

CCO Form: DE11
Approved: 04/93 (CEH)
Revised: 09/15 (AR)
Modified:

Municipal Agreement
Route: AC
County: Boone
Job No.: J5P3433

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 Route AC, Boone County, Job No. J5P3433 shall consist of interchange improvements at Route 63 in Columbia.

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

Beginning at Station 149+00.00 AC/New Haven Road to Station 161+87.32 AC/New Haven Road, in Section 29, Township 48 North, Range 12 West. Length of improvement is 1287.32 feet.

Beginning at Station 390+00.00 Lenoir Street to Station 412+05.95 Lenoir Street, in Section 29, Township 48 North, Range 12 West. Length of improvement is 2205.95 feet.

(3) RECONSTRUCTION OF CITY STREETS: The Commission owns and maintains Routes AC and 63 in Boone County as part of the State Highway System. While making improvements to Routes AC and 63, the Commission will realign and reconstruct Lenoir Street and widen and make improvements to New Haven Road, both city streets.

(A) Pursuant to paragraphs (17) and (18), below, the Commission will temporarily take Lenoir Street and a portion of New Haven Road into the State Highway System for the duration of the construction of the interchange improvements on Routes AC and 63. Upon completion of construction of this improvement, the City shall accept control and maintenance of Lenoir Street and that portion of New Haven Road east of relocated Lenoir Street that was temporarily accepted as part of the State Highway System for the purposes of this project pursuant and all obligations of the Commission

with regard to these roads shall cease.

(B) Prior to construction of the project, the City shall convey ownership of a portion of New Haven Road from the existing end of state maintenance to just east of the relocated intersection with Lenoir Street to the Commission. The conveyance shall be in a form acceptable to the Commission.

(C) The Commission shall, at its own expense, be responsible for the maintenance of the driving surface of Lenoir Street and New Haven Road, within the limits shown in Exhibit A, as long as the interchange improvement project on Routes AC and 63 is under construction.

(D) Representatives of the Commission and City shall make a joint inspection of Lenoir Street after construction is complete, to confirm satisfactory condition before the City accepts return of maintenance.

(4) 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.

(5) 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 detailed location of the improvement is shown on the plans prepared by the Commission for the above-designated route and project.

(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. J5P3433.

(7) RIGHT-OF-WAY USE: The City grants the right to use the right-of-way of public roads, streets, and alleys 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.

(9) RIGHT-OF-WAY ACQUISITION: 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 its expense, at no cost or expense to the City, any necessary right-of-way required for the construction of the improvement.

(10) UTILITY RELOCATION:

(A) The Commission and the City shall cooperate to secure the temporary or permanent removal, relocation, or adjustment of City owned lines, poles, wires, conduits, and pipes located on the right-of-way of existing public ways as necessary for construction of the improvement and the cost shall be borne by the owners of the facilities.

(B) The Commission shall secure the removal, relocation, or adjustment of any public or private utilities located upon private easements and shall pay any costs incurred therein.

(C) Should it be necessary to alter, relocate or adjust any city-owned utility facilities outside the present city limits on public right-of-way or on state highway right-of-way within or outside the city limits or within the right-of-way of a public way other than a city street or alley, the alteration, relocation, or adjustment shall be made by the City at its cost.

(D) The City agrees that any installation, removal, relocation, maintenance, or repair of City owned utilities involving work within highway right-of-way included in this project shall be done only in accordance with the general rules and regulations of the Commission and after a permit for the particular work has been obtained from the Commission's district engineer or his authorized representative. Similarly, the City will allow no work on the highway right-of-way involving excavation or alteration in any manner of the highway as constructed, including but not limited to driveway connections, except in accordance with the rules and regulations of the Commission and only after a permit for the specific work has been obtained from the Commission's district engineer or his authorized representative. The City shall take whatever actions that are necessary to assure compliance with this Subsection.

(11) LIGHTING: The installation, operation, and maintenance by the Commission of any 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 at the time of any such installation and only to the extent the Commission then deems warranted. No street lighting system shall be installed or maintained by or for 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 use any existing storm and surface water drainage facilities now in existence in the area. 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 highway right-of-way to the extent of the City's authority and control of the storm sewer facilities or natural drainage involved.

(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 final detailed plans approved by the Federal Highway Administration (or as they may be changed from time to time by the Commission with the approval 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 completion of plans in time to obligate federal funds for such construction, upon approval of the plans by the FHWA, upon the award by the Commission of the contract for the construction, and upon the approval of the award by the FHWA.

(16) MAINTENANCE:

(A) Except as provided in this Agreement, upon completion of the public improvement, the Commission will maintain all portions of the improvement within the Commission owned right-of-way. Maintenance by the Commission shall not in any case include maintenance or repair of sidewalks whether new or used in place, water supply lines, sanitary or storm sewers (except those storm sewers constructed by the Commission to drain the highway), city-owned utilities within the right-of-way or the removal of snow other than the 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 highways within City replaced by this improvement.

(D) The City shall inspect and maintain the sidewalks constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalks.

(17) 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. However, during the construction period contemplated in this Agreement:

(A) The Commission will assume no police or traffic control functions not obligatory upon Commission immediately prior to the execution of this Agreement, and

(18) CITY TO MAINTAIN: Upon completion of construction of this improvement, the Commission will retain control and maintenance of that portion of New Haven Road up to and including the new intersection and signal at the Lenoir Street and New Haven Road intersection. The City shall accept control and maintenance of the remainder of Lenoir Street and that portion of New Haven Road east of relocated Lenoir 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 and the City shall take whatever actions that are necessary to enforce this Section.

(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 \$3,500,000 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 Central 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.

(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: Mr. De'Carlon Seewood
City Manager
City of Columbia
P.O. Box 6015
Columbia, Missouri 65205
Facsimile No: (573) 442-8828
Email: decarlon.seewood@como.gov

(B) To the Commission: Machele Watkins, P.E.
Central District – District Engineer
Missouri Department of Transportation
1511 Missouri Boulevard, P.O. Box 718
Jefferson City, Missouri 65102
Facsimile No: (573) 526-1374
Email: Machele.Watkins@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 this _____(DATE)

Executed by the Commission this _____(DATE)

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

By: _____

Title: _____

ATTEST:

Secretary to the Commission

APPROVED AS TO FORM:

Commission Counsel

CITY OF COLUMBIA, MISSOURI

By: _____

Title: De'Carlon Seewood, City Manager

ATTEST:

By: _____

Title: Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____

Title: Nancy Thompson, City Counselor

Ordinance Number _____

Exhibit A

