

BILL NO: 1386

ORDINANCE NO. 1350

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE MISSOURI HIGHWAY AND TRANSPORTATION COMMISSION FOR THE MUNICIPAL AGREEMENT FOR THE PUBLIC IMPROVEMENT REPLACING THE ROUTE 47 BRIDGE OVER U.S. 61, MODIFYING THE ROUTE 47 & U.S. 61 INTERCHANGE TO A DIVERGING DIAMOND CONFIGURATION, AND BUILDING A SEGMENT OF THE U.S. 61 EAST OUTER ROAD, LINCOLN COUNTY, JOB NO. J2P3043.**

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF TROY, MISSOURI AS FOLLOWS:

**SECTION 1:** That the Mayor is hereby authorized to execute on behalf of the City of Troy a contract with the Missouri Highway and Transportation Commission providing for the Municipal Agreement for the public improvement replacing the Route 47 Bridge over U.S. 61, Modifying the Route 47 & U.S. 61 Interchange to a diverging diamond configuration, and building a segment of the U.S. 61 East Outer Road, Lincoln County, Job No. J2P3043 as outlined in the attached contract.

**SECTION 2: Conflicts:** All ordinances or parts of ordinances in conflict herewith are hereby repealed but shall otherwise remain in full force and effect.

**SECTION 3: Effective Date:** This Ordinance shall be in full force and effect after its passage and approval as provided by law.

PASSED AND APPROVED THIS 16th DAY OF October, 2023.

ATTEST:

  
\_\_\_\_\_  
Mayor Ron Sconce, City of Troy

  
\_\_\_\_\_  
Tonya Hawkins, City Clerk

1<sup>st</sup> Reading: October 16, 2023

2<sup>nd</sup> Reading: October 16, 2023

**EXHIBIT "1"**  
**Municipal Agreement**

CCO Form: DE11  
Approved: 04/93 (CEH)  
Revised: 12/21 (BDG)  
Modified:

Municipal Agreement  
Route: 47  
County: Lincoln  
Job No: J2P3043

## **MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION MUNICIPAL AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the **City of Troy**, Missouri, a municipal corporation (hereinafter, "City").

WITNESSETH:

WHEREAS, both the Commission and the City desire to clarify the duties and responsibilities of the parties associated with the Commission's project designated as J2P3043,

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

(1) IMPROVEMENT DESIGNATION: The public improvement designated as Route 47, Lincoln County, Job No. J2P3043 shall consist of replacing the Route 47 bridge over U.S. 61, modifying the Route 47 & U.S. 61 interchange to a diverging diamond configuration, and building a segment of the U.S. 61 east outer road. The outer road segment to be constructed is outside the City limits.

(2) IMPROVEMENT WITHIN CITY: The improvement within the City is located as follows:

Beginning at Station 619+00, a point 4206.76 feet S17° 34' 54" E from the intersection of the east line of Section 23, T49N, R1W and north line of Survey 1805, run in a generally easterly direction along existing Route 47 to Station 667+00, a point approximately 860' east of the Route 47 & Cherry St. intersection. Length of improvement within city is 0.91 mile.

(3) 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.

(4) LOCATION: The general location of the public improvement is shown on an attached sketch marked "Exhibit A" and made a part of this Agreement. The detailed location of the improvement is shown on the plans prepared by the Commission for the above-designated route and project.

(5) PURPOSE: It is the intent of this Agreement to outline the parties' responsibilities with respect to the construction and maintenance of those improvements to the State Highway System located within the City limits described in paragraphs (1) and (2) above and designated as Commission Job No. J2P3043.

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

(7) 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.

(8) RIGHT-OF-WAY ACQUISITION:

(A) 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 at its expense, at no cost or expense to the City, any necessary right-of-way required for the construction of the improvement.

(B) The portion of state highway covered by this Agreement shall be a controlled access highway and rights of access between the highway and abutting property shall be procured and the cost classified as right-of-way cost and paid for by the Commission in the same manner as other right-of-way costs. Only such rights of ingress and egress shall be allowed as indicated on the plans approved by the Commission and FHWA.

(9) 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.

(10) LIGHTING: 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.

(11) 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.

(12) 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.

(13) 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.

(14) COMMENCEMENT OF WORK: After acquisition of the necessary rights-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.

(15) MAINTENANCE: Except as provided in this Agreement, upon completion of the improvement, the Commission will maintain all portions of the improvement within the Commission owned right-of-way. The Commission will remove snow from the traveled portion of the highway using a snowplow or chemical means. Maintenance by the Commission shall NOT include maintenance or repair of water supply lines, sanitary or storm sewers (except those storm sewers constructed by the Commission to drain the highway), or city-owned utilities within the right-of-way.

(16) ACCEPTED WITHIN HIGHWAY SYSTEM: Effective upon execution of this

Agreement, the Commission temporarily accepts South Lincoln Drive between Route 47 and Third Street and Cherry Street between Route 47 and South Lincoln Drive 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.

(17) 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 (16) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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.

(22) FEDERAL HIGHWAY ADMINISTRATION: This Agreement is entered into subject to approval by the Federal Highway Administration and is further subject to the availability of federal and state funds for this construction.

(23) 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 \$3,500,000 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.

(24) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment approved and signed by representatives of the City and Commission, respectively, each of whom being duly authorized to execute the contract amendment on behalf of the City and Commission, respectively.

(25) COMMISSION REPRESENTATIVE: The Commission's Northeast 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.

(26) CITY REPRESENTATIVE: The City's Mayor or City Administrator 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.

(27) 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:  
Mayor Ron Sconce  
800 Cap Au Gris  
Troy, MO 63379  
rsconce@cityoftroymissouri.com

(B) To the Commission:  
Paula Gough, Northeast District Engineer  
1711 South Highway 61  
Hannibal, MO 63401  
paula.gough@modot.mo.gov

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.

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

(29) 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 the contract.

(30) 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.

(31) 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.

(32) 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.

(33) 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.

*[remainder of page intentionally left blank]*

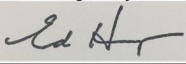
IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City on 2023-12-19 | 3:32 PM CST (Date).

Executed by the Commission on \_\_\_\_\_ (Date).

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

CITY OF TROY, MISSOURI

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By:   
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DocuSigned by:  
By: *Ron Sconce*  
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Title: Chief Engineer

Title: Mayor

ATTEST:

ATTEST:

DocuSigned by:  
  
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Secretary to the Commission

DocuSigned by:  
By: *Tonya Hawkins*  
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Title: city clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DocuSigned by:  
*Megan L. Waters-Hamblin*  
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Commission Counsel

DocuSigned by:  
By: *Brian Sinclair*  
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Title: City Attorney

Ordinance Number 1350

