CCO Form: FS35G
Approved: 1/20 (MWH)
Revised: 3/23 (RSV)
Modified:

Entity: City of Joplin
Project Number/Name: Zora Street
MoDOT Project Number: SNS0014
eAgreement #: 2023-05-79036

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
GOVERNOR'S TRANSPORTATION COST SHARE AGREEMENT

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

WITNESSETH:

WHEREAS, pursuant to Section 4.445 of Truly Agreed to and Finally Passed House Bill 3004 from the 2022 legislative session (**TAFP HB 3004 2022**), the Missouri General Assembly (**GA**) has appropriated Seventy-Five million dollars ($75,000,000) in general revenue funds to the Commission to be expended for road and bridge projects under the *Governor's Transportation Cost Share Program* (**Program**); and

WHEREAS, the Entity applied to the Commission for participation in the Program; and

WHEREAS, on January 4, 2023, the Commission approved the Entity's application to the Program for a proposed road and bridge improvement project (**Project**) off the State Highway System subject to the terms and conditions of this Agreement; and

WHEREAS, the Commission will administer these Program funds to the Entity with the understanding that such funds will be used for the purpose of funding the Entity's proposed Project, as further described within TAFP HB 3004 2022 and within this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations in this Agreement, the parties agree as follows:

(1) PROGRAM PURPOSE AND AMOUNT OF PROGRAM:

(A) The Program purpose is to provide financial assistance to public and private entities for public road and bridge projects satisfying a transportation need, provided that these funds shall not supplant, and shall only supplement, the current planned allocation of road and bridge expenditures under the most recently adopted State Transportation and Improvement Plan (**STIP**), including all amendments thereto, as of the date of passage of TAFP HB 3004 2022 by the GA.

(B) The total amount of this Program, as provided within Section 4.445

of TAFP HB 3004 2022, is Seventy-Five Million dollars ($75,000,000). These Program funds are subject to appropriations made by the GA and gubernatorial release of such funds appropriated to the Commission. The Commission will administer funds from the Program in an amount not to exceed Seventy-Five Million dollars ($75,000,000); however, in the event state funds appropriated within Section 4.445 of TAFP HB 3004 2022 are reduced so that the Commission is incapable of completely satisfying its obligations to the Entity, the Commission may recompute and reduce this Program and the amount of this Agreement.

(C) The designation of this Program does not create a lump sum quantity contract, but rather only represents the amount of funding available for reimbursement of eligible Program expenses. In no event will the Commission reimburse the Entity for improvements or work that are not actually performed. The release of all funding under this Agreement is subject to review and approval of all Project expenses to ensure that they are eligible Program expenses.

(D) These Program funds are for construction contract costs only. All other non-construction costs, including but not limited to preliminary engineering, environmental services, right-of-way services and acquisitions, utilities, construction inspection, etc. are ineligible for funds from Section 4.445 of TAFP HB 3004 2022. The Entity shall be solely responsible for all ineligible costs.

(2) PROGRAM TIME PERIOD: This Agreement provides Program funding for expenditures during State Fiscal Year (**SFY**) 2023 (July 1, 2022 - June 30, 2023). In the event the funds are re-appropriated by the GA into another SFY, the Program time period will automatically be adjusted to reflect the new SFY.

(3) REQUEST FOR RE-APPROPRIATION OF FUNDS AND EXTENSION OF TIME FOR COMPLETION OF PROJECT: It is anticipated the Seventy-Five Million dollars ($75,000,000) provided within Section 4.445 of TAFP HB 3004 2022 will not be fully expended by June 30, 2023, the end of SFY 2023. Therefore, the Commission will request for the re-appropriation of Program funds and extension of time for completion of the Project. If the re-appropriation is not approved by the GA, the Entity has the discretion to complete the construction of the Project at the Entity's expense and at no cost or expense whatsoever to the Commission.

(4) PURPOSE: The purpose of this Agreement is to coordinate participation by the Commission in the cost of the Entity's proposed Project in accordance with Section 4.445 of TAFP HB 3004 2022.

(5) LOCATION AND JOB NUMBER: The proposed Project that is the subject of this Agreement is identified as MoDOT job number SNS0014 and Entity job number/name Zora Street Widening. The Project is contemplated at the following location:

Along Zora Street between Range Line Road and Missouri Highway 249. Length of improvement is approximately 2 miles.

The general location of the Project is shown on the attachment marked as "**Exhibit A**" and is incorporated herein by reference.

(6) SCOPE OF WORK: The Entity shall undertake and complete the proposed Project described in the Entity's Scope of Work Statement, which is attached and marked as "**Exhibit B**" and is incorporated herein by reference. The Project will be defined by the Entity's Scope of Work Statement. Any proposed changes to the Entity's Scope of Work, during design or construction of the Project, must be submitted in writing for Commission review and approval before the changes will be considered eligible for participation in the Program.

(7) 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.

(8) COMMISSION REPRESENTATIVE: The Commission's Southwest 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.

(9) ENTITY REPRESENTATIVE: The Entity's Director of Public Works is designated as the Entity's representative for the purpose of administering the provisions of this Agreement. The Entity's representative may designate by written notice other persons having the authority to act on behalf of the Entity in furtherance of the performance of this Agreement.

(10) PROJECT RESPONSIBILITIES: With regard to Project responsibilities under this agreement, the parties agree as follows:

(A) The Entity shall be responsible for design of the Project and shall prepare detailed right-of way and construction plans and specifications. The Entity shall provide the Commission with final construction Plans, Specifications and Estimate (PS&E) prior to bidding the Project.

(B) The Entity shall acquire right-of-way as needed for the Project in accordance with Commission requirements for Local Public Agency projects.

(C) The Entity shall be responsible for letting the road and bridge improvement Project, which includes advertising the Project for bids and awarding the construction contract. The Entity shall award the contract to the lowest, responsive, responsible bidder. The Commission will review all contractors' bids and concur with the

selection of the apparent successful low bidder prior to the Entity awarding the construction contract.

(D) The Entity shall be responsible for construction of the Project which includes administration of the construction contract.

(E) The Entity shall be responsible for inspection of the Project work and is subject to the Commission's oversight, approval, and acceptance.

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

(A) The Program funds are only eligible to be used for construction contract costs on the Entity's proposed Project in accordance with Section 4.445 of TAFP HB 3004 2022. All other Project costs are ineligible for Program funds and shall be the responsibility of the Entity. The estimated construction contract cost for the Entity's proposed Project is nine million dollars ($9,000,000).

(B) The Commission will reimburse forty-four and forty-four hundreths percent (44.44%) of the construction contract costs not to exceed four million dollars ($4,000,000).

(C) The Entity shall be one hundred percent (100%) responsible for the balance of the construction contract costs in excess of nine million dollars ($9,000,000).

(D) The Commission and Entity will share any construction contract cost savings based on pro rata share between the parties.

(E) The estimated Construction Contract Cost, Project Responsibilities and Financial Responsibilities are shown in "**Exhibit C**", which is attached hereto and incorporated herein by reference.

(12) REIMBURSEMENT FOR ELIGIBLE EXPENSES: The Commission will reimburse the Entity as discussed in section (11) for Project expenses based on eligible construction contract costs.

(A) The Entity may request reimbursement for eligible costs incurred at any time subsequent to the execution of this Agreement by both parties. Requests for reimbursement shall be submitted to the Missouri Department of Transportation (**MoDOT**) monthly and shall be supported with invoices and documentation that its providers were paid in full for the work performed.

(B) It is understood and agreed by and between the parties that the Commission shall make no reimbursement payment which could cause the aggregate of all payments under this Agreement to exceed four million dollars ($4,000,000) as

approved by the Commission.

(C) The request for reimbursement must include a construction progress summary that includes an estimated percent complete, list of major items of work completed during the pay period and status of schedule.

(D) Within ninety (90) days of final inspection of the Project funded under this Program, the Entity shall provide to the Commission a final payment request and all financial performance and other reports as required by this Agreement.

(E) If the Commission determines that the Entity was overpaid, the Entity shall remit the amount of overpayment to the Commission.

(F) The Entity must submit reimbursement requests by May 31st of the Program Time Period to ensure reimbursement by the end of the SFY.

(13) EXPENDITURE OF PROGRAM FUNDS: All funds not expended by the Entity at the end of the Program Time Period within this Agreement may be redistributed to another applicant at the discretion of the Commission.

(14) WITHDRAWAL OF PROGRAM OFFER: The Commission reserves the right to amend or withdraw this Program offer at any time prior to acceptance by the Entity.

(15) MAINTENANCE: Upon completion of construction of this Project, the Entity shall accept maintenance and control of the improved Zora Street at no cost or expense whatsoever to the Commission. All obligations of the Commission under this Agreement shall cease upon completion of the Project.

(16) ACQUISITION OF RIGHT OF WAY: 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, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act.

(17) DESIGN AND CONSTRUCTION SPECIFICATIONS: The Entity agrees that all design and construction work for the proposed Project will be in accordance with policies, procedures, design criteria, design standards, and construction specifications adopted by the Entity for Entity's streets. In absence of such Entity adopted requirements, the Entity shall use Commission requirements for Local Public Agency projects. Any work on the State Highway System shall be in accordance with current Commission policies, procedures, design criteria, and the Missouri Standard Specifications for Highway Construction.

(18) PERMITS: The Entity shall secure any necessary approvals or permits from the Federal Government and the State of Missouri as required to permit the construction

and maintenance of the Project.

(19) TRAFFIC CONTROL: The plans shall provide for temporary and permanent traffic control using signs, signals, and markings in accordance with the Manual of Uniform Traffic Control Devices (**MUTCD**).

(20) SOLICITATION FOR BIDS AND CONTRACT AWARD: The Entity shall solicit bids for the Project in accordance with plans developed by the Entity. The Entity shall review all contractor bids received and award the contract to the lowest, responsive, responsible bidder. Prior to awarding the contract, the Entity shall submit the bids to the Commission for review and concurrence. The Entity shall not make any award for the Project without prior written consent of the Commission.

(21) NOTICE TO PROCEED: After award of the construction contract, the Entity shall provide the Commission with copies of the executed construction contract between the Entity and the contractor, the performance and payment bonds, and any other documentation as required by this Agreement. Upon receipt of all necessary documents, the Commission will authorize the Entity to issue a notice to proceed with construction.

(22) CONSTRUCTION PROGRESS AND INSPECTION: The Entity shall provide and maintain adequate, competent, and qualified engineering supervision and construction inspection at the Project site during all stages of the work to ensure that the completed work conforms with the Project plans and specifications. The inspection staff shall utilize construction progress and inspection reports to sufficiently document the work and to document proper payments for competed work. Project oversight by other personnel does not relieve the Entity of this responsibility.

(23) PROMPT PAYMENT: The Commission and the Entity will require all contractors to pay all subcontractors and suppliers for satisfactory performance of services in compliance with section 34.057 RSMo, Missouri's prompt payment statute. Pursuant to section 34.057 RSMo, the Commission and the Entity will also require the prompt return of all retainage held on all subcontractors after the subcontractors' work is satisfactorily completed, as determined by the Entity and the Commission.

(24) AUDIT OF RECORDS: The Entity shall maintain all records relating to this Agreement, including but not limited to bidding documents, construction contracts, construction inspection reports, 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) NONDISCRIMINATION CLAUSE: The Entity shall comply with all state and federal statutes applicable to the Entity relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000*d* and 2000e, *et seq*.); and with any provision of the

"Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq*.).

(26) 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.

(27) PROJECT SCHEDULE: The Project schedule is shown on the attachment marked as "**Exhibit D**" and is incorporated herein by reference. Any lack of progress which significantly endangers substantial performance of the Project within the specified time shall be deemed a material breach of this Agreement. The determination of lack of progress shall be solely within the discretion of the Commission. The Commission shall notify the Entity in writing once such a determination is made.

(28) PROJECT ACCEPTANCE AND CERTIFICATION: The Entity shall certify in writing that the Project was completed in accordance with all applicable state and federal laws and applicable construction requirements were met. The certification form is shown on the attachment marked as "**Exhibit E**" and is incorporated herein by reference. This certification will be submitted during the final closeout phase of the Project. The Commission will withhold final payment until certification is received.

(29) 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.

(30) 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.

(31) 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.

(32) 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.

(33) 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.

(34) 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.

(35) 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: Stacy Reese
District Engineer
3025 E. Kearney
Springfield, MO 65803
Email: stacy.reese@modot.mo.gov

Entity to: Dan Johnson
Director Public Works, City of Joplin
602 S. Main Street
Joplin, MO 64801
Email: djohnso1@joplinmo.org

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

(36) 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.

(37) 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.

(38) WORK PRODUCT: All documents, reports, exhibits, etc. produced by the Entity at the direction of the Commission and information supplied by the Commission shall remain the property of the Commission.

(39) CONFIDENTIALITY: The Entity shall not disclose to third parties confidential factual matters provided by the Commission except as may be required by statute, ordinance or order of court, or as authorized by the Commission. The Entity shall notify the Commission immediately of any request for such information.

(40) NONSOLICITATION: The Entity warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Entity, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

(41) DISPUTES: Any disputes that arise under this Agreement shall be decided by the Commission or its representative.

(42) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the Entity shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or 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) 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.

(43) INSURANCE: The Entity or the Commission will require any contractor procured to work on or under this Agreement:

(A) 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

(B) 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, MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities 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. The Entity shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(44) NOTIFICATION OF CHANGE: The Entity shall immediately notify the Commission of any change in conditions or law which may significantly affect its ability to perform the Project in accordance with the provisions of this Agreement.

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

(46) BANKRUPTCY: Upon filing for any bankruptcy or insolvency proceeding by or against the Entity, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the Entity responsible for damages.

(47) ENTITY RIGHT-OF-WAY: All Project improvements made within Entity-owned right-of-way shall become the Entity's property, and all future alterations, modifications, or maintenance therof, will be the responsibility of the Entity. The Entity further agrees that the right of way provided for any improvement will be held and maintained inviolate for public highway or street purposes, and will enact and enforce any ordinances or regulations necessary to prohibit the presence of billboards or other advertising signs or devices and the vending or sale of merchandise on such right of way, and will remove or cause to be removed from such right of way any sign, private installation of any nature, or any privately owned object or thing which may interfere with the free flow of traffic or impair the full use and safety of the highway or street.

(48) STATE WAGE LAWS: The Entity's contractor and its subcontractors shall pay the prevailing hourly rate of wages for each craft or type of worker required to execute this Project work as determined by the Department of Labor and Industrial Relations of Missouri, and they shall further comply in every respect with the minimum wage laws of Missouri. The Entity shall take those acts which may be required to fully inform itself of the terms of, and to comply with, any applicable state wage laws.

[The Remainder of This Page Is Intentionally Left Blank.]

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

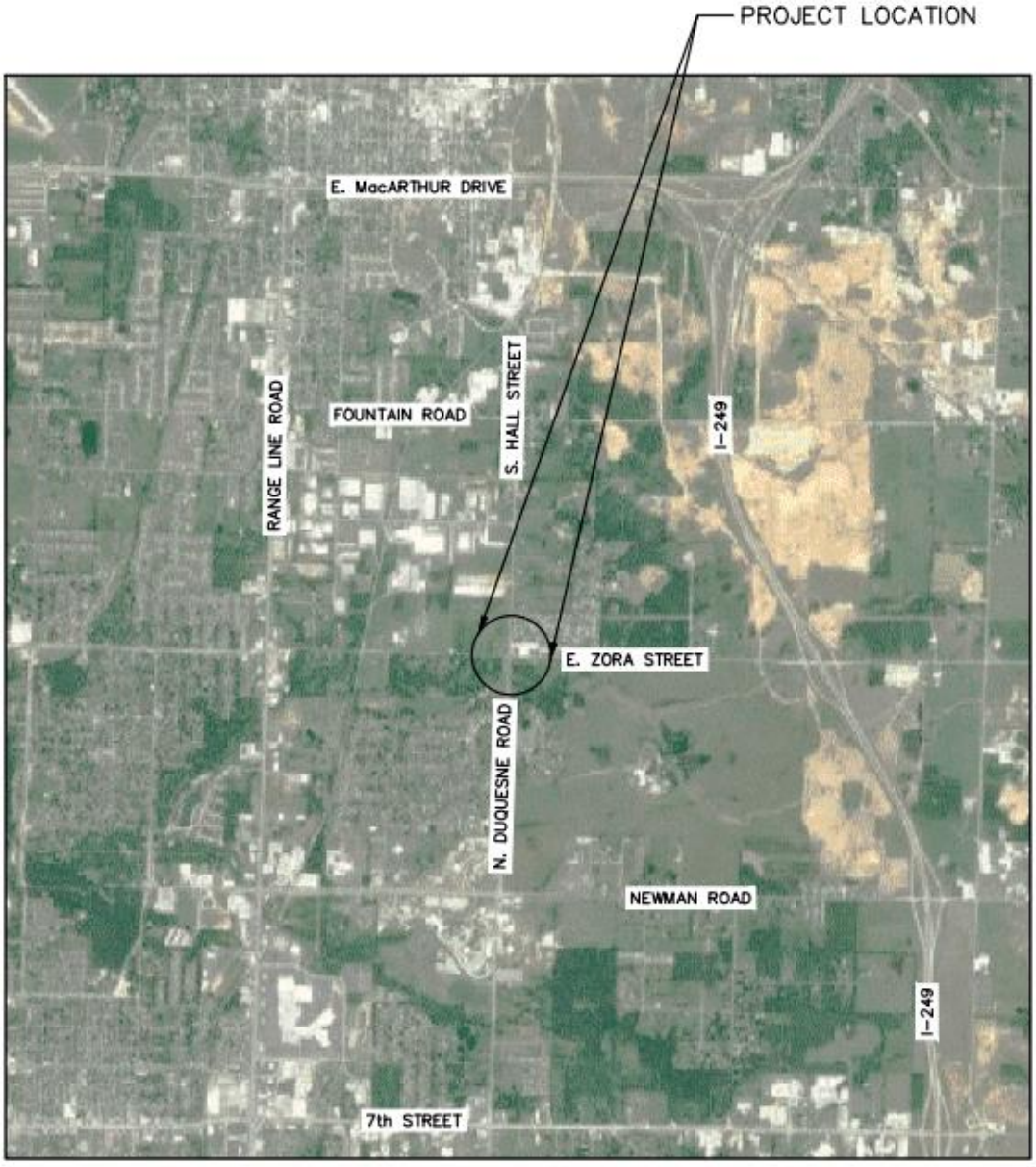
Executed by the Entity on _____(DATE).

Executed by the Commission on _____ (DATE).

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION	CITY OF JOPLIN
_____	By_____
Title _____	Title_____
Attest:	Attest:
_____	By_____
Secretary to the Commission	
	Title_____
Approved as to Form:	Ordinance No. _____
_____	
Commission Counsel	

EXHIBIT A

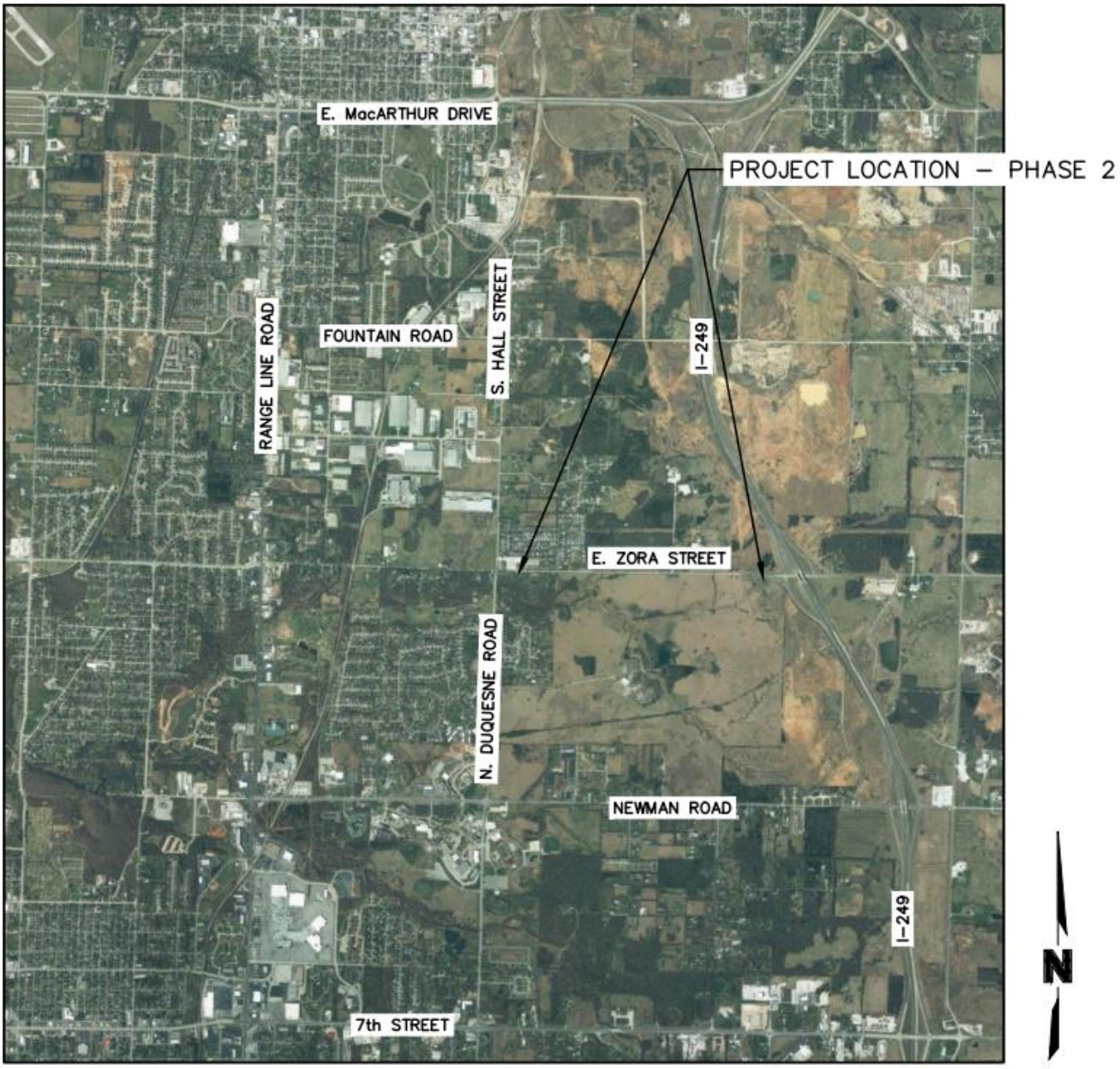
LOCATION



LOCATION MAP

NOT TO SCALE

EXHIBIT A (cont.)



LOCATION MAP

NOT TO SCALE

EXHIBIT A (cont.)



LOCATION MAP

NOT TO SCALE

EXHIBIT B

SCOPE OF WORK

- Widen Zora Street from Range Line Road to Duquesne Road to 2-13’ lanes with curb and gutter
- Replace open ditches with an enclosed system
- Widen Zora Street from Duquesne Road to Missouri Highway 249 to 2-12’ lanes with 10’ shoulders
- Roundabout at intersection of Zora Street and Duquesne Road

EXHIBIT C

FINANCIAL SUMMARY

Project Name: Zora Street Widening

Project Number: SNS0014

Description: Widening Zora Street from Range Line Road (Loop 49) to Duquesne Road with a roudabout installed at intersection of Zora Street and Duquesne Road.

Total Construction Contract Cost Estimate: $9,000,000

Local Entity: City of Joplin

	Current Estimate
Construction	$9,000,000

Project Responsibilities:

Preliminary Engineering/Design	City of Joplin
Right of Way Acquisition	City of Joplin
Bid Letting and Construction	City of Joplin
Utilities	City of Joplin
Construction Engineering/Inspection	City of Joplin

Financial Responsibilities for Cost Share Eligible:

Governor's Cost Share Funds	$4,000,000	Total Program Share
Governor's Cost Share Economic Development Funds	$0	$4,000,000
Entity	$5,000,000	Total Entity Share
		$5,000,000
Total:	$9,000,000	

How are overruns and underruns handled?

Overruns will be the responsibility of the Entity. Underruns will be based on a pro rata share.

EXHIBIT D

PROJECT SCHEDULE

- Award Date: June 2023

EXHIBIT E



Missouri Department of Transportation

Certification for Acceptance

Governor's Transportation Cost Share Program

Funding Recipient:					
Address					
City		State		Zip	
Project Identification Number:					
County		Route		Completion Date	
Project Location					
Type of Improvement					

I hereby certify the Governor's Cost share project identified above has been completed in accordance with all state and federal laws and the following requirements have been met:

1. Project field tests were performed in conformity with the governing specifications and the results were in reasonably close conformity with the specifications.
2. The project was constructed substantially in conformity with the plans and specifications.
3. A copy of the Final Invoice and a Final List of Pay Quantities have been submitted to MoDOT.
4. The Funding Recipient has received certification from the Contractor that all lawful claims in connection with the project have been paid and discharged.
5. For projects exceeding $75,000, all Missouri Prevailing Wage laws were followed and enforced (for a checklist, see Form PW-5 at https://labor.mo.gov/).

Signed by an Authorized Representative of the Funding Recipient:	_____ Signature _____(Date)