

IN THE CITY OF HOLTS SUMMIT, MISSOURI

BILL NO. 2022-20

ORDINANCE NO. 2807

AN ORDINANCE AUTHORIZING THE MAYOR ON BEHALF OF THE CITY OF HOLTS SUMMIT, TO ENTER INTO AN AGREEMENT WITH MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR COST APPORTIONMENT OF JOB NO J5P3576 WITHIN THE CORPORATE LIMITS OF THE CITY OF HOLTS SUMMIT, MISSOURI.

WHEREAS, the Transportation Public Improvement at Route 54 and OO, Callaway County, designated as Job No. J5P3576 shall consist of placing two pull boxes and 378 feet of electric conduit from the City's power supply to the center island of the roundabout; and

WHEREAS, the Board of Aldermen of the City of Holts Summit, Missouri, hereby determines that it is in the best interest of the citizens of Holts Summit for the Mayor to enter into an agreement with Missouri Highways and Transportation Commission for the Public Improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF HOLTS SUMMIT, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen of the City of Holts Summit, Missouri, hereby authorizes the Mayor to sign the agreement Missouri Highway and Transportation Commission as detailed in Exhibit A, hereby accepted and approved by the Board of Aldermen and made a part herein by reference as fully as if set out herein verbatim.

Section 3. Effective Date. This ordinance shall be in full force and effect immediately upon its final passage and approval.

FIRST AND SECOND READING AND FINAL PASSAGE HELD THIS THIRTEENTH DAY OF DECEMBER 2022.

ATTEST:

*Rachel Anderson*

Rachel Anderson, City Clerk

*Landon Oxley*  
Landon Oxley, Mayor

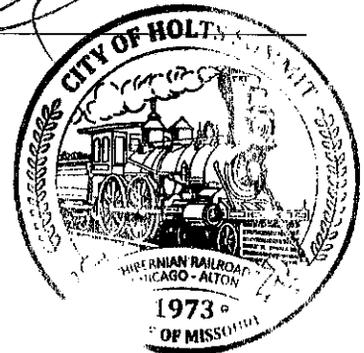
This ordinance approved by the Mayor this 13<sup>th</sup> day of December 2022.

ATTEST:

*Rachel Anderson*

Rachel Anderson, City Clerk

*Landon Oxley*  
Landon Oxley, Mayor



CCO Form: DE07  
Approved: 07/97 (DPP)  
Revised: 12/21 (BDG)  
Modified:

Cost Apportionment Agreement  
Route: 54 and OO  
County: Callaway  
Job No.: J5P3576

## MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION COST APPORTIONMENT AGREEMENT

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

WITNESSETH:

WHEREAS, the Commission owns and maintains Routes 54 and OO in Callaway County as part of the State Highway System; and

WHEREAS, the parties desire the improvement or reconstruction of the Route 54 ramp intersections at Route OO; and

WHEREAS, the Entity desires to provide aesthetic improvements, including lighting, within the reconstructed Route 54/Route OO intersection; 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 co-ordinate the participation by the Entity in the cost of the Commission's public improvement for the intersection of Route 54 and OO, in the County of Callaway, designated as Job No. J5P3576. This public improvement will involve reconstruction of the existing intersection as a roundabout. The Entity will participate in the cost of placing pullboxes and electric conduit from the City's power supply to the center island of the roundabout.

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

Route 54 ramp intersections at Route OO

The general location of the public improvement 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 Central 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 of pullboxes and electric conduit from the City's power supply to the center island of the roundabout. 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. No new right-of-way is contemplated for the project.

(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.

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

(A) The total project cost is currently estimated at three million, four hundred ten thousand dollars and no cents (\$3,410,000) and includes preliminary engineering (MoDOT design), construction, and construction engineering (MoDOT inspection). The details of the estimated cost breakdown are shown on the attachments marked Exhibit B and incorporated herein by reference.

(B) The Entity's responsibility will be to pay costs associated with the placement of pullboxes and electric conduit to the center island of the proposed roundabout currently estimated at ten thousand, six hundred fifty-seven dollars and ninety cents (\$10,657.90). The parties agree this estimate reasonably allocates costs to

each party and agree to this amount as a lump sum payment by the Entity toward the total project cost.

(C) The Entity shall remit a check in the amount of ten thousand, six hundred fifty-seven dollars and ninety cents (\$10,657.90) no later than five (5) days prior to the Commission's advertisement of the project for bids. 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 continue with the project.

(D) The Commission is responsible for the balance of the project in excess of ten thousand, six hundred fifty-seven dollars and ninety cents (\$10,657.90). The parties agree the Entity is not eligible for any refund of the Entity's contribution as a result of any project cost underruns.

(7) COMMINGLING OF FUNDS: 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 *State Road Fund*. If the amount deposited 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, excluding interest, shall be refunded to the Entity based on its pro rata share of the investment.

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

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(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.

(22) 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: Machelles Watkins, District Engineer  
1511 Missouri Boulevard  
P.O. Box 718  
Jefferson City, MO 65102  
Phone No.: (573) 751-7687  
Email: Machelles.watkins@modot.mo.gov

[Entity] to: City of Holts Summit  
Attn: Mr. Brandon Ruediger, City Administrator  
213 S. Summit Drive  
Holts Summit, MO 65043  
Facsimile No.: (573) 596-4115  
Email: cityadministrator@holtssummit.org

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

(23) 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 \$3,500,000 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.

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

Executed by the Entity this on December 13, 2022 (DATE).

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

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

CITY OF HOLTS SUMMIT

By: \_\_\_\_\_

By: 



Title: Assistant Chief Engineer

Title: Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary to the Commission

By: 

Title: City Clerk

Approved as to Form:

Approved as to Form:

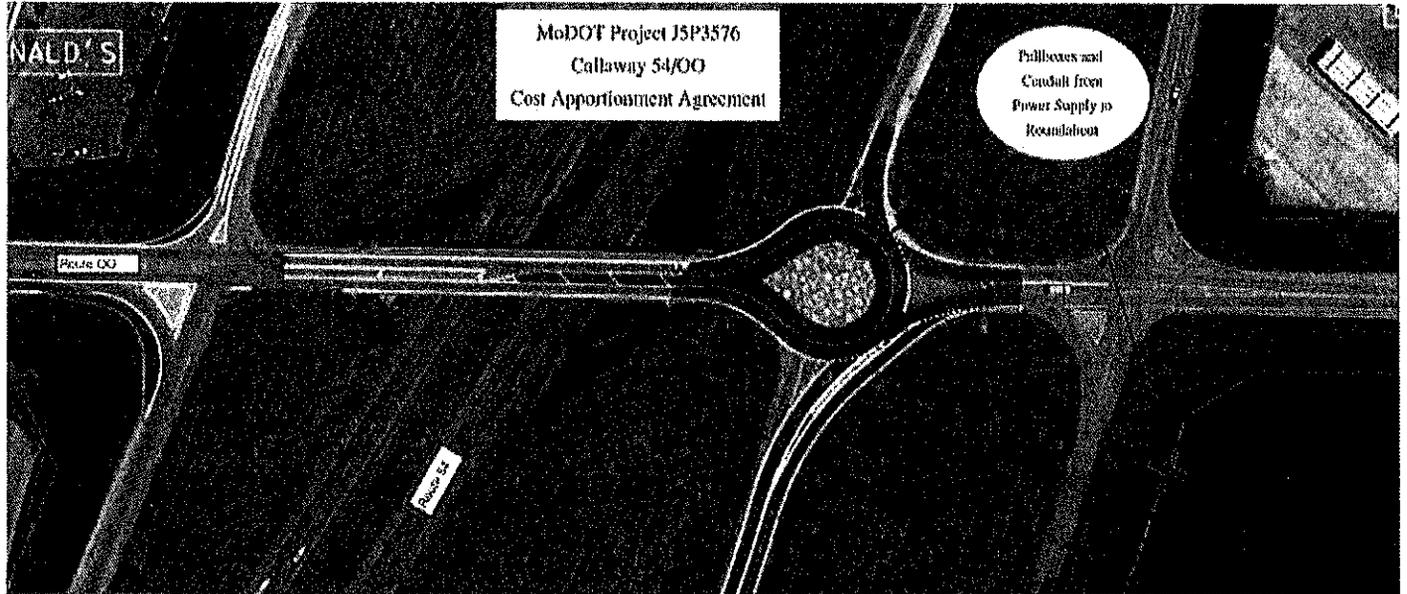
\_\_\_\_\_  
Commission Counsel

By: \_\_\_\_\_

Title: City Attorney

Ordinance No 2807

# EXHIBIT A



## Exhibit B

**Project Name:** Callaway US54/00

**MoDOT Project Number:** J5P3576

**Description:** Intersection improvements at Callaway US54 and Route 00 in Holts Summit

**Total Project Cost Estimate:** \$3,410,000

**Local Entity:** City of Holts Summit

	Current Estimate	Cost Participation Eligible
Preliminary Engineering	\$306,000.00	\$239.78
Right of Way Acquisition (including easements)	\$0.00	\$0.00
Right of Way Incidentals	\$0.00	\$0.00
Utilities	\$0.00	\$0.00
Construction	\$2,841,000.00	\$9,949.50
Construction Engineering	\$263,000.00	\$468.62
<b>Total</b>	<b>\$3,410,000.00</b>	<b>\$10,657.90</b>

### Project Responsibilities:

Design	MoDOT
Right of Way Acquisition	N/A
Letting	MoDOT
Inspection	MoDOT

### Financial Responsibilities:

MoDOT	\$3,399,342.10
City	\$10,657.90
<b>Total:</b>	<b>\$3,410,000.00</b>

### How are overruns and underruns handled?

The City has selected to make a one-time, no more no less, payment based upon the cost estimate for the identified work. Any project overruns or underruns will be applicable to the Commission.

### City Participation Breakdown:

Item No./Description @ Historical Cost	Quantity	Construction Cost
901-30.03/Conduit, 3 in., rigid, in trench @ \$12.00 per LF	261 (LF)	\$3132.00
901-40.03/Conduit, 3 in., rigid, pushed @ \$27.50 per LF	117 (LF)	\$3217.50
901-61.11/Pull box, preformed, Class 2 @ \$1800.00 per each	2 (each)	\$3600.00
<b>Total Construction</b>		<b>\$9,949.50</b>
Preliminary Engineering @2.41%		\$239.78
Construction Engineering @4.71%		\$468.62
<b>Total City Participation</b>		<b>\$10,657.90</b>