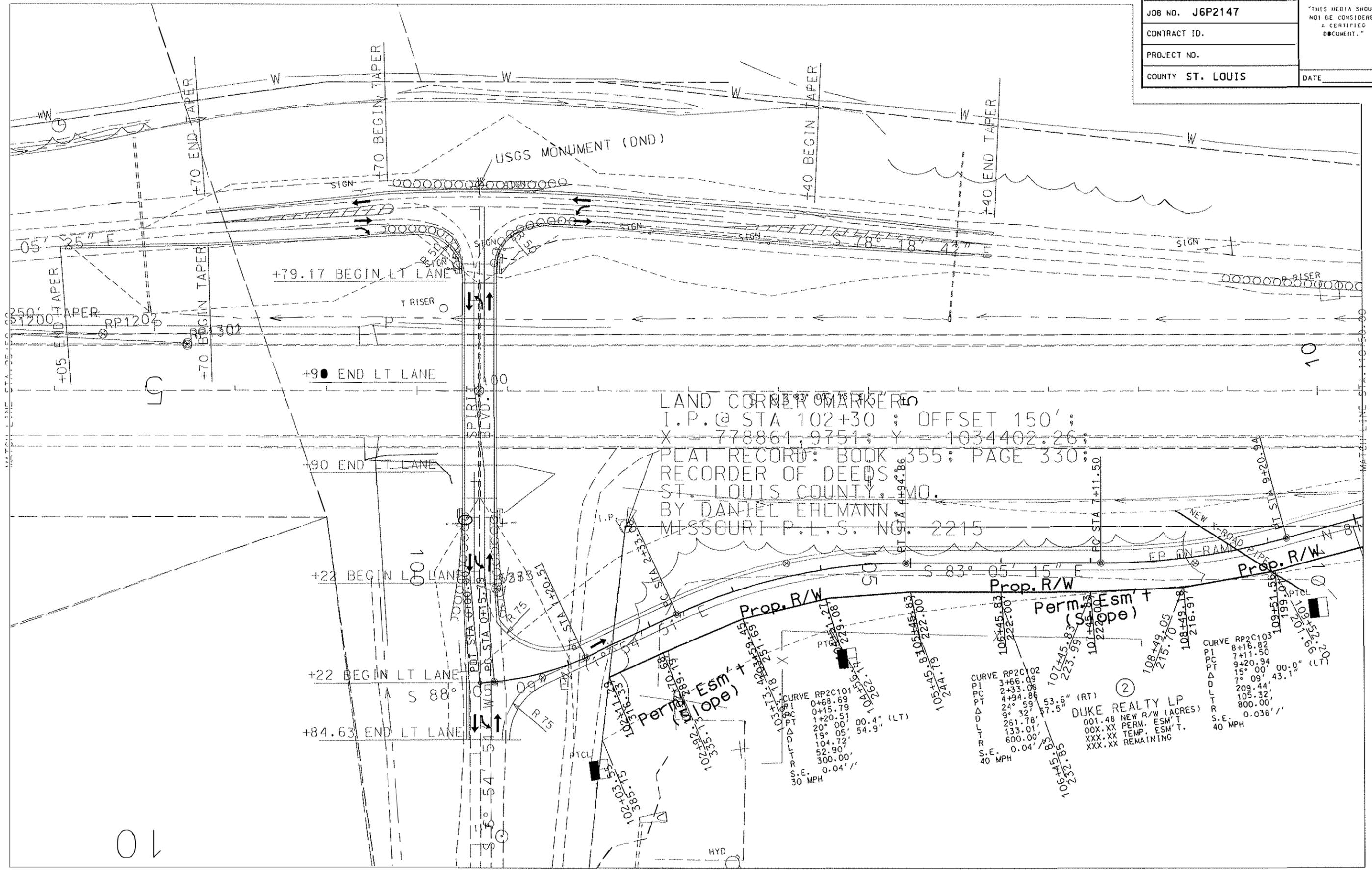
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IF A SEAL IS PRESENT ON THIS SHEET IT HAS BEEN ELECTRONICALLY SEALED AND DATED.

ROUTE	STATE	DISTRICT	SHEET NO.
40-6	MO	6	2
JOB NO. J6P2147			
CONTRACT ID.			
PROJECT NO.			
COUNTY ST. LOUIS			
			DATE

"THIS MEDIA SHOULD NOT BE CONSIDERED A CERTIFIED DOCUMENT."
DATE



10

IF A SEAL IS PRESENT ON THIS SHEET IT HAS BEEN ELECTRONICALLY SEALED AND DATED.

ROUTE	STATE	DISTRICT	SHEET NO.
40-61	MO	6	1
JOB NO. J6P2147			
CONTRACT ID.			
PROJECT NO.			
COUNTY ST. LOUIS			DATE

THIS MEDIA SHOULD BE CONSIDERED A CERTIFIED DOCUMENT.

