CCO Form:	DE07	Cost Apportionment Agreement	
Approved:	07/97 (DPP)	Route: FF & Indiana St.	
Revised:	03/14 (AR)	County: Jasper & Newton	
Modified:	02/16 (BDG)	Job No.: J7P3187B	

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
MUNICIPAL AND COST APPORTIONMENT AGREEMENT

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

WITNESSETH:

WHEREAS, the Commission owns and maintains Route FF in Jasper and Newton Counties as part of the State Highway System;

WHEREAS, the parties desire the improvement or reconstruction of Route FF at its intersection with Indiana Street; and

WHEREAS, the City 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:

(I) GENERAL INFORMATION:

(1) PURPOSE: The purpose of this Agreement is to coordinate participation by the City in the cost of the Commission's public improvement for Routes FF and Indiana Street, in the Counties of Jasper and Newton, designated as Job No. J7P3187B. This public improvement will involve intersection improvements.

(2) IMPROVEMENT DESIGNATION: The public improvement designated as Routes FF and Indiana Street, Jasper and Newton Counties, Job No. J7P3187B shall consist of intersection improvements.

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

Route FF, Jasper and Newton Counties, Missouri, at its intersection with Indiana Street in Joplin, Missouri.

The general location of the public improvement is shown in "Exhibit A." The detailed location of the improvement will be shown on the plans prepared by the Commission for

the above-designated route and project.

(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) 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.

(6) CITY REPRESENTATIVE: The City's Director of Public Works 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.

(7) 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:
Director of Public Works
City of Joplin
602 S Main
Joplin, MO 64801
Facsimile No: (417) 625-4738

(B) To the Commission:
District Engineer
MoDOT, Southwest District
3025 E Kearney
Springfield, MO 65803
Facsimile No: (417) 895-7610

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.

(II) PROJECT RESPONSIBILITIES AND FINANCIAL OBLIGATIONS:

(8) PROJECT RESPONSIBILITIES: With regard to project responsibilities

under this Agreement, the parties agree to contribute as follows:

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

(B) The Commission will acquire right-of-way as needed for the project in accordance with Commission requirements.

(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 City, or as the plans may from time to time be modified in order to carry out the work as contemplated. The Commission will award the project with concurrence from the City.

(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.

(9) CONCURRENCE WITH AWARD: Once the Commission has let the project and the City had been notified of the amounts bid on the project, the City will have five (5) calendar days to reject or recommend award of the bid. If the City does not respond within five (5) calendar days, the City shall be deemed to have automatically concurred in a Commission decision to award the construction contract. If the Commission has solicited bids twice or more, and these lettings have not resulted in award, the Commission may terminate this Agreement to void all contractual obligations without being in breach hereof, and the City's deposited funds shall be refunded for the discontinued project.

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

(A) The currently estimated total cost of the project is eight hundred eighteen thousand eight hundred twenty-eight dollars ($818,828). The details of the estimated cost breakdown may be seen in "Exhibit B," which is incorporated herein and attached hereto. The total project cost will include preliminary engineering, right of way acquisition, utility relocation, project construction, and work inspection.

(B) The Commission will pay fifty percent (50%) of the total project costs, currently estimated to be four hundred nine thousand four hundred fourteen dollars ($409,414).

(C) The City will pay fifty percent (50%) of the total project cost, currently estimated to be four hundred nine thousand four hundred fourteen dollars ($409,414). The City's share of the project costs will be comprised of local funds, a credit for design done by the City, and STP-Urban funds. The City will receive a credit for design, valued at eighty-one thousand six hundred eighty-two dollars ($81,682). The City will provide the Commission with documentation of expenses to verify these costs. The remainder of the City's share shall be comprised of STP-Urban funds and local funds. After accounting for the design credit, the City agrees that the Commission may program the City's remaining balance of STP-Urban funds at the time of obligation in an amount up to eighty percent (80%) of its responsibilities under this agreement, currently estimated to be thirty-four thousand two hundred twenty-four dollars ($34,224). In addition, the City shall remit a check to pay the Commission for the remaining portion of its share of the total project cost, currently estimated to be two hundred ninety-three thousand five hundred eight dollars ($293,508), no later than eight (8) weeks prior to the Commission's project bid letting date. This check should be made payable to *Director of Revenue - Local Fund.* If the City fails to make the deposit, the Commission is under no obligation to continue with the project. The City agrees that all funds deposited by the City, 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 Road fund. If the amount deposited with the Commission shall be less than the actual obligation of the City for this project, the City, 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, excluding interest, shall be refunded to the City based on its pro rata share of the investment.

(D) If, at the time of the letting, the lowest responsive bid is higher than the estimated construction and inspection cost amount, the City, 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 City payment is due, it shall notify the City of the new due date in writing, which shall be binding immediately upon the City's receipt of the written notice. The check must be made payable to the *Director of Revenue –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 City 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 City by the extended due date. If the Commission makes a contingent award of the contract and the City 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.

(E) The Commission and the City will share total project costs in excess of eight hundred eighteen thousand eight hundred twenty-eight dollars ($818,828) equally. The Commission and the City will share any cost savings equally.

(11) 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 City 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 City with the Commission pursuant to this Agreement. In the event the Commission agrees to grant the City'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 City'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 City and the Commission.

(12) USE OF RIGHT-OF-WAY: 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 improvements.

(13) 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.

(14) 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 any necessary right-of-way required for the construction of the improvement.

(15) UTILITY RELOCATION:

(A) The Commission and the City shall cooperate to secure the temporary or permanent removal, relocation, or adjustment of public utilities or private 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 such public utilities or the owners of the facilities except where the City is by existing franchise or agreement obligated to pay all or a portion of such cost, in which case the City will pay its obligated portion of the cost.

(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) It is understood and agreed by the parties to this Agreement that no city-owned utility facilities will require relocation or adjustment in connection with this improvement, but that should utility facilities be discovered at any time during development or construction of this improvement, relocation or adjustment of the same will be done and performed under a supplemental agreement covering the subject, and in accordance with Commission policy then in effect on division of costs for adjustment of utility facilities.

(D) In cases of public utilities owned by the City which must be moved, adjusted, or altered to accommodate construction of this improvement, and such city-owned utilities, poles, wires, conduits, and pipes are located within the present city limits and located on an existing city street, not state highway right-of-way, but being taken over by the Commission as a part of its highway right-of-way, the City will perform the necessary removal, adjustment, alterations and relocation, and the Commission will reimburse the City except as otherwise provided. The City shall perform the removal, adjustment, alterations and relocation in accordance with the detail plans, estimates of costs and bills of materials prepared by the 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 the 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 the Commission of the original and four copies of a bill for the actual costs incurred by the City in making any such removal, adjustment, alteration and relocation, the Commission shall reimburse the City for the actual cost necessitated by construction of this public improvement. The Commission's obligation toward the cost of any such removal, adjustment, alteration and relocation shall extend only to those costs incurred in accordance with FAPG 23 CFR 645A and its revisions.

(E) 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.

(F) The City agrees that any installation, removal, relocation, maintenance, or repair of public or private 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.

(16) LIGHTING

(A) 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.

(B) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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, 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) Maintenance of adaptive traffic signal components and all associated equipment installed as part of this project is detailed in a separate maintenance agreement.

(22) 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

(B) The City shall perform or cause to be performed normal maintenance on the project site.

(23) CITY TO MAINTAIN: Upon completion of construction of this improvement, the City shall accept control and maintenance of the improved City street that was temporarily accepted as part of the State Highway System for the purposes of this project pursuant to paragraph (22) 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.

(24) 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.

(25) 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.

(26) 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.

(27) 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.

(III) ADDITIONAL CONTRACT TERMS:

(28) 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 $3,000,000 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.

(29) 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 City and the Commission.

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

(31) 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 this Agreement.

(32) APPROVAL OF FHWA: 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.

(33) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations or for convenience by providing the City 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 City.

(34) 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.

(35) 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.

(36) 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.

(37) NO INTEREST: By contributing to the cost of this project or improvement,

the City 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 City shall not be entitled to a refund of the funds contributed by the City pursuant to this Agreement.

(38) 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.

(39) 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.

(40) 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.

(41) 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.

(42) 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.

[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 ____ day of _____, 20__.

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

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By _____

Title _____

ATTEST: (Commission seal)

_____
Secretary to the Commission

APPROVED AS TO FORM:

_____
Commission Counsel

CITY OF JOPLIN

By _____

Title _____

By _____

Title _____

By _____

Title _____

ATTEST: (City seal, if existing)

By _____

Title _____

APPROVED AS TO FORM:

By _____

Title _____

Ordinance Number_____

"Exhibit A"


IOWA AVE
29TH ST
30TH ST
GRAND ST
ILLINOIS AVE
WISCONSIN AVE
MICHIGAN
KANSAS AVE
32ND ST
FERGUSON
33RD ST
PLAZA DR
34TH ST
INDIANA AVE

"Exhibit B"

Project Name: 32nd & Indiana Intersection Improvements
MoDOT Job Number: 7P3187B

Description: Intersection improvements on 32nd St. at Indiana St. in Joplin.

Definition of "Total Project" for Cost Apportionment Includes:

Preliminary Engineering	ROW Incidentals	Utilities
ROW	Construction	Construction Engineering

Definition of "Total Project" for Cost Apportionment Excludes:

Cost to Accelerate Project		

Project Estimate

	Current Estimate and inflation	Cost Apportionment Eligible
Preliminary Engineering	$ 83,682	$ 83,682
Right-of-way	$ -	$ -
Right-of-way Incidentals	$ -	$ -
Utilities	$ 100,000	$ 100,000
Construction w/ Contingency	$ 569,146	$ 569,146
Non-contractuals	$ -	$ -
Inspection and Letting	$ 66,000	$ 66,000
Total	$ 818,828	$ 818,828

Project Responsibilities

Preliminary Engineering	City of Joplin
ROW Acquisition	None anticipated
Letting	MoDOT
Inspection	MoDOT

Financial Responsibilities

City of Joplin Design Credit	$	81,682	Total Local Share
City of Joplin Local Funds	$	293,508	$ 409,414
City of Joplin STP-Urban	$	34,224	50.0%
Local Reserved 4	$	-	
Local Reserved 5	$	-	
Local Reserved 6	$	-	
MoDOT SW in-kind	$	68,000	Total MoDOT Share
MoDOT Flexible Funds	$	341,414	$ 409,414
MoDOT Reserved 3	$	-	50.0%
MoDOT Reserved 4	$	-	

How are overruns and underruns handled?

City of Joplin and MoDOT will share any cost overruns and underruns equally.