

CCO Form: FS08
Approved: 03/04 (BDG)
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Modified: 02/23 (MWH)

I-70 and Little Blue Parkway
Job No. KU0033
City of Independence
Jackson County
Agreement No. 2022-10-73121

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
COST SHARE AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and City of Independence (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 June 16, 2022, 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 coordinate the participation by the Entity of improvements to the interchange of I-70 and Little Blue Parkway including turn lane additions, turn lane extensions and modifications to pedestrian facilities.

(2) LOCATION: The transportation improvement that is the subject of this Agreement is contemplated at the following location:

The interchange of I-70 at Little Blue Parkway in Independence, MO.

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 Entity and the Commission.

(4) COMMISSION REPRESENTATIVE: The Commission's Kansas City 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.

(5) ASSIGNMENT: The Entity 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 Entity shall comply with all local, state and federal laws and regulations relating to the performance of this 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) PROJECT RESPONSIBILITIES: With regard to project responsibilities under this Agreement, the parties agree to contribute as follows:

(A) The Entity shall be responsible for all aspects prior to construction of the project including design engineering, and relocation of utilities. The Commission will be responsible for the letting of the project, construction, and inspection of the project.

(B) The Entity shall follow the Commission's Local Public Agency (LPA) policy and procedures for all aspects of the project.

(C) The Entity shall provide preliminary and final design engineering for the preparation of detailed right-of-way and construction plans and project specifications. This includes coordination with all public and private utility owners within the project limits and relocation of utilities impacted by the project. The plans shall be prepared in accordance with and conform to the Commission's requirements, standards, and specifications. Said plans shall not be changed in concept or scope without prior written approval of the Commission.

(D) The Entity does not anticipate the acquisition of additional right of way with this project or contemplated by this Agreement.

(E) The Commission will provide preliminary engineering review and construction engineering of the project to ensure compliance with the Commission's policies and procedures.

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

(A) The total cost of the project is currently estimated at three million four hundred sixty-five thousand dollars (\$3,465,000) and will include preliminary engineering, preliminary engineering review, construction and inspection. The details of the estimated cost breakdown are listed below and in "Exhibit B", which is attached hereto and made

part hereof.

(B) The Entity shall be responsible for fifty percent (50%) of the total project cost. The details of the estimated cost breakdown are listed in “Exhibit B”, which is attached hereto and made part hereof. The current estimate of the Entity's responsibilities is one million seven hundred thirty-two thousand five hundred dollars (\$1,732,500). The Entity will receive a credit for preliminary engineering costs paid by the Entity upon receipt by the Commission of acceptable documentation of actual costs incurred and paid from the Entity. This credit is estimated in the amount of three hundred sixty-five thousand dollars (\$365,000) The Entity shall remit a check in the amount of one million three hundred sixty- seven thousand five hundred dollars (\$1,367,500) to cover estimated preliminary engineering review, construction and inspection costs no later than five (5) days prior to the Commission’s advertisement of the project for bids. This check should be made payable to the *Missouri Highway and Transportation Commission – Local Fund*. If the Entity fails to make the required deposit, the Commission is under no obligation to continue with the project.

(C) The Commission will pay for fifty percent (50%) of the total project cost not to exceed one million seven hundred thirty-two thousand five hundred dollars (\$1,732,500). Of this amount, the Commission will provide one million five hundred twenty thousand five hundred dollars (\$1,520,500) from the Commission’s Cost Share program available in State Fiscal Year 2024. The remaining two hundred twelve thousand dollars (\$212,000) will be paid from the MoDOT Kansas City District budget. Commission Cost Share Program funds shall only be used on the State Highway System.

(D) The Entity is responsible for the balance of the project in excess of three million four hundred sixty-five thousand dollars (\$3,465,000). 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 investment.

(E) If, at the time of the letting, the lowest responsive bid is higher than the estimated construction and inspection cost amount, 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 lowest responsive bid no later than one (1) day prior to the date of the Commission meeting wherein the subject bid will be considered for award 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 *Director of Revenue – Credit Local Fund*. The Commission, in its sole discretion, reserves the right to take action at the said Commission meeting and either reject all bids if the Entity fails to make the payment by the due date, or award the contract to the lowest responsive bidder contingent upon receipt of the additional funds from the Entity by the extended due date. If the Commission makes a contingent award of the contract and the Entity fails to make the required deposit(s) by the extended due date, the contingency of the contract award by the Commission shall be deemed unsatisfied, the award of the

contract shall be deemed null and void and the Commission shall be under no obligation to continue with the project.

(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: 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 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: Kansas City District, District Engineer
600 NE Colbern Rd
Lee's Summit, MO 64086

Entity to: Mayor Rory Rowland
111 E Maple Ave
Independence, MO 64050
Email: rrowland@indepmo.org

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:

(A) 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.

(B) The Entity 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 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.

Remainder of Page Intentionally Left Blank; Signatures and Execution Appear on Following Page

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 INDEPENDENCE

Title _____

By _____
Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____
Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title: _____

Ordinance No _____

EXHIBIT A- PROJECT LOCATION

Jackson County
I-70 at Little Blue Parkway, Jackson County
Independence, MO

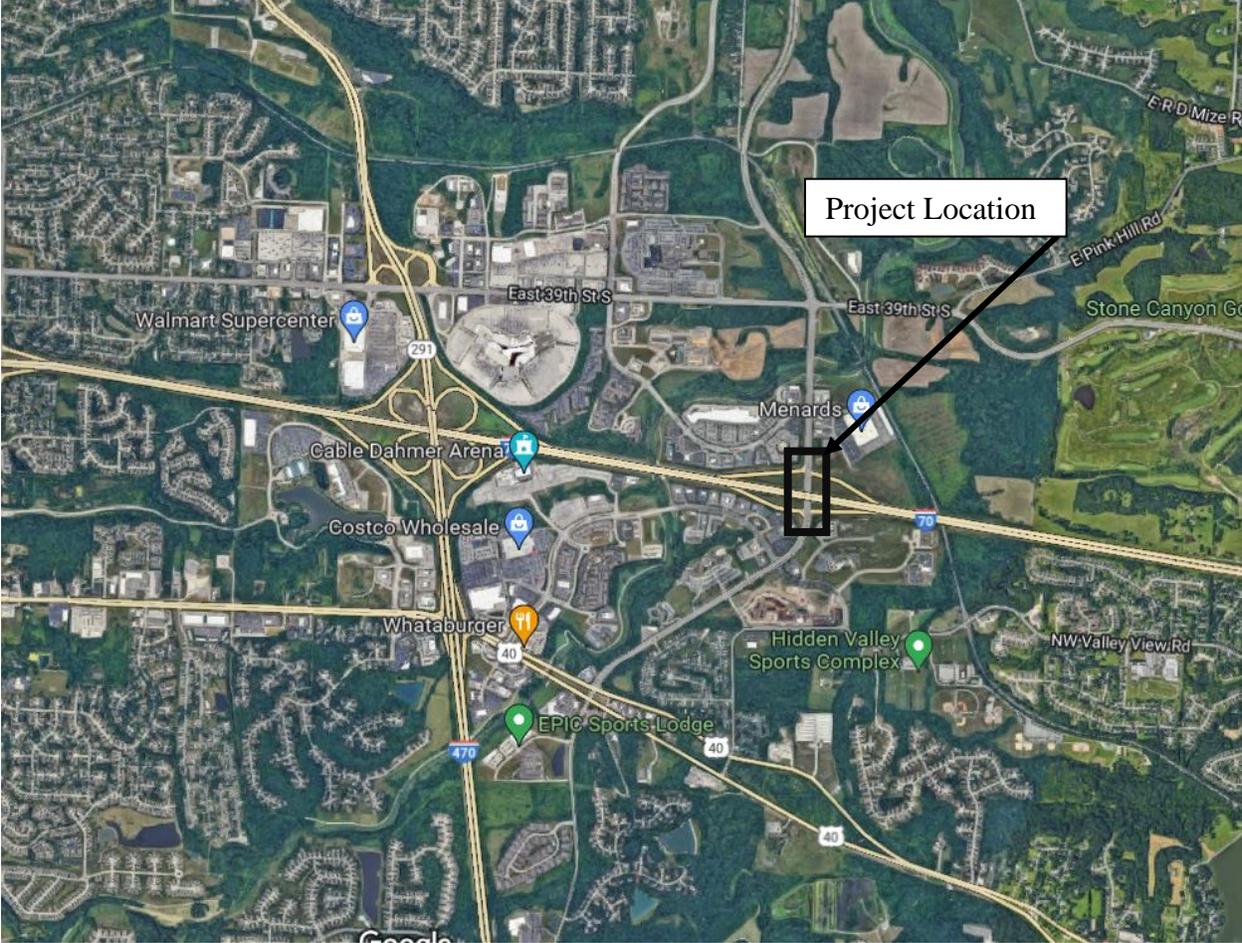


EXHIBIT B- Estimated Cost Breakdown

Project Name: I-70 & Little Blue Parkway

MoDOT Project Number: KU0033

Description: Interchange Improvements at I-70 on Little Blue Parkway, Jackson County

Total Eligible Project Cost Estimate: \$3,465,000

Local Entity: City of Independence

	Current Estimate	Cost Share Eligible
Preliminary Engineering	\$365,000	\$365,000
Preliminary Engineering Review (MoDOT)	\$10,000	\$10,000
Construction	\$2,888,000	\$2,888,000
Construction Engineering	\$202,000	\$202,000
Total	\$3,465,000	\$3,465,000

Project Responsibilities:

Preliminary Engineering	Entity
Letting	MoDOT
Construction Engineering	MoDOT

Financial Responsibilities:

District	\$212,000	6%
Cost Share Funds	\$1,520,500	44%
Entity	\$1,732,500	50%
Total:	\$3,465,000	100%

How are overruns and underruns handled?

The Entity is responsible for the balance of the project in excess of three million four hundred sixty-five thousand dollars (\$3,465,000). 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 investment.