

Council Bill: B 97-25

MOTION TO AMEND: _____

MADE BY: _____

SECONDED BY: _____

MOTION: I move that Council Bill B 97-25 be amended as set forth on this amendment sheet.

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The Attachment A attached to this amendment sheet is substituted for the Attachment A attached to the original ordinance.

CCO Form: FS08
 Approved: 03/04 (BDG)
 Revised: 03/24 (TLP)
 Modified: 04/25 (MWH)

Route: I-70
 County: Boone
 Project No. JST0021
 City of Columbia
 2024-09-85377

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION COST SHARE AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Columbia (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 September 12, 2024, 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 Entity of the City of Columbia in the cost of specific additional pedestrian improvements being added to the Commission's larger Improve I-70 Design-Build Project JST0021 which was awarded on February 14, 2024 by the Commission. The main focus of this project being to add an additional lane of travel from Columbia to Kingdom City while also making improvements at the US 63/I-70 Interchange. "Exhibit A" describes the pedestrian improvements which are being added with this agreement.

(2) LOCATION: The transportation improvements that are the subject of this Agreement are contemplated along the Route 63 Connector, I-70 Drive SE, St. Charles Road and Clark Lane. The locations described more specifically in Exhibit A and on the drawings in Exhibit B.

(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 Improve I-70 3rd Party Lead 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) APPLICABLE LAWS AND REGULATIONS: This Agreement shall be construed according to the laws of the State of Missouri. Each party shall comply with all applicable federal, state, and local laws, regulations, and ordinances. Additionally, each party shall adhere to all accepted industry standards, processes, and procedures relevant to the performance of their obligations under this Agreement. A violation of this paragraph constitutes a material breach of the 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: The Commission shall be responsible for preparation of plans, specifications and construction for the herein improvements. This includes design, and inspection of items being added to the project. The plans shall be prepared in accordance with and conform to Commission requirements. The Commission will authorize its design-build contractor to design, provide necessary materials, and construct the specified improvements as a Change Order to JST0021.

(A) 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, according to 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.

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

(A) The total project cost will include, right of way, right of way incidentals, and construction, currently estimated at two million thirty-two thousand five hundred dollars (\$2,032,500). The details of the estimated cost breakdown are listed below and in "Exhibit C", which is attached hereto and made part hereof. Construction costs include all costs incurred by the design-build contractor including the design, construction and utilities among other items. Cost Share funds shall not be used off the State Highway System. The pedestrian improvements listed in Exhibit A of this Agreement are deemed eligible for Cost Share funds, as agreed by the Commission and the City.

(B) The Entity shall pay for fifty percent (50%) of the total project cost, currently estimated at one million sixteen thousand two hundred and fifty dollars

(\$1,016,250). The Entity shall receive a credit for the right-of-way costs, currently estimated at twenty thousand dollars (\$20,000). The Entity shall remit a check in the amount of nine hundred ninety-six thousand two hundred fifty dollars (\$996,250) to cover construction costs, no later than thirty (30) days after execution of this contract. This check should be made payable to *Missouri Highways & Transportation Commission – Local Fund*. If the Entity fails to make the deposit, the Commission is under no obligation to continue with the additional elements of work associated with this cost share.

(C) The Commission will pay for fifty percent (50%) of the total project cost up to a maximum of one million sixteen thousand two hundred and fifty dollars (\$1,016,250). Of this amount, the Commission shall provide one million sixteen thousand two hundred and fifty dollars (\$1,016,250) from the Commission's Cost Share program, available in state fiscal year 2025.

(D) The Entity is responsible for the balance of the additional improvements in excess of two million thirty-two thousand five hundred dollars (\$2,032,500). Underruns shall be based on pro rata share.

(E) If, the additional work proposed by this Cost Share, is determined to be in excess of the budget at the time of the initial or any subsequent change order execution, the Entity upon written notification from the Commission shall remit a check in the amount of its share of the difference between the estimated amount and the change order amount no later than one (1) day prior to the date of the change order execution or a later date set by the Commission in its sole discretion. In the event the Commission, in its sole discretion, extends the day the Entity payment is due, it shall notify the Entity of the new due date in writing, which shall be binding immediately upon the Entity's receipt of the written notice. The check must be made payable to the *Missouri Highways & Transportation Commission – Local Fund*. The Commission, in its sole discretion, reserves the right to take action regarding the Change Order and either reject the Change Order if the City fails to make the payment by the due date, or execute the Change Order contingent upon receipt of the additional funds from the Entity by the extended due date. If the Commission makes a contingent execution of the Change Order and the Entity fails to make the required deposit(s) by the extended due date, the contingency of the Change Order by the Commission shall be deemed unsatisfied, the Change Order deemed null and void and the Commission shall be under no obligation to continue with the additions to the contract.

(10) COMMINGLING OF FUNDS: The Entity agrees that all funds deposited by the Entity, 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 by its Investment Policy. All interest monies shall be payable to the *Local Fund* and credited to the project. If the amount deposited plus any applicable credited interest with the Commission shall be less than the actual obligation of the Entity for this project, the Entity, 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 Entity shall be refunded to the Entity based on its pro rata share of the investment.

(11) COMMISSION RIGHT OF WAY: The municipal agreement (2024-02-83365) with the City of Columbia executed on February 14, 2024 will govern the maintenance of these improvements.

(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 and the Entity.

(14) 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.

(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.

(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 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.

(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: 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: Dan Oesch
3rd Party Lead
Improve I-70
830 MoDOT Drive
Jefferson City MO 65109
573-291-2788
Email: Daniel.Oesch@modot.mo.gov

Entity to: Attn: City Manager
City of Columbia
701 E Broadway
Columbia, MO 65201
Email: cmo@como.gov

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

(22) 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.

(23) INDEMNIFICATION: 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.

(24) INSURANCE:

(A) The Entity is required or 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 insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$600,000 per claimant and \$4,000,000 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.

(B) 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

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

Executed by the Entity this _____ (date).

Executed by the Commission this _____ (date).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF COLUMBIA, MISSOURI

Title _____

By _____
De'Carlon Seewood
Title City Manager

ATTEST:

ATTEST:

Secretary to the Commission

By _____
Sheela Amin
Title City Clerk

Approved as to Form:

Approved as to Form:

Commission Counsel

By _____
Nancy Thompson
Title: City Counselor

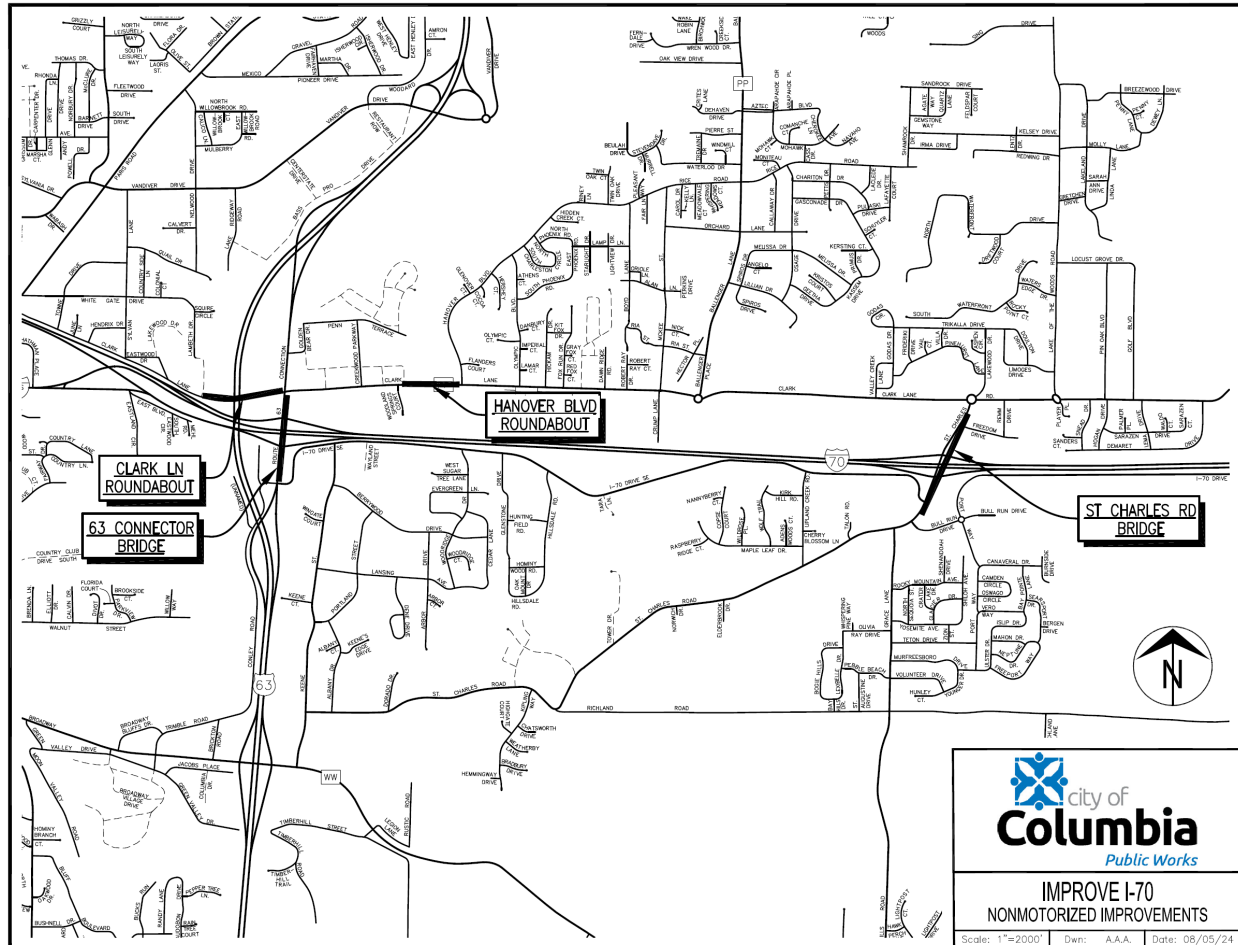
Ordinance No _____

Exhibit A

Project Description:

- **Route 63 Connector:** The existing design-build contract will install 6-foot sidewalks on the west side from Clark Lane to Conley Road/East Boulevard roundabout. The proposed project increases sidewalks to 8-foot on the west side of the bridge, adds 8-foot sidewalks on the east side from Clark Lane to Conley Road and adds a signalized pedestrian crossing across the Route 63 Connector at Conley Road.
- **I-70 Drive SE:** The proposed project adds 8-foot sidewalks on the south side from the Route 63 Connector to existing sidewalks at TGI Friday's and adds a signalized pedestrian crossing across I-70 Drive SE.
- **St. Charles Road:** The existing design-build contract will install 6-foot sidewalks on the west side from south of Outer Road 70 to north of Nilson-Millard Cremation and Burial Center. The proposed project increases sidewalks to 8-foot on the west side of the bridge and adds 8-foot sidewalks on the east side from south of Outer Road 70 to the Phillips 66 access and from Freedom Drive to the St. Charles Road/Clark Lane roundabout.
- **Clark Lane:** The proposed project adds base fill, culvert widening and 5-foot minimum sidewalks on the north side from Woodland Spring Court to the Clark Lane/Hanover Boulevard roundabout and adds 6-foot sidewalks on the north side from Lambeth Drive to the Route 63 Connector.

Exhibit B

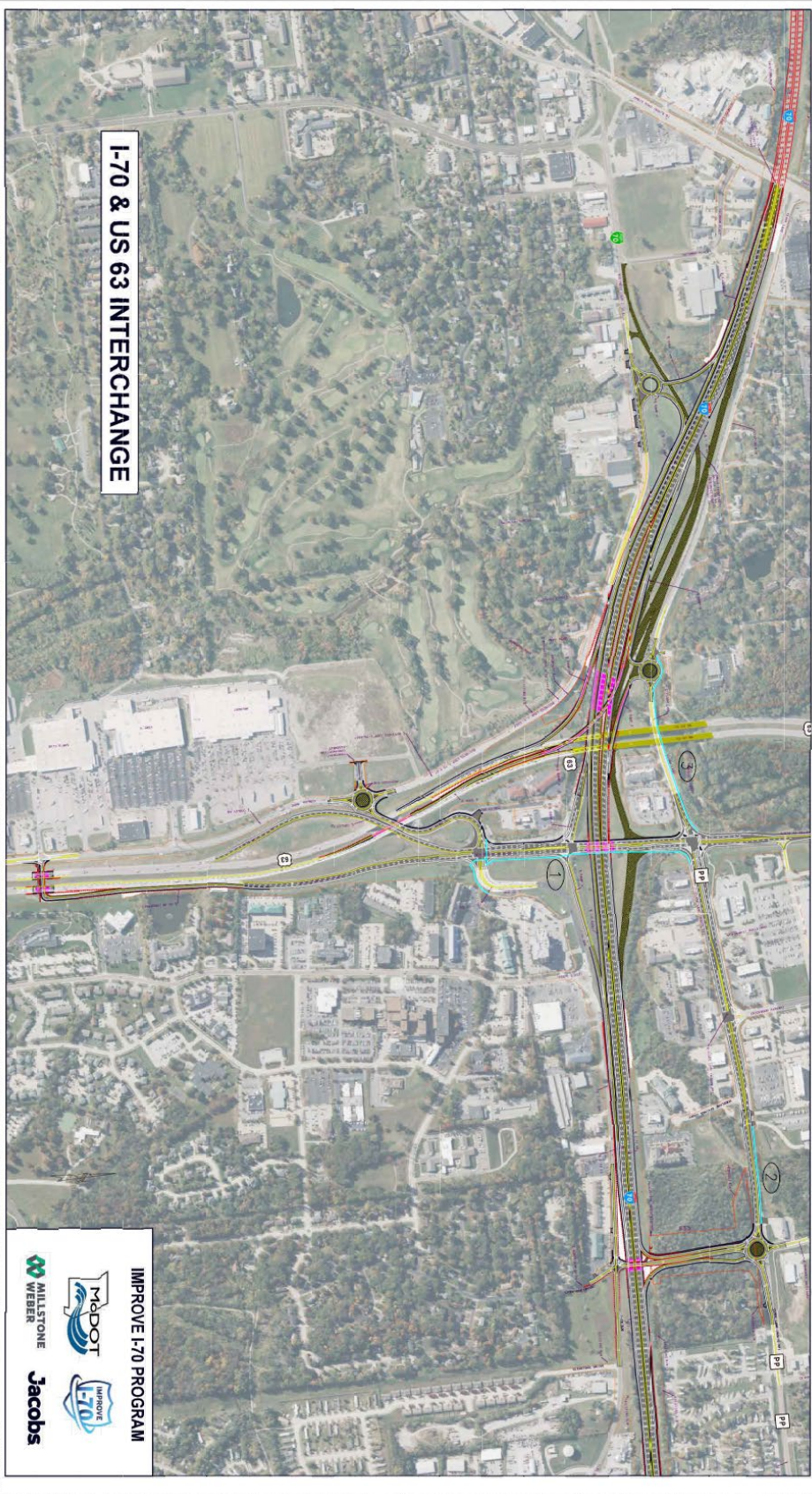


1. HWY 63 CONNECTOR BRIDGE
2. HANOVER BLVD ROUNDABOUT
3. CLARK LN ROUNDABOUT

— SIDEWALK INCLUDED IN IMPROVE I-70 DESIGN BUILD
 — SIDEWALK INCLUDED IN MODOT STP COST SHARE



STP COST SHARE IMPROVEMENTS
 HWY 63 CONNECTOR AREA
 SCALE: N.T.S. DATE: A.A.A. NOV 08/05/2024





1. ST CHARLES RD BRIDGE

- SIDEWALK INCLUDED IN IMPROVE I-70 DESIGN BUILD
- SIDEWALK INCLUDED IN MODOT STP COST SHARE



STP COST SHARE IMPROVEMENTS
ST CHARLES RD BRIDGE

Scale: N.T.S. | Drawn: A.A.A. | Date: 08/08/2024

Exhibit C

Project Name: Improve 70 - Project #1

MoDOT Project Number: JST0021

Details: This cost share will add additional pedestrian improvements to the existing elements planned for this awarded design-build project.

Total Eligible Cost Estimate: \$2,032,500

Local Entity: City of Columbia

Current Estimate

Preliminary Engineering	\$0
PE Review	\$0
Right of Way	\$19,000
Right of Way Incidentals	\$1,000
Right Of Way Review	\$0
Construction	\$2,012,500
Utilities	\$0
CE (MoDOT's Consultant)	\$0
CE Review	\$0
Total	\$2,032,500

Project Responsibilities

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

Financial Responsibilities

MoDOT Internal Budget	\$0	0%
Cost Share Funds	\$1,016,250	50%
Entity	\$1,016,250	50%
Total	\$2,032,500	100%

The entity shall be responsible for all cost overruns. Underruns shall be based on pro rata share.