

MEMO



To: Mayor and Board of Aldermen
From: Rodney Bollinger, Director of Administrative Services
Date: Tuesday, February 01, 2022
Re: Cost Share Agreement with MoDOT for the Roundabout Project

Attached is the proposed cost share agreement with the Missouri Highways and Transportation Commission for the roundabout project at US Highway 61 and Deerwood Dr.

The ten-page agreement details the extent and nature of the proposed public improvements and includes a location map, cost breakdown, and project schedule.

The project will be a 50/50 split between the City and MoDOT of the total cost, which is estimated at \$2,006,000. That means that both the City and MoDOT will each pay \$1,003,000. However, should there be cost overruns, the City will be responsible for the balance of the project in excess of the total cost.

Thanks for your consideration of this information. Please let me know if you have questions or concerns.

CCO Form: FS08
Approved: 03/04 (BDG)
Revised: 03/17 (MWH)
Modified: 01/22 (MWH)

Route 61, Cape Girardeau County
Project No. SE0048
City of Jackson

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

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and City of Jackson (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 December 17, 2021, 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, the City of Jackson, in the cost of the Commission's Project SE0048.

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

Location Description: Construction of roundabout at the intersection of Route 61 and Deerwood Drive. The length of improvement will be approximately 0.5 mile.

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 Southeast 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: 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. The details of the estimated cost breakdown are listed below and in "Exhibit C", which is attached hereto and made part hereof.

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

(A) The total project cost will include preliminary engineering, utilities, right of way, construction and inspection, currently estimated at Two million six thousand dollars (\$2,006,000). The details of the estimated cost breakdown are listed below and in "Exhibit B", which is attached hereto and made part hereof.

(B) The Commission will pay for fifty percent (50%) of the total project cost, not to exceed One million three thousand dollars (\$1,003,000). Of this amount, the Commission shall provide Nine hundred seventy-three thousand dollars (\$973,000) from the Commission's Cost Share program, available in State Fiscal Year 2024, and right of way incidental, preliminary engineering review, and construction engineering review services by its Southeast District personnel estimated to total Thirty thousand dollars (\$30,000). Commission Cost Share Program funds shall not be used off the State Highway System.

(C) The Entity shall pay for fifty percent (50%) of the total project cost, currently estimated at One million three thousand dollars (\$1,003,000).

(D) The Entity shall be responsible for the balance of the project in excess of Two million six thousand dollars (\$2,006,000).

(E) The Entity may request reimbursement for eligible costs any time after August 1, 2023. Requests for reimbursement shall be submitted to the Commission monthly and shall be supported with invoices and documentation that its providers were paid in full for the work performed.

(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) 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.

(17) 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.

(18) 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.

(19) 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: Mark Croarkin
2675 North Main
Sikeston, MO 63801
Facsimile No.: (573) 472-5296
Email: mark.croarkin@modot.mo.gov

Entity to: City of Jackson
Attn: Dwain Hahs
101 Court Street
Jackson, MO 63755
Facsimile No.: (573) 243-4588
Email: mayorhahs@jacksonmo.org

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

(20) 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.

(21) 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.

(22) WITHHOLDING OF FUNDS: In the event that the Entity 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 Entity for compliance and the Entity's failure to comply, withhold the expenditure of further funds for maintenance, improvement, construction, or reconstruction of the state highway system in the Entity, City of Jackson.

(23) ACCEPTED WITHIN HIGHWAY SYSTEM: Effective upon execution of this Agreement, the Commission temporarily accepts the portion of the Entity 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 Entity, shall perform or cause to be performed normal maintenance on the project site.

(24) CITY TO MAINTAIN: Upon completion of construction of this improvement, the Entity shall accept control and maintenance of the improved Entity street that was temporarily accepted as part of the State Highway System for the purposes of this project pursuant to paragraph (23) above and shall thereafter keep, control, and maintain the same as, and for all purposes, a part of the Entity 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 Entity street system under this Agreement shall cease upon completion of the improvement.

(25) 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 maintenance or repair of sidewalks whether new or used in place, 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 the Entity's, city streets, the right-of-way acquired for these adjustments and connections will be deeded to the Entity.

(C) The Entity shall inspect and maintain the sidewalks constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalks.

(26) RIGHT-OF-WAY USE: The Entity grants the right to use the right-of-way of public roads, streets, alleys and any other property owned by the Entity as necessary for construction and maintenance of said public improvement.

(27) IMPROVEMENT WITHIN CITY: The improvement within the limits owned by the Entity is located as follows:

Description: *Beginning at the intersection of US Route 61 and Deerwood Drive, the limits of the improvement extends from 400 feet northwest of the intersection to a point 300 feet southeast of the intersection. Length of the improvement within city-owned right of way is approximately 700 feet.*

*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 _____(DATE)

Executed by the Commission this _____(DATE)

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF JACKSON

Asst. Chief Engineer

By _____

Mayor, City of Jackson

ATTEST:

ATTEST:

Secretary to the Commission

By _____

City Manager, City of Jackson

Approved as to Form:

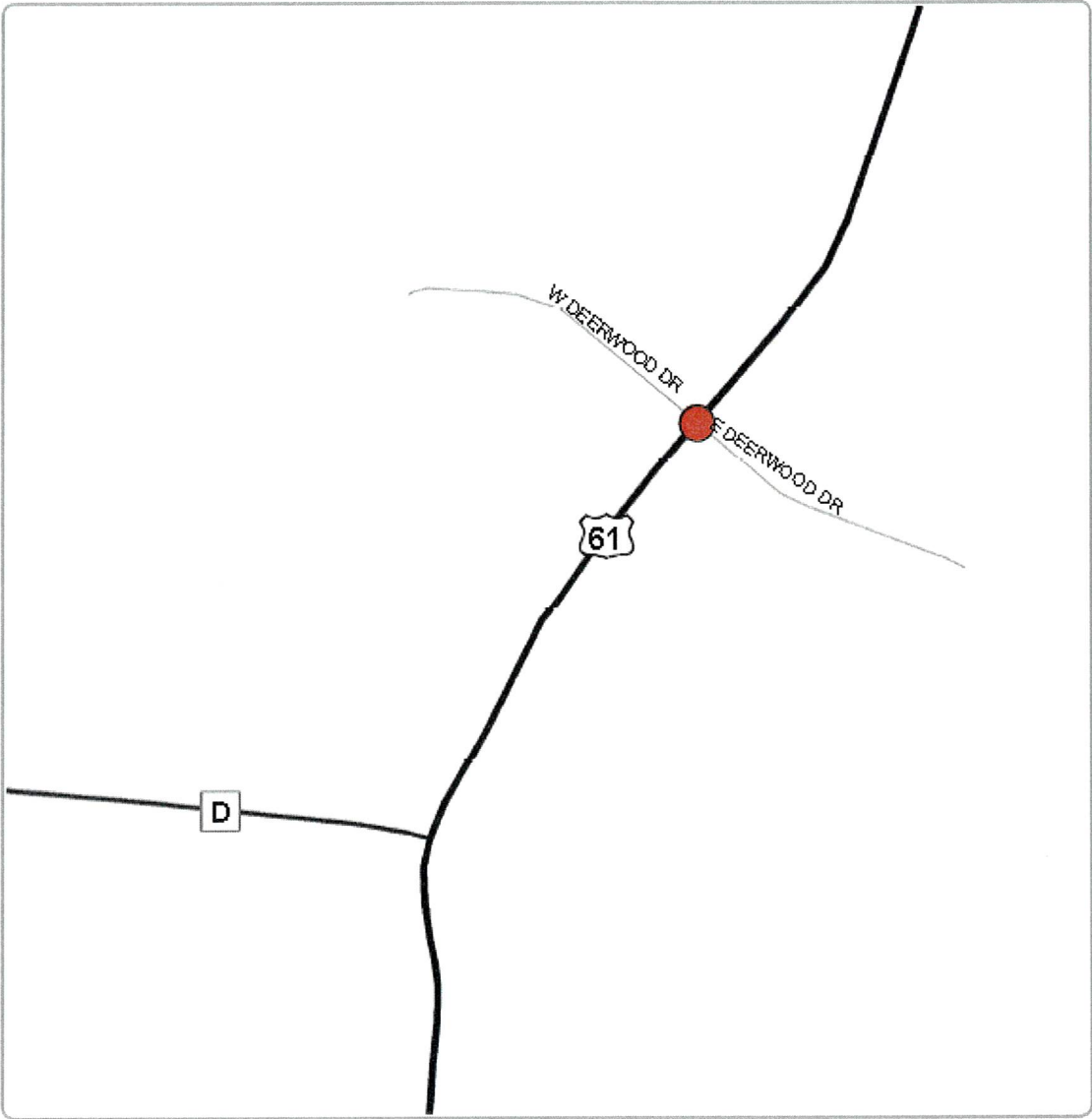
Approved as to Form:

Commission Counsel

City Attorney, City of Jackson

Ordinance No _____

Exhibit A:



Project Location

Project Location 



CITY OF JACKSON
ROUTE 61 ROUNDABOUT
CAPE GIRARDEAU COUNTY

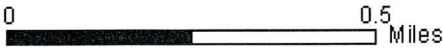


Exhibit B:

COST ESTIMATE

Project Name: Route 61 and Deerwood Drive/City of Jackson

MODOT Project Number: SE0048

Description: Construction of Roundabout at Intersection

Total Project Cost Estimate: \$2,006,000

Local Entity: \$1,003,000

	Current Estimate	Cost Share Eligible
Preliminary Engineering	\$215,500	\$215,500
PE Review	\$5,000	\$5,000
R/W	\$545,000	\$545,000
R/W Incidental	\$20,000	\$20,000
Construction	\$970,000	\$970,000
Utilities	\$100,000	\$100,000
Construction Engineering	\$145,500	\$145,500
CE Review	\$5,000	\$5,000
Total Project	\$2,006,000	\$2,006,000

Project Responsibilities:

Design	Entity
Right of Way	Entity/SE District
Letting	Entity
Inspection	Entity/SE District

Financial Responsibilities:

Southeast District	\$30,000	1%
Cost Share Funds	\$973,000	49%
City of Jackson	\$1,003,000	50%
Total	\$2,006,000	100%

The Entity, City of Jackson, shall be responsible for cost overruns on the project. Any underruns will be distributed based on the pro rata share.

Exhibit C

Project Schedule Route 61 and Deerwood Drive Roundabout

Engineering	December 2022
Right of Way	December 2023
Letting	January 2024
Project Award	March 2024
Construction Start	April 2024
Construction Complete	October 2024