CCO Form: DE07
Approved: 07/97 (DPP)
Revised: 02/17 (AR)
Modified:

Cost Apportionment Agreement
Route: Connecticut Ave./Interstate 44
County: Newton
Job No.:7S3173

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
COST APPORTIONMENT AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Joplin (hereinafter, "Entity").

WITNESSETH:

WHEREAS, the Commission owns and maintains Interstate 44, including the Connecticut Avenue bridge over Interstate 44, in Newton County as part of the State Highway System;

WHEREAS, the parties desire the improvement or reconstruction of bridge A1969, which carries Connecticut Avenue over Interstate 44, and

WHEREAS, the Entity is willing to provide assistance in the construction or reconstruction of the improvements, subject to the terms and conditions herein.

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 in the cost of the Commission's public improvement for the Connecticut Avenue bridge over Interstate 44, in the County of Newton, designated as Job No. J7S3173. This public improvement will involve replacement of bridge A1969.

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

Bridge A1969, Connecticut Avenue over I-44, located 1.0 mile west of Business Loop 49 (Range Line Road) in Joplin.

The general location of the public improvement 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) USE OF RIGHT-OF-WAY: The Entity grants the right to use the right-of-way of public roads, streets, and alleys as necessary for construction and maintenance of said public improvements.

(5) COMMISSION REPRESENTATIVE: The Commission's 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.

(6) PROJECT RESPONSIBILITIES: With regard to project responsibilities under this Agreement, the parties agree to contribute as follows:

(A) The Entity will be responsible for the preparation of detailed right-of-way and construction plans and project specifications. The plans shall be prepared in accordance with and conform to Commission requirements.

(B) No right-of-way is anticipated to be needed for the project.

(C) The Commission will be responsible for letting the work for the herein improvement, which includes advertising the project for bids and awarding the construction contract. The Commission will solicit bids for the herein improvement in accordance with plans developed by the Entity, or as the plans may from time to time be modified in order to carry out the work as contemplated.

(D) The Commission will be responsible for construction of the herein improvements, which includes administration of the construction contract and inspection of the project work. The project shall be constructed in accordance with and conform to Commission requirements.

(7) PAYMENT RESPONSIBILITIES: With regard to payment responsibilities under this Agreement, the parties agree to as follows:

(A) The Entity will be responsible for fifty percent (50%) of the total project cost. The total project cost will include utilities, and construction. Preliminary engineering, construction engineering, right-of-way and right-of-way incidentals are excluded from the total project cost for purposes of cost sharing. 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, one hundred sixty-eight thousand, twenty-two dollars ($1,168,022). The Entity shall remit a check in the amount of one million, one hundred sixty-eight thousand, twenty-two dollars ($1,168,022) to cover the estimated total project cost no later than five (5) days prior to the Commission's advertisement of the project for bids. The 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.

(B) The Commission will pay for fifty percent (50%) of the total project cost, currently estimated at one million, one hundred sixty-eight thousand, twenty-two dollars ($1,168,022) from its Southwest District distributed funds.

(C) The Entity is responsible for the balance of the project in excess of two million, three hundred thirty-six thousand, forty-four dollars ($2,336,044).

(D) 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 *Missouri Highways and Transportation Commission – 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.

(8) 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.

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

(10) 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.

(11) APPROVAL OF FHWA AND AVAILABILITY OF FUNDS: This Agreement is entered into subject to the approval of the Federal Highway Administration and is further subject to the availability of federal and state funds for this construction.

(12) 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.

(13) 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.

(14) 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.

(15) 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, except as otherwise provided by this Agreement or a separate written agreement.

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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.

(22) 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.

(23) 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: District Engineer
3025 E. Kearney
Springfield, MO 65807
Facsimile No.: 417-895-7610

City of Joplin to: Director of Public Works
City of Joplin
602 S. Main
Joplin, MO 64801
Facsimile No.: 417-625-4738

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

(24) 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.

(25) 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 $3,000,000 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.

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

Executed by the Entity this ____ day of _____, 20__.

Executed by the Commission this ____ day of _____, 20___.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

_____

Title _____

ATTEST:

_____
Secretary to the Commission

Approved as to Form:

_____
Commission Counsel

CITY OF JOPLIN

By _____

Title _____

ATTEST:

By _____

Title _____

Approved as to Form:

_____

Title:_____

Ordinance No _____

EXHIBIT "A"
PROJECT LOCATION



EXHIBIT "B"
FUNDING TABLE

Project Name: Connecticut Avenue Bridge over I-44
MoDOT Job Number: 7S3173

Description: Bridge improvement over I-44

Definition of "Total Project" for Cost Apportionment Includes:

Construction	Utilities	

Definition of "Total Project" for Cost Apportionment Excludes:

Design	Right-of-way	
Construction Engineering	Right--of-way Incidentals	

Project Estimate

	Current Estimate and Inflation	Cost Apportionment Eligible
Preliminary Engineering	$ 322,186	$ -
Right-of-way	$ -	$ -
Right-of-way Incidentals	$ -	$ -
Utilities	$ -	$ -
Construction	$ 2,290,238	$ 2,290,238
Contingency	$ 45,806	$ 45,806
Inspection and Letting	$ 237,000	$ -
Total	$ 2,895,230	$ 2,336,044

Project Responsibilities

Preliminary Engineering	Joplin
ROW Acquisition	None Anticipated
Letting	MoDOT
Inspection	MoDOT

Financial Responsibilities

City of Joplin	$ 1,168,022	Total Local Share
	$ -	$ 1,168,022.00
	$ -	50.0%
	$ -	Total MoDOT Share
MoDOT Southwest	$ 1,168,022	$ 1,168,022.00
	$ -	50.0%

How are overruns and underruns handled?

City and Commission to share under runs equally. City to pay any actual costs over $2,336,044.