

Bill No. 13808

Ordinance No. 24-044

Sponsor: Michael Galba

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL COOPERATION AND REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF ST. CHARLES, MISSOURI, AND THE METROPOLITAN PARK AND RECREATION DISTRICT, D/B/A THE GREAT RIVERS GREENWAY DISTRICT, ASSOCIATED WITH CERTAIN REHABILITATION EFFORTS ON THE BOSCHERT GREENWAY PHASE I, IN AN AMOUNT NOT TO EXCEED \$282,000.00.

Be It Ordained by the Council of the City of St. Charles, Missouri, as Follows:

SECTION 1. An Intergovernmental Cooperation and Reimbursement Agreement (Boschert Greenway: Trail Stabilization & Paving) between the City of St. Charles, Missouri, and the Metropolitan Park and Recreation District, d/b/a The Great Rivers Greenway District, for rehabilitation efforts on the Boschert Greenway Phase I to repair conditions beyond ordinary maintenance in an amount not to exceed \$282,000.00, is approved. The Agreement shall be substantially the same in form and content as attached hereto and identified as Exhibit 1. The Mayor is authorized to execute the Agreement and perform all acts necessary to carry out the intent of this ordinance.

SECTION 2. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

April 9, 2024
Date Passed

Vince Ratchford
Vince Ratchford, Presiding Officer

4-10-24
Date Approved by Mayor

Daniel J. Borgmeyer
Daniel J. Borgmeyer, Mayor

Approved as to Form:

Attest:

Michael P. Cullen 3/15/24
Michael P. Cullen, City Attorney Date

Kimberly Hudson
City Clerk



Notice of Signature Request

Attention: Navalee Britton

Date Sent: 4/10/24

Department: Parks + Rec

Return By: ASAP

File Number: OPD 24-044

Company/Organization: Great Rivers Greenway

Topic: See attached

Original Contracts are attached which requires the signature of one or more individuals. Please acquire the necessary signatures, date and return one original marked "City Copy" to the City Clerk's Office. Thank you.

**INTERGOVERNMENTAL COOPERATION
AND REIMBURSEMENT AGREEMENT
(Boschert Greenway: Trail Stabilization & Paving)**

THIS INTERGOVERNMENTAL COOPERATION AND REIMBURSEMENT AGREEMENT (“COOPERATION AGREEMENT”) is made and entered into as of the date last signed below by and among the **METROPOLITAN PARK AND RECREATION DISTRICT d/b/a THE GREAT RIVERS GREENWAY DISTRICT (“DISTRICT”)** and the **CITY OF ST. CHARLES, MISSOURI** (the “**CITY**”) (collectively referred to as the “**PARTIES**”).

WHEREAS, the **DISTRICT** is engaged in developing and constructing a series of parks, trails and greenways in the City of St. Louis, St. Louis County and St. Charles County, Missouri;

WHEREAS, Sections 70.210 and 70.220 RSMo., as amended, authorize municipalities and political subdivisions to contract and cooperate with other municipalities and political subdivisions for the planning, development, construction, acquisition or operation of any public improvement or facility;

WHEREAS, Section 67.1742(2) RSMo. provides that a metropolitan park and recreation district shall have the power to “Contract with public and private entities or individuals both within and without the state ... in furtherance of any of the purposes of the district;”

WHEREAS, subject to the terms of this **COOPERATION AGREEMENT**, **CITY** has agreed to conduct rehabilitation efforts, including trail stabilization and paving, at the greenway segment located between Boschert Town Road and New Town Boulevard (the “**PROJECT**”) depicted as the “Project Area” on Exhibit A, attached hereto and incorporated herein;

WHEREAS, subject to the terms of this **COOPERATION AGREEMENT**, **DISTRICT**

has agreed to reimburse fifty percent (50%) of the cost of the **PROJECT**, subject to appropriation by the **DISTRICT'S** Board of Directors, up to an amount not to exceed Two Hundred Eighty-Two Thousand and 00/100 U.S. Dollars (\$282,000.00) towards the construction and completion of the **PROJECT** (the "**DISTRICT CONTRIBUTION**");

WHEREAS, Ordinance Number 24-044 authorizes the **CITY** to enter into this **COOPERATION AGREEMENT** with the **DISTRICT**; and

NOW, THEREFORE, in consideration of the foregoing and the following mutual covenants, terms and conditions, the **PARTIES** agree as follows:

1. **Representations of the DISTRICT.** The **DISTRICT** represents, warrants and covenants to the **CITY** as follows:

- a. The **DISTRICT** is a political subdivision duly created and existing under and pursuant to the laws of the State of Missouri.
- b. The **DISTRICT** has full power and authority to enter into this **COOPERATION AGREEMENT** and to carry out its obligations hereunder, and by proper action has duly authorized the execution and delivery of this **COOPERATION AGREEMENT** by its duly authorized officers.
- c. Neither the execution and delivery of this **COOPERATION AGREEMENT**, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the **DISTRICT** is now a party or by which the **DISTRICT** is bound.

2. **Representations of the CITY.** The **CITY** represents, warrants and covenants to the **DISTRICT** as follows:

- a. The **CITY** is a constitutionally created City of the State of Missouri.

- b. The **CITY** has power to enter into this **COOPERATION AGREEMENT** and by proper action has duly authorized the execution and delivery of this **COOPERATION AGREEMENT** by its duly authorized officers.
- c. The execution and delivery of this **COOPERATION AGREEMENT** will not conflict with or constitute a breach of or default under the laws applicable to the **CITY**, its ordinances or any bond, debenture, note or other evidence of indebtedness of the **CITY** or any contract, agreement or lease to which the **CITY** is a party or by which it is bound.

3. **CITY Responsibilities.**

- a. **CITY** hereby agrees to complete or cause the completion of the **PROJECT** in accordance with the scope of work attached hereto as Exhibit B, at the **CITY'S** cost and expense subject to reimbursement by the **DISTRICT** as set forth in Section 4 herein.
- b. The **CITY** will maintain Workers' Compensation and appropriate employer's liability insurance covering any of its own employees engaged in activities relating to the **PROJECT**.
- c. The **CITY** will require that any outside contractor, equipment provider or other third party with which it enters into any agreements under this **COOPERATION AGREEMENT**, provide it with a certificate of insurance demonstrating insurance coverage in connection with the activities to be performed by such contractor in connection with the **PROJECT**, for personal and property liability, medical benefits, as well as general liability insurance, all of which shall name the **CITY** and the **DISTRICT** as additional insureds.
- d. After the **PROJECT'S** construction is substantially completed, the **CITY** shall issue a Certificate of Substantial Completion, in the form attached hereto as

Exhibit C and incorporated herein, to the **DISTRICT**. The Certificate of Substantial Completion shall represent all signing parties' determination that the **PROJECT** substantially conforms to the terms of this **COOPERATION AGREEMENT**.

4. **District Responsibilities.**

a. **DISTRICT** shall reimburse the **CITY** for fifty percent (50%) of the cost of the **PROJECT**, in a total amount not to exceed the **DISTRICT CONTRIBUTION**, subject to appropriation by **DISTRICT'S** Board of Directors, and in accordance with the following terms and conditions:

- i. **DISTRICT** shall reimburse and pay the **CITY** the amount of actual costs incurred or paid by or on behalf of the **CITY** for work in furtherance of construction of the **PROJECT**, provided that all costs and expenses incurred or paid by or on behalf of the **CITY** for which the **CITY** seeks payment from **DISTRICT** must be directly applicable to the construction of the **PROJECT** (the "**REIMBURSABLE COSTS**").
- ii. The **CITY** shall present written invoices, construction pay applications, and other reasonable written supporting materials to **DISTRICT** of all costs incurred or paid by the **CITY**. The request shall include a certification from the **CITY'S** construction manager that costs submitted: (1) have not previously been submitted to **DISTRICT**, (2) have actually been incurred or paid by or on behalf of the **CITY**, and (3) are related to the construction of the **GRG PROJECT** and are otherwise eligible for payment as described herein.
- iii. Upon receipt of the certification and accompanying invoices and/or other supporting materials, **DISTRICT** shall review the certification and

materials and determine within thirty (30) days of receipt of said certification if the submitted costs are eligible **REIMBURSABLE COSTS**. If **DISTRICT** determines that any costs identified as **REIMBURSABLE COSTS** by the **CITY** are not **REIMBURSABLE COSTS** as contemplated hereunder, **DISTRICT** shall notify the **CITY** in writing within five (5) days after reviewing the certification and invoice, identifying the ineligible costs and the basis for determining the costs to be ineligible, whereupon the **CITY** shall have the right to provide additional or supplemental information regarding the submitted **REIMBURSABLE COSTS** along with a supplemental certificate for payment. If **DISTRICT** fails to approve or disapprove of any submitted certificate for payment within thirty (30) days after receipt thereof, the certificate for payment shall be deemed approved; provided, however, in no event shall the **CITY** submit a request for payment to **DISTRICT** more frequently than once per thirty (30) day period. Once the **REIMBURSABLE COSTS** have been approved by **DISTRICT**, **DISTRICT** shall pay the **CITY** within thirty (30) days after such costs have been approved.

- iv. Notwithstanding anything contained in this **COOPERATION AGREEMENT** to the contrary, it is expressly understood and agreed by the **PARTIES** that under no circumstances, and in no event, shall **DISTRICT** be required to reimburse more than the **DISTRICT CONTRIBUTION**. The **CITY** shall be responsible for all costs paid or incurred in connection with construction of the **PROJECT** in excess of the **DISTRICT CONTRIBUTION**.

5. **Amendments, Changes and Modifications.** This **COOPERATION AGREEMENT** may be amended, changed, modified or altered only by written agreement of the **DISTRICT** and the **CITY**.

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

DISTRICT: Metropolitan Park and Recreation District
3745 Foundry Way, Suite 253
St. Louis, MO 63110
Attention: CEO

CITY: St. Charles Parks & Recreation
1900 W. Randolph Street
St. Charles, MO 63301
Attention: Director

7. **Breach of Cooperation Agreement; Default.** Either **PARTY'S** failure to perform any duties, or obligations that either **DISTRICT** or **CITY** is required to perform under this **COOPERATION AGREEMENT** is a breach of this **COOPERATION AGREEMENT**. Upon learning of a breach of this **COOPERATION AGREEMENT**, the non-breaching **PARTY** shall notify the breaching **PARTY**, in writing, of such breach. In the event a breach of this **COOPERATION AGREEMENT** is not remedied within thirty (30) calendar days after delivery of written notice of such breach to the breaching **PARTY**, the non-breaching **PARTY** will be in default. If a **PARTY** is in default under this **COOPERATION AGREEMENT**, the non-breaching **PARTY** may terminate this **COOPERATION AGREEMENT** by written notice to the breaching **PARTY**, such termination to be effective upon the date of the breaching **PARTY'S** receipt of such notice, and may pursue any and all remedies, at law or in equity, against the breaching **PARTY** for such default.

8. **Assignment.** No party may assign its right under this **COOPERATION AGREEMENT** without the written consent of the other.

9. **Waiver.** The failure of a party to require performance of any provision of this **COOPERATION AGREEMENT** shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this **COOPERATION AGREEMENT** constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

10. **Controlling Law/Venue.** This **COOPERATION AGREEMENT** shall be interpreted in accordance with the laws of the State of Missouri. Any action brought hereunder shall be brought in the Circuit Court of St. Charles County, Missouri or in the event of Federal jurisdiction, in the United States District Court, Eastern District of Missouri.

11. **Integration.** This **COOPERATION AGREEMENT** represents the entire integrated agreement between the **DISTRICT** and the **CITY**, and supersedes all prior negotiations, representations or agreements, either written or oral, as to the **PROJECT** referenced herein.

12. **Counterparts.** This **COOPERATION AGREEMENT** may be executed by the **PARTIES** in separate counterparts, each of which when executed and delivered shall be an original for all purposes, but all of which, when taken together, shall constitute one and the same instrument. Executed counterpart signature pages of the **COOPERATION AGREEMENT** may be delivered by facsimile, email in portable document format (.pdf), or other electronic transmission intended to preserve the original graphic appearance of a document, and any such signature page shall be deemed an original.

[Signature Page Immediately Follows]

WHEREFORE, the PARTIES have set their hands on the dates indicated below.

**METROPOLITAN PARK AND RECREATION DISTRICT
d/b/a THE GREAT RIVERS GREENWAY DISTRICT**

By: _____
Susan Trautman, CEO

Date: _____

Approved as to form:

Husch Blackwell LLP



CITY OF SAINT CHARLES, MISSOURI

Daniel J. Borgmeyer 4-10-24

Daniel J. Borgmeyer, Mayor Date

Attest:

Kimberly Hudson 4-10-24

Kimberly Hudson, City Clerk Date

Approved as to Legal Form:

Michael P. Cullen 3/19/24

Michael P. Cullen, City Attorney Date

CITY OF ST. CHARLES, PARKS & RECREATION BOARD

By: _____

Date: _____

ATTEST:



EXHIBIT A

Project Area

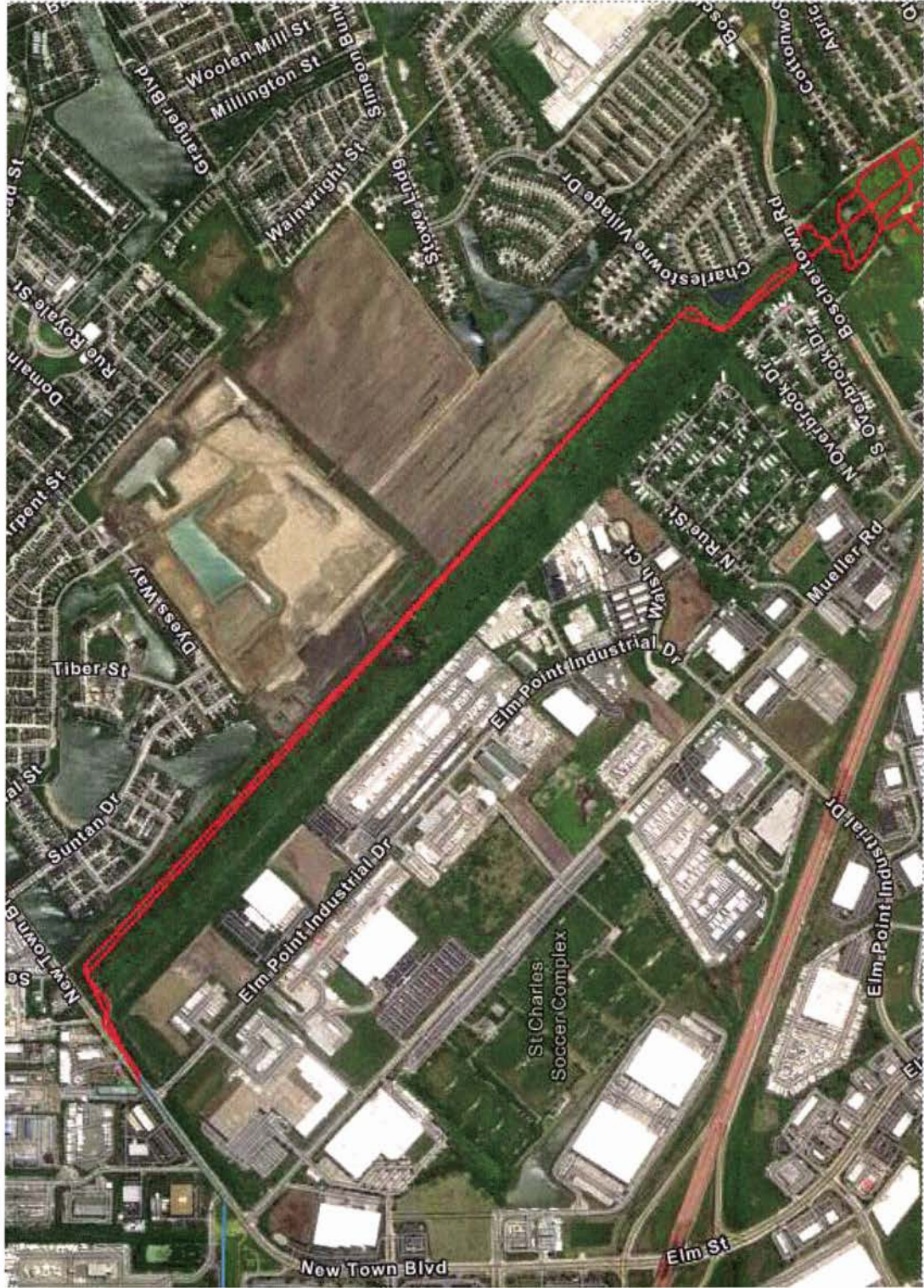


EXHIBIT B

Scope of Work

Trail Rehabilitation

Pulverize & Compact – 10,580 SY

- Pull samples of existing materials to develop mix design
- Provide plywood & fabric to create trail access
- Pulverize existing trail & underlying soils to a width of 14'
- Compact & fine grade pulverized base
- Layout one section of trail to cement stabilize, roughly 1,100 x 12'
- Clean up access road, backfill, seed and straw only access area

Full Depth Reclamation with Cement – 10,580 SY

- Provide plywood & fabric to create trail access
- Incorporate Portland cement at 7% (per previous Geotech report) into pulverized material
- Provide initial compaction & water to form homogenous mixture
- Fine grade & smooth drum roll cement stabilized base
- Allow base to cure for 72 hours prior to any gravel or pavement being placed
- Clean up access road, backfill, seed and straw only access area

Trail Paving – 2" & 3" options – Pave all stabilized surfaces 10' wide

- Paint edge of pavement limits, trail to be 10' wide at top width
- Install BP-1 asphalt surface course in one lift
- Backfill of trail not included

Tree Removal

- All tree limbs and debris will be chipped and removed from site
- Tree stumps will be ground to 6" or greater below surface, backfilled with soil and grindings to 4" above grade level
- Current ANSI Safety requirement for Tree Care Operations should be followed.

EXHIBIT C

Form of Certificate of Substantial Completion

CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, _____, the Metropolitan Park and Recreation District d/b/a The Great Rivers Greenway District (the "District"), pursuant to that certain Cooperation Agreement dated _____, 20____, (the "Agreement") by and between the District and the City of St. Charles, Missouri (the "City"), hereby certifies to the District as follows:

1. That as of _____, 20____, the Greenway (the "Work") (as defined in the Agreement in Exhibit A) has been substantially completed in a workmanlike manner and in accordance with the Agreement and Exhibit B.
2. Lien waivers for applicable portions of the Work have been obtained.
3. This Certificate of Substantial Completion is accompanied by the project architect's certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), certifying that the Work has been substantially completed in accordance with the Agreement.
4. This Certificate of Substantial Completion is being issued by the City to the District in accordance with the Agreement to evidence the City's satisfaction of all obligations and covenants with respect to the Work and the development of the Greenway.
5. The District's acceptance (below) or its failure to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the District (which written objection, if any, must be delivered to the City prior to the end of such 30-day period) shall evidence the satisfaction of the City's agreements and covenants to perform the Work.
6. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ___ day of _____, 2024.

**METROPOLITAN PARK AND RECREATION DISTRICT
D/B/A THE GREAT RIVERS GREENWAY DISTRICT**

By:

Name:

Title:

CITY OF ST. CHARLES, MISSOURI

By:

Name:

Title:

RCA FORM (OFFICE USE ONLY)

Bill # 13808

MEETING/DATE: 4/2/2024

Regular(X) Special() Work Session()

ATTACHMENT: YES(X) NO()

Report() Resolution() Ordinance(X)

Request for Council Action

Ward: Eight

Sponsor: Michael Galba

Description: Intergovernmental Cooperation and Reimbursement Agreement for Boschert Greenway Phase I with Great Rivers Greenway

- **Contract Extension/Renewal:** Yes() No(X)
- **Information Paper Attached:** Yes(X) No()

Board/Committee/Commission: Approve(X) Disapprove()

Summary:

Presented is an intergovernmental agreement with Great Rivers Greenway to complete necessary work on Boschert Greenway Phase I from Boschertown Road to New Town Boulevard. GRG originally designed and constructed the trail in 2008 with the City/Parks responsible for on-going maintenance. Because the issues with the trail are beyond ordinary maintenance, GRG has agreed to split the total cost to fix the trail which is estimated at \$564,000, or \$282,000 to each party.

The type of trees and subsurface being the main issues created the asphalt to fail cracking and splitting apart as reported in the findings from the SCI Engineering report. The scope of work includes tree removal, pulverization and compaction, full depth reclamation (FDR) with cement and lastly trail paving. After the entire 10,580 square yards of the trail is pulverized and compacted, there will be a 1,000 square yard test area of full depth reclamation for a period of time to ensure the results are a positive fix for the entire trail. We estimate the test site being in place for a minimum of 3 months prior to any additional work. Until it is decided the FDR has succeeded, the trail will remain a compacted rock surface.

As this is an intergovernmental agreement, City Council approval is also necessary. Work to the trail is expected to begin in April and opened back up to the public within 2 weeks or less.

STAFF RECOMMENDATION: Approve

Budget Impact: (revenue generated, estimated cost, CIP item, etc.) N/A

Account #: 217-451-873-109 **Fiscal Impact:** \$564,000 **Project #:** TBD **BA#** 3

RCA prepared by: MMB Dept. Dir MMB Finance Dir. Qao Dir. of Admin. 4