

CCO Form: FS08  
Approved: 03/04 (BDG)  
Revised: 03/17 (MWH)  
Modified:

Loop 49, Jasper County  
Project No. J7S3430  
City of Joplin

## **MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION COST SHARE 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 Entity applied to the Commission's Cost Share Committee for participation in the Commission's *Cost Share Program*; and

WHEREAS, on September 26, 2019, 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 co-ordinate the participation by the Entity of the City of Joplin in the cost of the Commission's Project J7S3430.

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

The intersection of Missouri Business Loop 49 (Rangeline Road), 15<sup>th</sup> Street in the City of Joplin.

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 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.

(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) PLANS AND CONSTRUCTION:

(A) The Entity shall be responsible for preparation of plans, specifications and construction for the herein improvements. This includes design, letting of project, and inspection of project. The plans shall be prepared in accordance with and conform to Commission requirements and are subject to the Commission's approval.

(B) The Commission will provide preliminary engineering review, right of way review and construction engineering review.

(C) The Entity shall be responsible for the preparation of detailed 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. The Commission will review and approve the legal descriptions, which are required prior to the deeds being executed by property owners. Commission review of the parcels being acquired is required to ensure the Uniform Act was followed.

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

(A) The total project cost will include preliminary engineering, right-of-way, utilities, construction, and inspection. The total project cost is currently estimated to be nine hundred fourteen thousand eight hundred eighty-five dollars (\$914,885). 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 current estimate of the Entity's responsibilities is four hundred fifty-seven thousand four hundred forty-three dollars (\$457,443).

(C) The Commission will pay for fifty percent (50%) of the total project cost up to and not to exceed the maximum amount of four hundred fifty-seven thousand four hundred forty-three dollars (\$457,443). Of this amount, the Commission shall provide four hundred thirty-two thousand four hundred forty-two dollars (\$432,442) from the Commission's Cost Share program, available in State Fiscal Year 2021, and preliminary engineering review, right of way review and construction engineering review services by MoDOT District personnel estimated to total twenty-five thousand dollars (\$25,000). The Commission's Cost Share Program funds shall not be used off the State Highway System.

(D) The Entity is responsible for the balance of the project in excess of nine hundred fourteen thousand eight hundred eighty-five dollars (\$914,885). The Entity shall be responsible for all cost overruns. The Entity and Commission will share cost underruns equally, based on the pro rata share.

(E) The Entity may invoice the Commission monthly after the costs are incurred beginning July 1, 2020 or after the project is complete.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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: Steve Campbell  
3025 E Kearney St  
Springfield, MO 65803  
Facsimile No.: (417) 895-7637  
Email: Steven.Campbell@modot.mo.gov

Entity to: David Hertzberg  
602 S Main St  
Joplin, MO 64801

Facsimile No.: (417) 625-4738  
Email: dhertzbe@joplinmo.org

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

(21) 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.

(22) 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.

*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 \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Executed by the Commission this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

CITY OF JOPLIN

\_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary to the Commission

By \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to Form:

Approved as to Form:

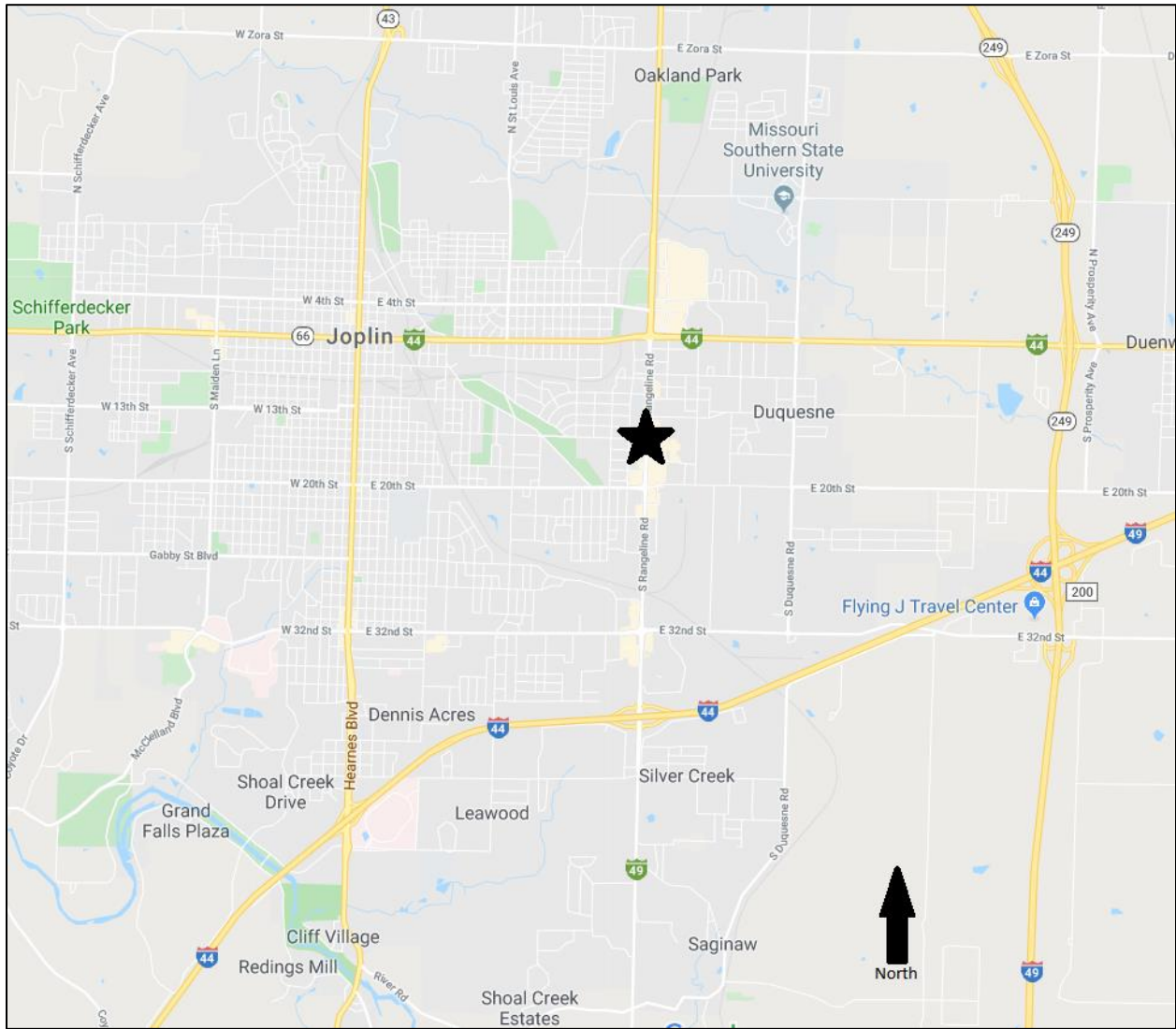
\_\_\_\_\_  
Commission Counsel

\_\_\_\_\_  
Title: \_\_\_\_\_

Ordinance No \_\_\_\_\_

**Note: If the Entity is a county with a commission form of government, additional lines need to be inserted to allow all three commissioners to sign the agreement.**

# Exhibit "A" Project Location





## Exhibit "B" Financial Summary

**Project Name:** Rangeline Road and 15th Street  
**MoDOT Job Number:** J7S3430

**Description:** Intersection improvements on Loop 49 (Rangeline Road) at 15th Street in Joplin.

**Definition of "Total Project" for Cost Apportionment Includes:**

Preliminary Engineering	ROW Incidentals	Utilities
ROW	Construction and Non-Contractuals	Construction Engineering

**Project Estimate**

	Current Estimate and Inflation	Cost Share Eligible
Preliminary Engineering	\$ 122,500	\$ 122,500
MoDOT Preliminary Engineering Review	\$ 10,000	\$ 10,000
Right-of-way	\$ 139,185	\$ 139,185
Right-of-way Incidentals	\$ 11,500	\$ 11,500
MoDOT Right-of-Way Review	\$ 5,000	\$ 5,000
Utilities	\$ 50,000	\$ 50,000
Construction w/ Contingency	\$ 466,700	\$ 466,700
Construction Engineering	\$ 100,000	\$ 100,000
MoDOT Construction Engineering Review	\$ 10,000	\$ 10,000
<b>Total</b>	<b>\$ 914,885</b>	<b>\$ 914,885</b>

**Project Responsibilities**

Preliminary Engineering	Joplin
ROW Acquisition	Joplin
Letting	Joplin
Inspection	Joplin

**Financial Responsibilities**

City of Joplin	\$ 457,443	Total Local Share
		\$ 457,443
		50.0%
MoDOT Operations/Engineering Oversight	\$ 25,000	Total MoDOT Share
MoDOT Cost Share Program	\$ 432,443	\$ 457,443
		50.0%

**How are overruns and underruns handled?**

Entity is responsible for 100% of overruns. Entity and Commission to share under run savings 50%-50%.