

CCO Form: DE07  
Approved: 07/97 (DPP)  
Revised: 09/11 (AR)  
Modified:

Cost Apportionment Agreement  
Route: 40  
County: Jackson  
Job Nos.: J4P2387 & J4P2387B

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

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and Jackson County (hereinafter, "Entity").

WITNESSETH:

WHEREAS, the Commission owns and maintains Route 40 in Jackson County as part of the State Highway System;

WHEREAS, the Commission desires the improvement or reconstruction of the Route 40 and Lee's Summit Road intersection, designated as Job No. J4P2387, and the parties desire the improvement or reconstruction of an adjoining section of Lee's Summit Road, designated as Job No. J4P2387B, extending generally from 550' south of the centerline of Route 40 to 1400' south of Anderson Drive; 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 participation by the Entity in the cost of the Commission's public improvement for the Lee's Summit Road section, in the County of Jackson, designated as Job No. J4P2387B. This public improvement will involve the reconstruction of Lee's Summit Road from 550' south of the centerline of Route 40 to 1400' south of Anderson Drive and also includes a new bridge over the Little Blue River. The Entity will not be participating in the cost of the Commission's public improvement at the intersection of Lee's Summit Road and Route 40, designated as Job No. J4P2387, except for the specific items listed in section 5(J).

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

*On Kansas City, Missouri right-of-way from 450' south of the Commission's right-of-way line on the south side of Route 40 to 1400' south of Anderson Drive in Jackson County, 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 and the Entity for the above-designated route and project.

(4) 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.

(5) PROJECT RESPONSIBILITIES FOR JOB NO. J4P2387B: With regard to project responsibilities for the section of Lee's Summit Road designated as Job No. J4P2387B 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. This responsibility includes design and the inspection of project. The plans shall be prepared in accordance with and conform to Commission requirements.

(B) The Entity 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 Entity, or as the plans may from time to time be modified in order to carry out the work as contemplated.

(D) The Entity will be responsible for the review of the bids for purposes of awarding the Commission's construction contract. If the lowest responsive bid is greater than 10% above the final cost estimate, then the Commission may not award said construction contract unless the Entity concurs in such award. The Entity shall provide concurrence within three calendar days of the bid opening by the Commission. Failure of the Entity to provide concurrence within the three calendar day time frame shall be construed as non-concurrence by the Entity in the award of the project to the lowest responsive bidder.

(E) The Commission will be responsible for administration of the construction contract. The Commission will assign a Resident Engineer to administer the construction contract. The project shall be constructed in accordance with and conform to Commission requirements. The Commission's Resident Engineer shall have final authority on all decisions pertaining to the administration of the construction contract for the project.

(F) The Entity will be responsible for construction inspection of the herein improvements, which includes the certification of materials incorporated into the

project. The Entity will be responsible for providing inspection personnel that are trained in SiteManager contract software and these inspection personnel will input all construction records into SiteManager on a daily basis once work begins on the project. The Commission will be responsible for providing access to a project office with a computer terminal so the Entity's inspection staff can complete any SiteManager reporting requirements.

(G) The Entity will provide a lead representative to be available during all phases of construction at the request of the Commission. This lead representative shall be in addition to any construction inspection staff that the Entity assigns to the project. The Entity's lead representative shall attend weekly construction meetings once work begins on the project. The lead representative will provide Entity input on the project, but the Commission's Resident Engineer shall have final authority on the contract.

(H) The Commission will obtain all necessary environmental documents and coordination with FHWA, and any other applicable state or federal agencies, for review of such documents. The Commission and these other agencies, in their sole discretion, shall determine whether such documents are approved for the project, and may require the Entity to assist the Commission with any changes to the environmental documents prior to approval.

(I) The Entity will be responsible for the review of all proposed change orders during construction, when such review is desired by the Entity. The Entity may make recommendations to the Commission concerning such change orders, and shall provide any recommendation regarding the proposed change orders within twenty-four hours of receiving each change order from the Commission. However, the Commission has sole discretion on all decisions to approve or reject any change order. Failure of the Entity to provide recommendations on proposed change orders within the twenty-four hour time frame shall be construed as concurrence by the Entity in the proposed change order.

(J) The Entity will be responsible for reimbursable gas utility costs incurred within Kansas City, Missouri right-of-way on both Job No. J4P2387 and Job No. J4P2387B. The Entity will furnish the Commission with a copy of its Utility Relocation Agreement with the gas utility, MGE, at least 120 days prior to the letting so utilities can be cleared along the project limits before the letting date. The Entity will also be responsible for waterline design costs for both Job No. J4P2387 and Job No. J4P2387B. The Entity will remit these payments directly to the consultant performing this corridor long waterline design work.

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

(A) The currently estimated cost of Job No. J4P2387B is Ten Million, Nine-Hundred Thousand Dollars (\$10,900,000.00). 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 only the project construction costs that are included in the bid book and let with the project.

(B) The Commission will pay a maximum contribution of zero dollars (\$0.00) toward the right of way and utility relocation costs for Job No. J4P2387B. The Commission will pay a maximum contribution of zero dollars (\$0.00) toward the project construction costs for Job No. J4P2387B.

(C) The Job No. J4P2387B project has been allocated Seven Million, One-Hundred Twenty Thousand Dollars (\$7,120,000.00) in Federal STP funds in federal fiscal year 2014 under STP-3301(454). The Entity will be responsible for 100% of the difference between the construction cost and the Federal STP funds eligible for this project. The Entity agrees to transfer these Federal STP funds to the Commission so the Commission can obligate them as a lump sum under Job No. J4P2387B.

(D) The Entity shall remit a check to pay the Commission for the difference between the project cost and the Federal STP funds, currently estimated in the amount of Three Million, Seven-Hundred Eighty Thousand Dollars (\$3,780,000.00), at least five (5) days prior to notice of letting for the project. This check shall be made payable to the "Missouri Highways and Transportation Commission – Local Fund." If the Entity fails to make this payment, the Commission is under no obligation to continue with the project. 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 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.

(E) If the lowest responsive bid amount is more than Ten Million, Nine-Hundred Thousand Dollars (\$10,900,000.00), and, if applicable, the Entity gives its concurrence in the award of the contract pursuant to paragraph (5)(D) of this Agreement, then the Entity shall remit a check to the Commission for the difference between the lowest responsive bid amount and \$10,900,000. This additional deposit shall be made within ninety (90) days of the bid opening. This check shall be made payable to the "Missouri Highways and Transportation Commission – Local Fund." If the Entity fails to make this payment, the Commission is under no obligation to continue with the project. The Entity shall be responsible for the project costs that exceed the Federal STP funds that are capped at Seven Million, One-Hundred Twenty Thousand Dollars (\$7,120,000.00).

(F) If change orders increase the total construction cost more than Ten Million, Nine-Hundred Thousand Dollars (\$10,900,000.00) or more than the amount that the Entity has already deposited based on the lowest responsive bid amount, whichever is greater, then the Entity shall remit a check to the pay the Commission for the total cost of the change order. This additional deposit shall be made within ninety (90) days of the signed change order. Entity change order deposits must occur whenever the change order value exceeds \$50,000. This check shall be made payable to the "Missouri Highways and Transportation Commission – Local Fund." If the Entity fails to make this payment, the Commission is under no obligation to continue with the project.

(G) If the final construction cost totals less than Eight Million, Nine-Hundred Thousand Dollars (\$8,900,000.00), then the Entity's final payment to the Commission will be calculated at 20% of the final construction cost. The Federal STP funds that are capped at Seven Million, One-Hundred Twenty Thousand Dollars (\$7,120,000.00), require a minimum of a 20% match, so this calculation ensures that the Entity remains responsible for all matching costs on the project if all of the Federal STP funds are not expended.

(H) The Commission is responsible for all internal construction engineering costs, which are not federally participating, at no cost or expense to the Entity. This responsibility only includes the Resident Engineer support and all contract administration costs.

(I) The Entity is responsible for all Entity staff costs, including internal inspectors and consultants, which are not federally participating, at no cost or expense to the Commission.

(7) 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.

(8) 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.

(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) 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.

(14) 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.

(15) 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.

(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) 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) 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) 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 Entity this \_\_\_\_ day of \_\_\_\_\_, 2014.

Executed by the Commission this \_\_\_\_ day of \_\_\_\_\_, 2014.

**MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION**

COUNTY OF JACKSON, MISSOURI

By \_\_\_\_\_

By MDS

Title \_\_\_\_\_

Title \_\_\_\_\_

ATTEST: (Commission seal)

By \_\_\_\_\_

Secretary to the Commission

Title \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_

Commission Counsel

Title \_\_\_\_\_

ATTEST: (Entity seal, if existing)

By Mary Spino

Title County Clerk

APPROVED AS TO FORM:

By Jim D. Holden for

Title County Council

If Entity is a City – City Ordinance Number \_\_\_\_\_

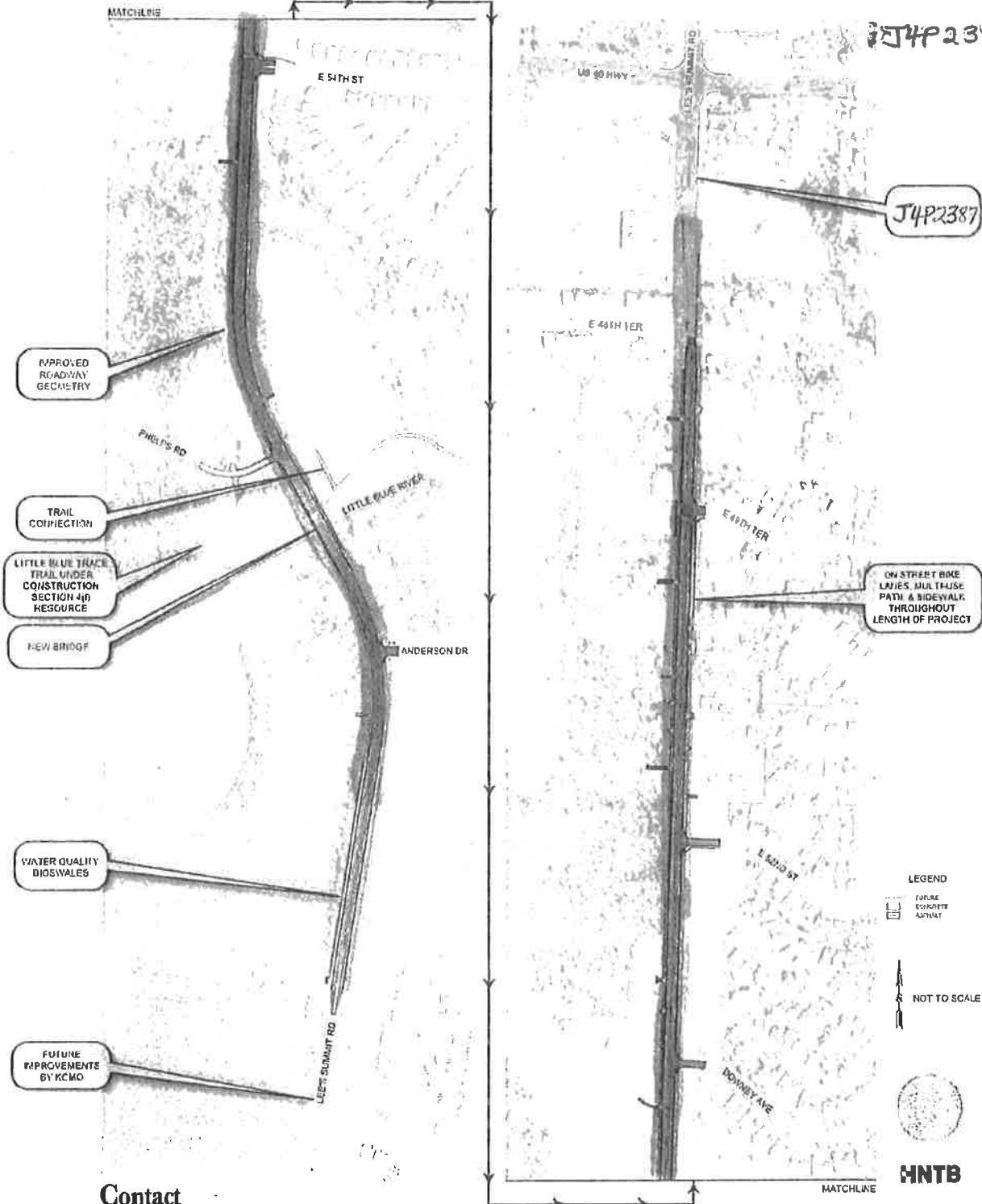


# EXHIBIT A

## LEE'S SUMMIT ROAD IMPROVEMENTS ANDERSON DRIVE TO EAST 48TH TERRACE

J4P2387

J4P2387B



### Contact

For more information or questions, please contact:  
John McClernon, Jackson County Public Works  
816-881-4532

[www.jacksongov.org/LSR](http://www.jacksongov.org/LSR)  
Scott Heavin, HNTB  
816-472-1201

MARCH 31, 2011

**HNTB**

**Exhibit B - Lee's Summit Road Cost Estimate and Funding Distribution --- Job No. J4P2387B --- STP-3301(454)**

	<b>Total Construction Cost</b>	<b>Roadway &amp; Bridge Cost</b>	<b>Total Waterline Cost</b>	<b>Federal STP Funds -- STP-3301(454)</b>	<b>Initial Jackson County Deposit</b>
<b>Project Amounts</b>	\$ 10,900,000.00	\$ 7,600,000.00	\$ 3,300,000.00	\$ 7,120,000.00	\$ 9,780,000.00

\* NOTE: MoDOT will administer the Federal STP Funds and the construction contract, but MoDOT will provide zero dollars (\$0.00) towards the construction costs for Job No. J4P2387B.