

CCO Form: DE11
 Approved: 04/93 (CEH)
 Revised: 12/21 (BDG)
 Modified: 11/23 (GH)

Municipal Agreement
 Route: I-70
 County: Boone
 Job No.: JST0021

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 Columbia, 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 Job No. JST0021 shall consist of improvements to the I-70 corridor from just east of Route B to just East of Route 54 in Kingdom City and includes improvements to the US 63 Connector and interchange.

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

Beginning at Station 694+00, a point 400 feet east of Route B, and continue in an east direction along existing I-70, to a point 1.2 miles east of the US 54 in Kingdom City. The project may potentially impact the following streets: Conley Road, Clark Lane, Heriford Road, Whitegate Drive, Hathman Place, St. Charles Road, Business Loop 70, East Boulevard, I-70 Drive Southeast, Towne Drive and Sylvan Lane. The length of improvements within the City is approximately 3.8 miles.

(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 actual design of the public improvement may vary and will be shown on detailed plans prepared by the Design-Build Contractor selected by the Commission for the above designated route and project. A copy of the detailed plans will be provided to the City for comment upon modifications and enhancements to City streets.

(5) BICYCLE AND PEDESTRIAN IMPROVEMENTS: The Commission acknowledges the importance of bicycle and pedestrian facilities to the City and, therefore, the Commission will encourage the Design-Build Contractor to consider connectivity for pedestrian and bicycle movement through the interchange and in the surrounding area when designing the project. Detailed plans for pedestrian and bicycle improvements to the I-70 and US 63 Interchange area will be provided to the City for review, and the City may provide the Commission with comments for the Commission's consideration.

(6) PURPOSE: It is the intent of this Agreement to outline the parties' responsibilities with respect to the construction and maintenance of those improvements to the State Highway System located within the City limits described in paragraphs (1) and (2) above and designated as Commission Job No. JST0021. The parties' responsibilities with respect to the funding of said improvements are outlined in a separate Cost Apportionment Agreement between the parties.

(7) RIGHT-OF-WAY USE: The City grants the right to use the right-of-way of public roads, streets, and alleys owned by the City in the location of the public improvement identified in Exhibit A, as necessary for construction and maintenance of said public improvement.

(8) CLOSE AND VACATE: The City shall temporarily close and vacate all streets or roads, or parts thereof, which may be necessary to permit the construction of the project in accordance with the detailed plans. When the Commission deems it necessary to completely close any City Street or road during construction, the City shall be advised a minimum of ten (10) calendar days in advance to make provisions for the diversion and rerouting of traffic. At the Project Director's discretion, local traffic will be allowed access, if practical. The Commission will hold the City harmless for City's actions under this paragraph in any action for damages arising from the loss of access occasioned by Job No. JST0021.

(9) RIGHT-OF-WAY ACQUISITION:

(A) Upon approval of all agreements, plans and specifications by the Commission and the Federal Highway Administration (FHWA), the Commission will file copies of the plans with the city clerk of the City and the county clerk of the county and proceed to acquire at no cost or expense to the City, any necessary right-of-way required for the construction of the improvement.

(B) The portion of state highway covered by this Agreement shall be a controlled 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.

(10) UTILITY RELOCATION:

(A) City-Owned Utility Facilities on State Highway Rights-of-Way: At its cost, City is responsible for the temporary or permanent removal, relocation, or adjustment of all City-owned utility facilities including, but not limited to, lines, poles, wires, conduits, and pipes on state highway rights-of-way. However, if the City-owned utility facilities existed prior to the establishment of the state highway right-of-way, then the removal, relocation, or adjustment shall proceed as established in any prior agreement and, if no prior agreement exists, then Commission is responsible for the temporary or permanent removal, relocation, or adjustment of such City-owned utility facilities and shall pay the costs incurred therein.

Removal, relocation, or adjustment of utility facilities within state highway right-of-way will be done only in accordance with the general rules and regulations of Commission and after a permit for the work has been obtained from Commission's District Engineer or his authorized representative.

(B) City-Owned Utility Facilities on City and on Other Public (Non-Commission and Non-City) Rights-of-Way: At Commission's cost, City is responsible for the temporary or permanent removal, relocation, or adjustment of all City-owned utility facilities including, but not limited to, lines, poles, wires, conduits, and pipes within the rights-of-way of existing City streets and other public (non-Commission and non-City) rights-of-way. City shall perform the removal, adjustment, alterations and relocation in accordance with the detail plans, estimates of costs and bills of materials prepared by 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 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 Commission of the original and four copies of a bill for the actual costs incurred by City in making such removal, adjustment, alteration and relocation, Commission shall reimburse City for the actual cost necessitated by construction of this public improvement. Commission's obligation toward the cost of such removal, relocation, or adjustment shall extend only to those costs incurred in accordance with FAPG 23 CFR 645A and its revisions.

(C) Utility Facilities on Privately Owned Easements: At its cost, Commission is responsible for the removal, relocation, or adjustment of any public or private utilities located upon private easements.

(11) 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.

(12) 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.

(13) DRAINAGE: The Commission will construct drainage facilities along the improvement and may modify any existing storm and surface water drainage facilities now in existence in the area as necessary to serve the improved areas. The City shall be responsible for receiving and disposing of storm and surface water discharged from those drainage facilities which the Commission constructs within the limits of City right-of-way to the extent of the City's authority and control of the storm sewer facilities or natural drainage involved. If the storm and surface water discharged from the drainage facilities constructed by the Commission exceed the capacity of the City's facilities, then the Commission will reimburse the City for required facility upgrades. For purposes of capacity evaluation under this paragraph, the average discharge from a storm with a 10-year recurrence interval will be used for residential drainage facilities and a storm with a 25-year recurrence interval will be used for other drainage facilities.

(14) 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.

(15) COMMENCEMENT OF WORK: After acquisition of the necessary right-of-way, the Commission shall construct the highway in accordance with provisions contained in the Request for Proposals (RFP) as approved by the Federal Highway Administration (or as they may be amended with the concurrence 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 issuance of the final RFP, and the evaluation, approval, and award of a contract based upon a successful submittal in accordance with the provisions contained in the final RFP.

(16) MAINTENANCE:

(A) Except as provided in this Agreement, upon completion of the public improvement, the Commission will maintain and repair all portions of the improvement within the Commission owned right-of-way, EXCEPT sidewalks—whether new or used in place and whether on or off Commission owned right-of-way—water supply lines, sanitary or storm sewers not constructed by the Commission to drain the highway, city-owned utilities, and the removal of snow other than by 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.

(C) Effective upon completion of construction, the Commission shall transfer ownership to the City, and the City will accept the portions of existing streets within City replaced by this improvement.

(D) Upon completion of construction of the sidewalks constructed by this project, the City shall accept control and maintenance of the sidewalks and shall thereafter keep, control, and maintain the sidewalks consistent with the City's Code of Ordinances. Pursuant to the City's Code of Ordinances, maintenance of City sidewalk is the responsibility of the adjacent property owner.

(17) CITY STREET SYSTEM ACCEPTED WITHIN HIGHWAY SYSTEM: Effective upon execution of this Agreement, the Commission temporarily accepts the portion of the City Street system described in this Agreement as part of the State Highway System for the purposes of this project and the expenditure of the State Road Fund. Despite this acceptance, the Commission is not responsible for (1) law enforcement services; (2) traffic control EXCEPT to the extent traffic control is necessitated by the project and included within the project's traffic control plan; and, (3) maintenance UNLESS required or necessitated by the project and UNLESS within the time period beginning when the Commission's contractor performs physical work on the system and ending when the project is fully accepted by the Commission.

(18) CITY TO MAINTAIN CITY STREET: Upon completion of construction of this improvement, the City shall accept control and maintenance of any improved City street that was temporarily accepted as part of the State Highway System for the purposes of this project pursuant to paragraph (17) above and shall thereafter keep, control, and maintain the same as, and for all purposes, a part of the City Street system at its own cost and expense and at no cost and expense whatsoever to the Commission. All obligations of the Commission with respect to the City Street system under this Agreement shall cease upon completion of the improvement.

(19) 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.

(20) RESTRICTION OF PARKING: Since the improvement is being designed and constructed to accommodate a maximum amount of traffic with a minimum amount of right-of-way, the City shall take whatever actions that are necessary to prevent parking

upon the highway or any part of the area of the highway right-of-way within the limits of the improvement.

(21) 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

(22) 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.

(23) 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.

(24) 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 \$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.

(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.

(25) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment approved and signed by representatives of the City and Commission, respectively, each of whom being duly authorized to execute the contract amendment on behalf of the City and Commission, respectively.

(26) COMMISSION REPRESENTATIVE: The Commission's Project Director 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.

(27) CITY REPRESENTATIVE: The City's Manager 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.

(28) 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 upon receipt by personal or facsimile delivery, addressed as follows:

- (A) To the City:
City Manager
City of Columbia
701 E Broadway
Columbia, MO 65201
cmo@como.gov
- (B) To the Commission:
Jeff Gander, P.E., Project Director
Missouri Department of Transportation
830 MoDOT Drive
Jefferson City, MO 65102
573-291-2788
Jeffery.gander@modot.mo.gov

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

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

(30) 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.

(31) 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.

(32) 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.

(33) 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.

(34) 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 on _____ (Date).

Executed by the Commission on _____ (Date).

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

CITY OF COLUMBIA, MISSOURI

By: _____

By: _____ *SSC*

De'Carlton Seewood

Title: _____

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 Number _____

EXHIBIT A

Project Limits for Job JST0021 extend along I-70 in both directions eastbound and westbound into both Boone and Callaway Counties.

