

BILL NO. 3010

ORDINANCE NO. 2780

AN ORDINANCE AUTHORIZING AND DIRECTING THE EXECUTION OF A MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION COST SHARE AGREEMENT FOR CERTAIN OLIVE BLVD INTERSECTION IMPROVEMENTS

WHEREAS, the City has completed the northeast quadrant traffic study which identified Olive Blvd intersection deficiencies at N Price Rd and Dielman Industrial; and

WHEREAS, the City has contracted with TREKK Design Group to complete preliminary improvement and right-of-way acquisition plans; and

WHEREAS, the City has allocated ARPA, development, and capital improvement funds for this project; and

WHEREAS, The City received application approval notice from the Missouri Highways and Transportation Commission on April 2, 2023 (Exhibit B)

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OLIVETTE, MISSOURI, AS FOLLOWS:

Section One. The City Manager is authorized and directed to execute and enter into on behalf of the City with the Missouri Highways and Transportation Commission in substantial conformity with the attached Exhibit A.

Section Two. The City Manager is further authorized to take such further action and execute such further documents as may be necessary to effect the purpose of this Ordinance.

Section Three. This Ordinance shall be effective immediately upon its passage and adoption.

PASSED AND ADOPTED THIS 8th DAY OF August, 2023.

Mafine Weil
MAYOR

ATTEST:

[Signature]
CITY CLERK-Deputy.

CCO Form: FS08
Approved: 03/04 (BDG)
Revised: 03/17 (MWH)
Modified: 06/23 (MWH)

Route 340, St. Louis County
Project No. SL0181 / S503078
City of Olivette

**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 Olivette (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 March 30, 2023, 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 City of Olivette in the cost of the Commission's Project SL0181 / S503078.

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

Route 340 at North Price Road and Dielman Industrial Road

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 St. Louis 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: With regard to project responsibilities under this Agreement, the parties agree to the following:

(A) The Entity shall be responsible for all aspects of the project including preliminary engineering, acquisition of right of way, relocation of utilities, letting of the project, construction, and inspection of the project.

(B) The Entity shall follow the Commission's Local Public Agency (LPA) process.

(C) The Entity shall provide preliminary engineering for the preparation of detailed right-of-way and construction plans and project specifications. The plans shall be prepared in accordance with and conform to the Commission's requirements, standards, and specifications. Said plans shall not be changed in concept or scope without prior written approval of the Commission.

(D) 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 (**Uniform Act**), as amended and any regulations promulgated in connection with the Act.

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

(F) The Entity shall be responsible for letting the work for the herein improvement, which includes advertising the project for bids and awarding the construction contract. The Entity shall 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. The Entity shall not award the construction contract without obtaining Commission's written concurrence in the award. The Entity shall submit all required bid concurrence documentation to the Commission at least two (2) weeks prior to the Commission Meeting in which the Entity seeks to request

award. If the Entity fails to comply with this provision, the Commission is under no obligation to continue participation in the project.

(G) The Entity shall secure all required federal, state, and local permits as required for design and construction of the improvements. Prior to entering onto the Commission right of way to perform any obligation under this Agreement, the Entity shall obtain any applicable permit from the Commission, unless the performance of such obligations under this Agreement would not ordinarily require a permit from the Commission.

(H) The Entity shall 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 the current criteria, specifications and requirements established and adopted by the Commission and in accordance with the current applicable manuals and policies of the Commission and the Federal Highway Administration (FHWA), if applicable, which shall be furnished by the Commission upon request, and, absent the foregoing, with manuals and policies of the American Association of State Highway and Transportation Officials ("AASHTO").

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

(A) The estimated total cost of the project is one million six hundred thousand dollars (\$1,600,000). The Cost Share eligible project cost is one million two hundred ninety-three thousand dollars (\$1,293,000). The Cost Share ineligible project cost is three hundred seven thousand dollars (\$307,000). The project cost will include preliminary engineering, preliminary engineering review, right of way acquisition, right of way incidentals, right of way review, utilities, construction, construction engineering, and construction engineering review. The details of the estimated costs breakdown are listed below and in "Exhibit B", which is attached and made part hereof.

(B) The Entity shall be responsible for fifty percent (50%) of the Cost Share eligible project cost estimated at six hundred forty-six thousand five hundred dollars (\$646,500) and one hundred percent (100%) of the Cost Share ineligible project costs estimated at three hundred seven thousand dollars (\$307,000). The total estimate of the Entity's responsibilities is nine hundred fifty-three thousand five hundred dollars (\$953,500).

(C) The Commission will be responsible for fifty percent (50%) of the Cost Share eligible project cost, currently estimated at six hundred forty-six thousand five hundred dollars (\$646,500). Of this amount, the Commission will provide six hundred thirty-one thousand five hundred dollars (\$631,500) from the Commission's Cost Share program, available in State Fiscal Year 2024, and preliminary engineering review, right of way review and construction engineering review provided by MoDOT personnel estimated to total fifteen thousand dollars (\$15,000).

(D) The Entity is responsible for the balance of the Cost Share eligible project costs in excess of one million two hundred ninety-three thousand dollars (\$1,293,000). The Entity and Commission will share underruns based on pro rata share of the Cost Share eligible project costs. The Entity shall be responsible for one hundred percent (100%) of all cost overruns and underruns for Cost Share ineligible project costs.

(E) The Entity shall be responsible for adding this project to the East West Gateway Transportation Improvement Program (TIP) after the execution of this Agreement.

(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: Thomas Blair
St. Louis District Engineer
1590 Woodlake Drive
Chesterfield, MO 63017
Email: thomas.blair@modot.mo.gov

Entity to: Bruce McGregor
Director of Public Works
1140 Dielman Road
Olivette, MO 63132
Email: bmcgregor@olivettemo.com

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 \$4,000,000 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 _____ (date).

Executed by the Commission this _____ (date).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF OLIVETTE

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title: _____

Ordinance No _____

Exhibit A
Location Map



Exhibit B

Project Name: Route 340 Intersection Improvements

MoDOT Project Number: SL0181 / S503079

Description: Route 340 at North Price Road and Dielman Industrial Road

Total Project Cost Estimate: \$1,600,000

Local Entity: City of Olivette

	Current Estimate	Cost Share Eligible	Cost Share Ineligible
Preliminary Engineering	\$85,000	\$50,000	\$35,000
Preliminary Engineering Review (MoDOT)	\$5,000	\$5,000	\$0
Right of Way Acquisition	\$828,000	\$828,000	\$0
Right of Way Incidentals	\$5,000	\$5,000	\$0
Right of Way Review	\$5,000	\$5,000	\$0
Utilities	\$10,000	\$8,000	\$2,000
Construction	\$601,000	\$356,000	\$245,000
Construction Engineering	\$56,000	\$31,000	\$25,000
Construction Engineering Review (MoDOT)	\$5,000	\$5,000	\$0
Total	\$1,600,000	\$1,293,000	\$307,000

Project Responsibilities:

Design	Entity
Right of Way Acquisition	Entity
Letting	Entity
Inspection	Entity

Financial Responsibilities:

Cost Share Eligible		
MoDOT Internal Budget	\$15,000	1%
Cost Share Funds	\$631,500	49%
Entity	\$646,500	50%
Total:	\$1,293,000	100%
Cost Share Ineligible		
Entity	\$307,000	100%

How are overruns and underruns handled?

Underruns will be shared on a pro-rata basis. Overruns will be the responsibility of the Entity. The Entity will be one hundred percent (100%) responsible for the Cost Share Ineligible cost overruns & underruns.