

BILL NO. _____

ORDINANCE NO. 697

AN ORDINANCE TO AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION A COST APPORTIONMENT AGREEMENT TO PROVIDE FOR THE APPORTIONMENT OF COSTS BETWEEN THE CITY AND THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR REPAVING A PORTION OF US 169 AND THAT PORTION OF ROUTE Z WHICH LIES WITHIN THE BOUNDARIES OF THE CITY OF KING CITY, MISSOURI

Whereas, the Missouri Highways and Transportation Commission (Commission) maintains the throughway surface of Routes A and 169 on right-of-way owned by the City as part of the state highway system; and

Whereas, the Commission desires to improve or reconstruct, beginning 200 feet south of Vermont Street extending in a northerly direction along US Highway 169 to 200 feet North of Vermont Street, and also beginning at the intersection of US Highway 169, extending east along Route Z to the intersection of Grand Avenue; and

Whereas, the Commission requires an apportionment of costs between the Commission and the City for that portion of the improvement or reconstruction that is within the City limits;

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

Section 1: That the Mayor and City Clerk are hereby authorized to enter into a cost apportionment agreement with the Missouri Highways and Transportation Commission for the purpose above described which will provide that the City expend up to \$ 5,085.00 for this purpose, a copy of said cost apportionment agreement is attached hereto and made a part hereof as Exhibit "A".

Section 2: This Ordinance shall be in full force and effect from and after its passage and approval.



Mayor

ATTEST:



City Clerk

EXHIBIT A PROJECT LOCATION

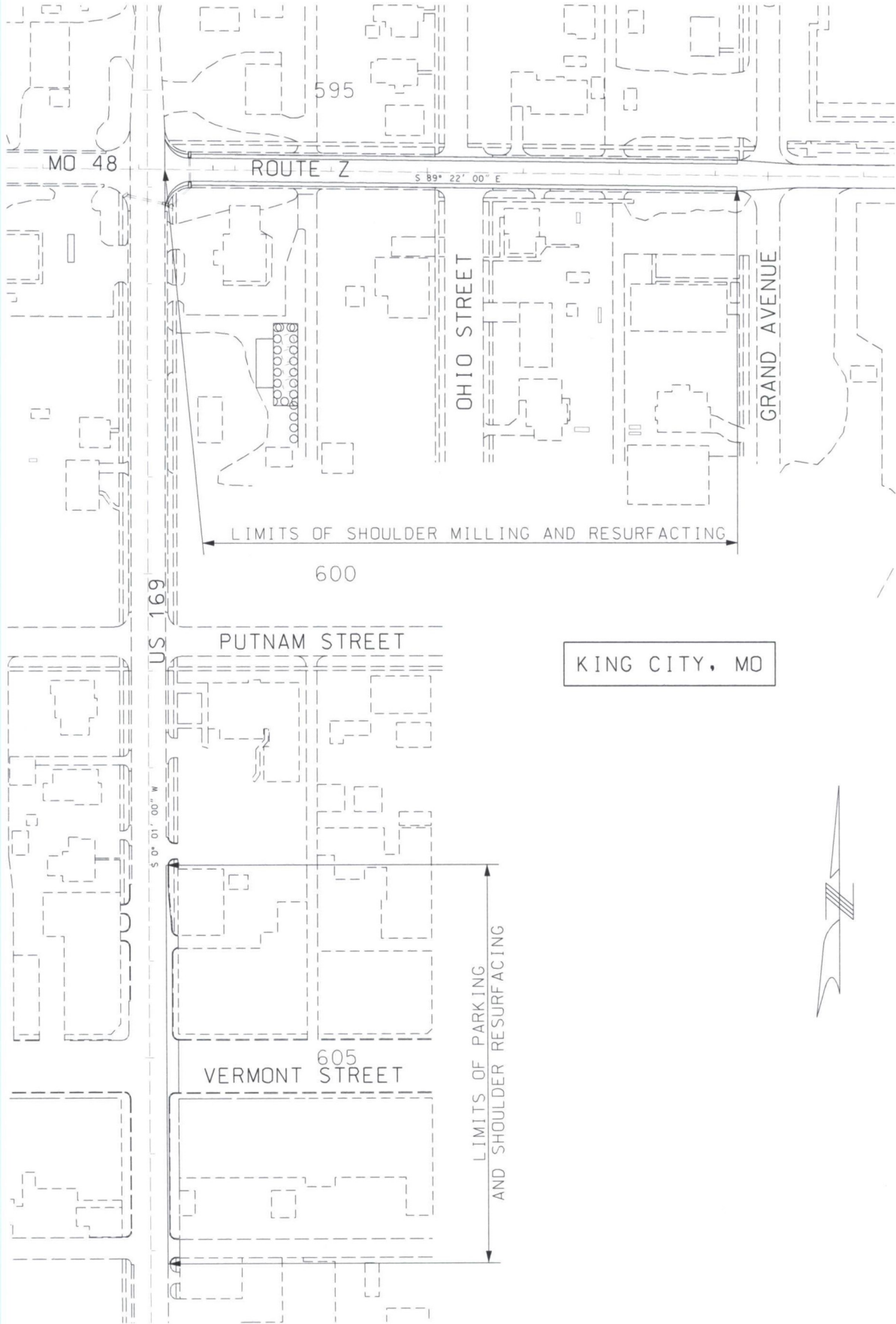
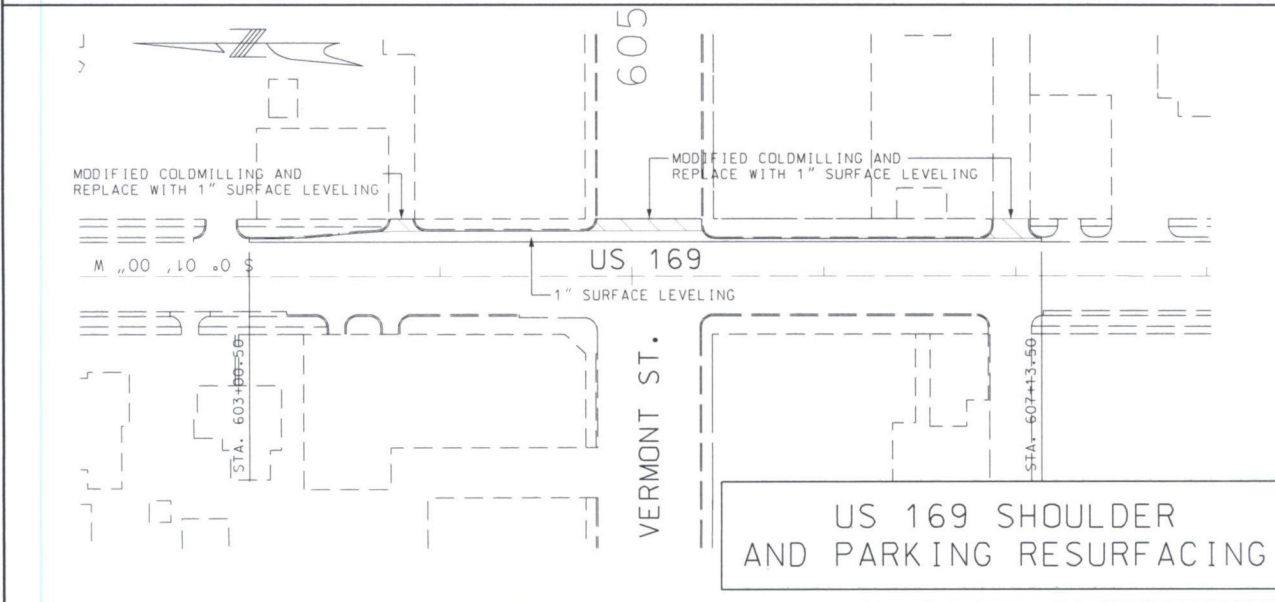
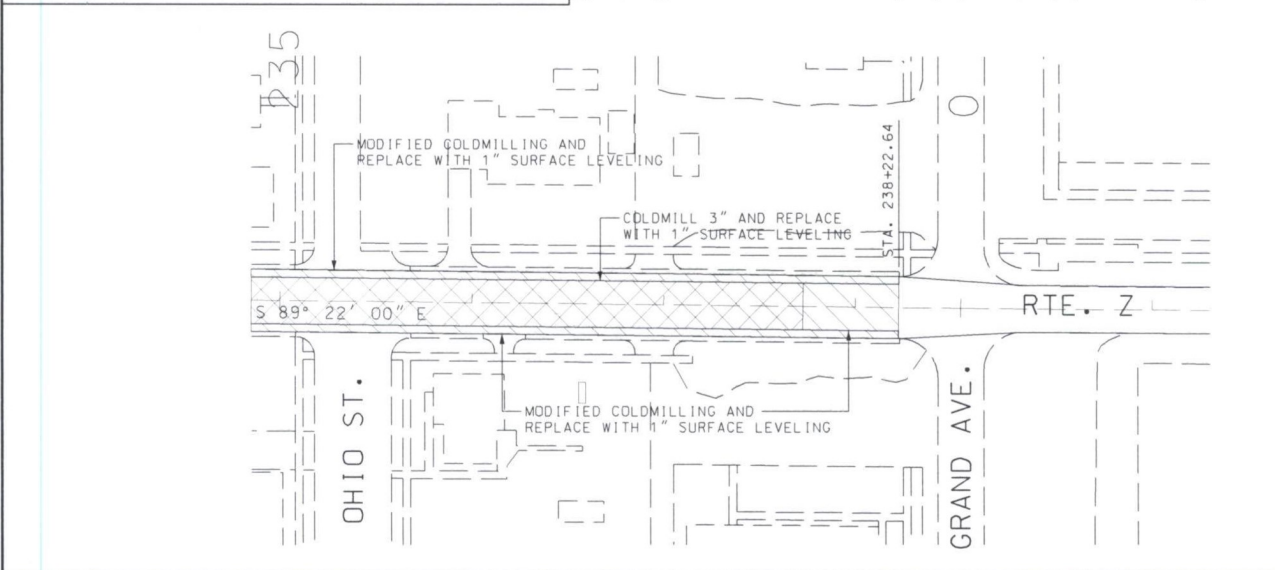
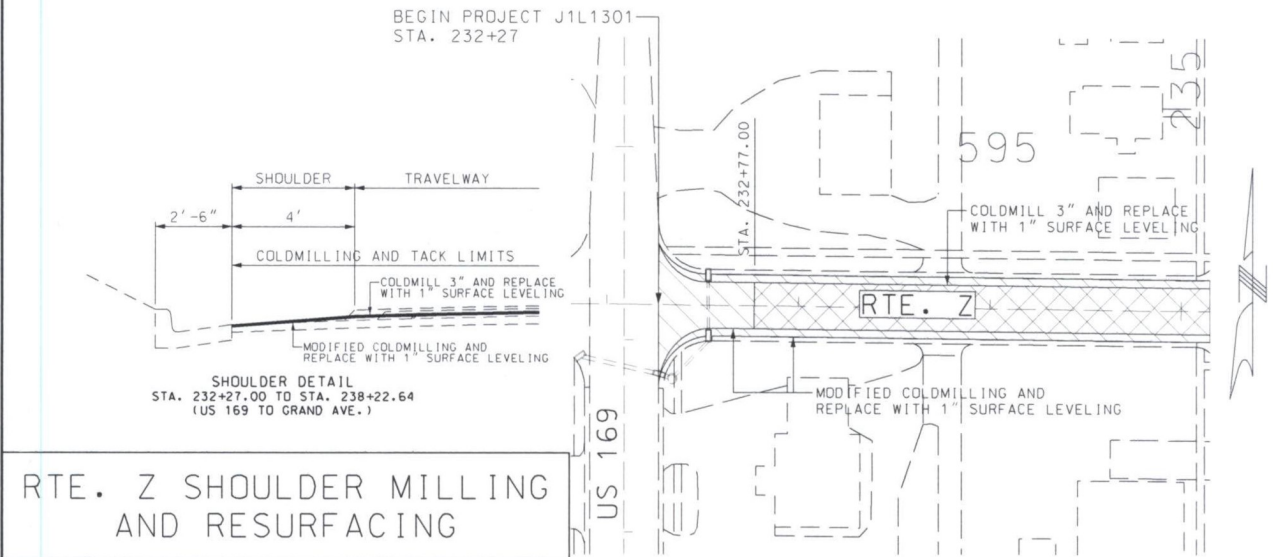


EXHIBIT B
COST APPORTIONMENT WORK



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

Cost Apportionment Agreement
Route: Z and 169
County: Gentry
Job No.: J1L1301

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

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

WITNESSETH:

WHEREAS, the Commission maintains the throughway surface of Routes Z and 169 on right of way owned by the Entity, as part of the State Highway System;

WHEREAS, the parties desire the improvement or reconstruction of Route Z, extending generally from US 169 to US 69 (old Pattonsburg, MO); 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 Route Z, in the County of Gentry, designated as Job No. J1L1301. This public improvement will involve asphalt resurfacing.

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

Beginning 200' south of Vermont St. extending in a northerly direction along US 169 to 200' north of Vermont St. Also beginning at the intersection of US 169 extending east along Route Z to the intersection of Grand Ave.

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.

(3) USE OF RIGHT-OF-WAY: The Entity 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.

(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: With regard to project responsibilities under this Agreement, the parties agree to contribute as follows:

(A) The Commission will be responsible for the preparation of detailed right-of-way and construction plans and project specifications. This includes design, letting of project, and inspection of 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 Commission, or as the plans may from time to time be modified in order to carry out the work as contemplated.

(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. The additional improvements to be constructed for the Entity's benefit are milling and 1" asphaltic overlay of the 4' wide shoulders along Rte. Z from US 169 to Grand Avenue and overlaying the approximate 2' wide shoulder area and 6' wide parking area on the east side of US 169 to the north and south of Vermont St., further detailed in Exhibit B.

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

(A) The currently estimated cost of the entire project is one million four hundred and seventy-one thousand dollars (\$1,471,000), most of which will be spent outside the Entity's city limits.

(B) The Commission will pay all of the actual project costs except for those that are the Entity's responsibility as denoted in Exhibit B. In addition, the Commission will also be responsible for the costs associated with administration of the construction contract and inspection of the work performed by the construction contractor, at no cost or expense to the Entity.

(C) The Entity shall remit a check in the amount of five thousand eighty five dollars (\$5,085) by January 15, 2013. This check should be made payable to *Director of Revenue - Credit State Road Fund*. If the Entity fails to make the deposit, the Commission is under no obligation to construct the Entity's portion of 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 Road fund. This fixed amount will be considered full compensation for the work detailed in Exhibit B and no adjustments will be required due to actual quantities or unit prices.

(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 10th day of December, 2012

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

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

KING CITY, MISSOURI

By _____

By *M. Caldwell*

Title _____

Title Mayor

ATTEST: (Commission seal)

By _____

Secretary to the Commission

Title _____

APPROVED AS TO FORM:

By _____

Commission Counsel

Title _____

ATTEST: (Entity seal, if existing)

By *Tina Smith*

Title City Clerk

APPROVED AS TO FORM:

By _____

Title _____

If Entity is a City – City Ordinance Number 697