

EXHIBIT 1 TO ORDINANCE

CCO Form: FS35G
Approved: 1/20 (MWH)
Revised: 3/20 (MWH)
Modified: 04/21 (MWH)

Entity: City of Lee's Summit
Project Number:GOVCS11
Fed Number:STBG-3301(527)
2020-04-57209

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION GOVERNOR'S TRANSPORTATION COST SHARE AGREEMENT

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

WITNESSETH:

WHEREAS, pursuant to Section 4.430 of Truly Agreed to and Finally Passed House Bill 4 (hereinafter, "TAFP HB 4") from the 2019 legislative session, the Missouri General Assembly (**GA**) has appropriated Fifty Million dollars (\$50,000,000) in general revenue funds to the Commission to be expended for road and bridge projects under the *Governor's Transportation Cost Share Program (Program)*; and

WHEREAS, pursuant to Section 4.435 of Truly Agreed to and Finally Passed House Bill 2004 (hereinafter, "TAFP HB 2004") from the 2020 legislative session, the Missouri GA re-appropriated thereby reducing the funds to Twenty-five Million dollars (\$25,000,000) in general revenue funds to the Commission to be expended for road and bridge projects under the Governor's Transportation Cost Share Program; and

WHEREAS, pursuant to the January 6, 2021 Commission meeting, the Commission to set aside Twenty-five million dollars (\$25,000,000) of state road funds to be expended for road and bridge projects under the Governor's Transportation Cost Share Program; and

WHEREAS, the Entity applied to the Commission for participation in the *Governor's Transportation Cost Share Program*; and

WHEREAS, on December 9, 2019, the Commission approved the Entity's application to the *Governor's Transportation Cost Share Program* subject to the terms and conditions of this Agreement.

WHEREAS, the Commission will administer these Program funds to the Entity with the understanding that such funds will be used for the purpose of funding road and bridge improvement projects, as further described within TAFP HB 4 and TAFP HB 2004 and within this Agreement.

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WHEREAS, 23 U.S.C. §133 authorizes a Surface Transportation Program (STP) to fund transportation related projects; and

WHEREAS, the Entity desires to construct certain improvements, more specifically described below, using federal funds; and

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

(1) AMOUNT OF PROGRAM: The total amount of this Program, as provided within Section 4.430 of TAFP HB 4 , Section 4.435 of TAFP HB 2004, and the January 6, 2021 Commission meeting is Fifty Million dollars (\$50,000,000). The parties to this Agreement agree that the Commission will administer funds from the Program in an amount not to exceed Fifty Million dollars (\$50,000,000). These funds made available from the Commission to the Entity are subject to appropriations made by the GA and gubernatorial release of such funds appropriated to the Commission. In the event state funds appropriated within Section 4.430 of TAFP HB 4 and/or Section 4.435 of TAFP HB 2004 are reduced so that the Commission is incapable of completely satisfying its obligations to the Entity, the Commission may recompute and reduce this Program. The designation of this program does not create a lump sum quantity contract, but rather only represents the amount of funding available for eligible expenses. In no event will the Commission reimburse the Entity for improvements or work that are not actually performed. The release of all funding under this Agreement is subject to review and approval of all project expenses to ensure that they are qualifying expenses. These funds are for construction contract costs only. Preliminary engineering, environmental services, right of way services and acquisitions, utilities, construction inspection and other costs shall not receive the funds from HB 4 Section 4.430 or HB 2004 Section 4.435. The Entity shall be solely responsible for all ineligible costs.

(2) REQUEST FOR RE-APPROPRIATION OF FUNDS AND EXTENSION OF TIME FOR COMPLETION OF PROJECT: It is anticipated the Twenty-Five Million dollars (\$25,000,000) provided within Section 4.435 of TAFP HB 2004 will not be fully expended by June 30, 2021. Therefore, the Commission will request for the re-appropriation and extension of time. If the re-appropriation is not approved, the Entity has the discretion to complete the construction of the project at the Entity's expense and at no cost and expense whatsoever to the Commission.

(3) PROGRAM TIME PERIOD: This Agreement provides funding for expenditures for the *Governor's Transportation Cost Share Program* projects to the Entity for State Fiscal Year (**SFY**) 2021 (July 1, 2020 - June 30, 2021). In the event the funds are re-appropriated by the GA into another SFY, the Program Time Period will automatically be adjusted to reflect the new SFY.

(4) PURPOSE: The purpose of this Agreement is to provide financial assistance to the Entity in accordance with Section 4.435 of TAFP HB 2004 and the January 6, 2021 Commission meeting and to coordinate the participation by the

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Commission in the cost of the Entity's project Colbern Rd Complete Streets STBG-3301(527). The purpose is for a Cost Share Program with public and private entities for public road and bridge projects satisfying a transportation need, provided that these funds shall not supplant, and shall only supplement, the current planned allocation of road and bridge expenditures under the most recently adopted State Transportation and Improvement Plan (**STIP**), including all amendments thereto, as of the date of passage of this bill by the GA. The Entity's responsibilities relating to funding are also outlined in this agreement. The Entity shall abide by and carry out the conditions and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273. The Entity shall at all times comply with all applicable FHWA regulations, policies, procedures and directives, as they may be amended or promulgated from time to time during the term of this Agreement. The Entity's failure to comply shall constitute a material breach of this Agreement.

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

The Colbern Road corridor running approximately between MO-350 and Douglas Road.

The general location of the project is shown on the attachment marked as "Exhibit A" and is incorporated herein by reference.

(6) SCOPE OF WORK: The Entity shall undertake and complete the work described in the Entity's Scope of Work Statement, which is attached and marked as "Exhibit B" and is incorporated herein by reference. The project will be defined by the Entity's Scope of Work Statement.

(7) 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.

(8) COMMISSION REPRESENTATIVE: The Commission's Kansas City 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.

(9) ENTITY REPRESENTATIVE: The Entity's City Traffic Engineer is designated as the Entity's representative for the purpose of administering the provisions of this Agreement. The Entity's representative may designate by written notice other persons having the authority to act on behalf of the Entity in furtherance of the performance of this Agreement.

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(10) PROJECT RESPONSIBILITIES: With regard to project responsibilities under this agreement, the parties agree as follows:

(A) The Entity shall be responsible for the design, acquisition of right of way, letting of the Project, construction and inspection of the Project. The Entity's responsibility to letting the work for this herein Project includes advertising the project for bids and awarding the construction contract. The Entity shall solicit bids for the herein improvement.

(B) The Commission shall not be responsible for the project design, acquisition of right of way, letting of the project, construction or inspection of the Project.

(C) The Entity shall be responsible for construction of the herein improvement, which includes administration of the construction contract and inspection of the project work.

(D) The Entity shall commence work on the project upon receipt of written notice to proceed from the Commission.

(E) Project Efficiency: The Entity shall proceed with the project in a sound, economical and efficient manner in order to accomplish the items listed in the Scope of Work Statement, Exhibit B, within the prescribed Program Time Period.

(F) Project Inspection: The Commission shall have the right to inspect and review the work performed on this project.

(G) Notification of Change of Conditions: The Entity shall immediately notify Commission, in writing, of any change in conditions or law or of any event which may significantly impair its ability to carry out the project in accordance with the provisions of this Agreement.

(11) REIMBURSEMENT FOR ELIGIBLE EXPENSES: The Commission will reimburse the Entity for eligible construction contract expenses in accordance with Section 4.435 of TAFP HB 2004 based on actual construction contract costs.

(A) The Governor's Cost Share Program funds are only eligible to be used for construction contract costs. All other project costs, including but not limited to preliminary engineering, environmental services, right-of-way services and acquisitions, utilities not covered under the construction contract, construction administration and inspection shall be the responsibility of the Entity. The breakdown details of the estimated total project cost is shown in "Exhibit C," which is attached hereto and incorporated herein by reference. The current construction contract cost estimate is

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Sixteen Million dollars (\$16,000,000).

(C) The Governor's Transportation Cost Share Program share of the project construction contract cost will be Fifty percent (50%) not to exceed Eight Million dollars (\$8,000,000).

(D) The Entity shall be responsible for the balance of the construction contract costs and all ineligible costs that are not the Commission's responsibility by the terms of this Agreement. in excess of Eight Million dollars (\$8,000,000). Of this amount, the Entity has been allocated Three Million Nine Hundred Seventy Five Thousand Dollars (\$3,975,000) in Federal STP funds available in 2021 for construction. The federal share for this project will be reimbursed at eighty percent (80%).

(E) The Entity may request reimbursement for eligible costs at any time subsequent to the execution of this Agreement by both parties. Requests for reimbursement shall be submitted to the Missouri Department of Transportation (**MoDOT**) monthly and shall be supported with invoices and documentation that its providers were paid in full for the work performed.

(F) The Entity's request for reimbursement must include a construction progress summary that includes an estimated percent complete, list of major items of work completed during the pay period and status of schedule.

(G) Within ninety (90) days of final inspection of the project funded under this Program, the Entity shall provide to the Commission a final payment request and all financial performance and other reports as required by this Agreement.

(H) If the Commission determines that the Entity was overpaid, the amount of overpayment shall be remitted to the Commission.

(I) Reimbursement requests must be submitted by May 31st of the Program Time Period to ensure reimbursement.

(12) EXPENDITURE OF PROGRAM FUNDS: All funds not expended by the Entity at the end of the Program Time Period within this Agreement may be redistributed to another Applicant at the discretion of the Commission.

(13) WITHDRAWAL OF PROGRAM OFFER: The Commission reserves the right to amend or withdraw this Program offer at any time prior to acceptance by the Entity.

(14) ENTITY TO MAINTAIN: Upon completion of construction of this improvement, the Entity shall accept maintenance of the improvements made by this project at no cost and expense whatsoever to the Commission. Any traffic signals

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installed on highways maintained by the Commission will be turned over to the Commission upon completion of the project for maintenance. Any aesthetic improvements installed on highways maintained by the Commission upon completion of the project will be the sole responsibility of the Entity for maintenance. All obligations of the Commission under this Agreement shall cease upon completion of the improvement.

(15) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the Entity with written notice of cancellation. Should the Commission exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Entity.

(16) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, 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, as amended and any regulations promulgated in connection with the Act. However upon written request by the Entity and the written acceptance by the Commission, the Commission shall acquire right of way for the Entity. Upon approval of all agreements, plans and specifications by the Commission and the Federal Highway Administration (**FHWA**), the Commission will file copies of said plans in the office of the county clerk: and proceed to acquire by negotiation and purchase or by condemnation any necessary right of way required for the construction of the improvement contemplated herein. All right of way acquired by negotiation and purchase will be acquired in the name of Entity, and the Entity will pay to grantors thereof the agreed upon purchase prices. All right of way acquired through condemnation proceedings will be acquired in the name of the State of Missouri and subsequently released to the Entity. The Entity shall pay into court all awards and final judgments in favor of any such condemnees. The Entity shall also reimburse the Commission for any expense incurred by the Commission in acquiring said right of way, including but not limited to the costs of surveying, appraisal, negotiation, condemnation, and relocation assistance benefits. Unless otherwise agreed to in writing the Commission shall have the final decision regarding the settlement amount in condemnation.

(17) ENTITY'S PRELIMINARY PLANS: The Entity shall provide the Commission with plans setting forth the general analysis and explanation of reasons for design choices.

(18) REVIEW OF BIDS AND CONTRACT AWARD: The Entity shall award the contract to the lowest, responsive, responsible bidder. The Commission will review all contractors' bids and concur with the selection of the apparent successful low bidder prior to the Entity awarding the construction contract.

(19) NOTICE TO PROCEED: After the Commission receives copies of the

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executed construction contract between the Entity and the contractor, the performance and payment bonds, and any other documentation as required by this Agreement, the Commission will authorize the Entity to issue a notice to proceed with construction.

(20) CONSTRUCTION PROGRESS AND INSPECTION REPORTS: The Entity shall provide and maintain adequate, competent and qualified engineering supervision and construction inspection at the project site during all stages of the work to ensure that the completed work conforms with the project plans and specifications. Project oversight by other personnel does not relieve the Entity of this responsibility.

(21) PROMPT PAYMENT: The Commission and the Entity require all contractors to pay all subcontractors and suppliers for satisfactory performance of services in compliance with section 34.057 RSMo, Missouri's prompt payment statute. Pursuant to section 34.057 RSMo, the Commission and the Entity also require the prompt return of all retainage held on all subcontractors after the subcontractors' work is satisfactorily completed, as determined by the Entity and the Commission.

(22) 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.

(23) NONDISCRIMINATION CLAUSE: The Entity shall comply with all state and federal statutes applicable to the Entity relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(24) PROJECT SCHEDULE: A project schedule shall be included as Exhibit D. Any lack of progress which significantly endangers substantial performance of the project within the specified time shall be deemed a violation of the terms of this Agreement. The determination of lack of progress shall be solely within the discretion of the Commission. The Commission shall notify the Entity in writing once such a determination is made.

(25) PROJECT ACCEPTANCE AND CERTIFICATION: The Entity shall certify in writing with a signature all applicable state and federal laws were followed with the completion of this project i.e. consultant selection, bidding, prevailing wage, uniform act, etc. (Exhibit E). This certification will be submitted during the project closeout phase of the project. Final payment will be held until certification is received.

(26) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the

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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.

(27) 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.

(28) 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.

(29) 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.

(30) 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.

(31) 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.

(32) 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
David Silvester
Kansas City District Engineer

Entity to: City of Lee's Summit
Michael Park
City Traffic Engineer

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

(33) 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.

(34) 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.

(35) PERMITS: The Entity shall secure any necessary approvals or permits from the Federal Government and the State of Missouri as required to permit the construction and maintenance of the contemplated improvements.

(36) TRAFFIC CONTROL: The plans shall provide for handling traffic with signs, signal and marking in accordance with the Manual of Uniform Traffic Control Devices (**MUTCD**).

(37) WORK PRODUCT: All documents, reports, exhibits, etc. produced by the Entity at the direction of the Commission and information supplied by the Commission shall remain the property of the Commission.

(38) CONFIDENTIALITY: The Entity shall not disclose to third parties confidential factual matters provided by the Commission except as may be required by statute, ordinance or order of court, or as authorized by the Commission. The Entity shall notify the Commission immediately of any request for such information.

(39) NONSOLICITATION: The Entity warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Entity, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

(40) DISPUTES: Any disputes that arise under this Agreement shall be decided by the Commission or its representative.

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(41) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the Entity shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or 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 MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities 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. The Entity shall cause insurer to increase the insurance amounts in accordance with those 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.

(42) NOTIFICATION OF CHANGE: The Entity shall immediately notify the Commission of any change in conditions or law which may significantly affect its ability to perform the project in accordance with the provisions of this Agreement.

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

(44) BANKRUPTCY: Upon filing for any bankruptcy or insolvency proceeding by or against the Entity, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the Entity responsible for damages.

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(45) OUTDOOR ADVERTISING: The Entity further agrees that the right of way provided for any improvement will be held and maintained inviolate for public highway or street purposes, and will enact and enforce any ordinances or regulations necessary to prohibit the presence of billboards or other advertising signs or devices and the vending or sale of merchandise on such right of way, and will remove or cause to be removed from such right of way any sign, private installation of any nature, or any privately owned object or thing which may interfere with the free flow of traffic or impair the full use and safety of the highway or street.

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

Executed by the Entity on _____.

Executed by the Commission on _____.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF LEE'S SUMMIT

By _____

Title _____

Title _____

Attest:

Attest:

By _____

Secretary to the Commission

Title _____

Approved as to Form:

Commission Counsel

EXHIBIT A

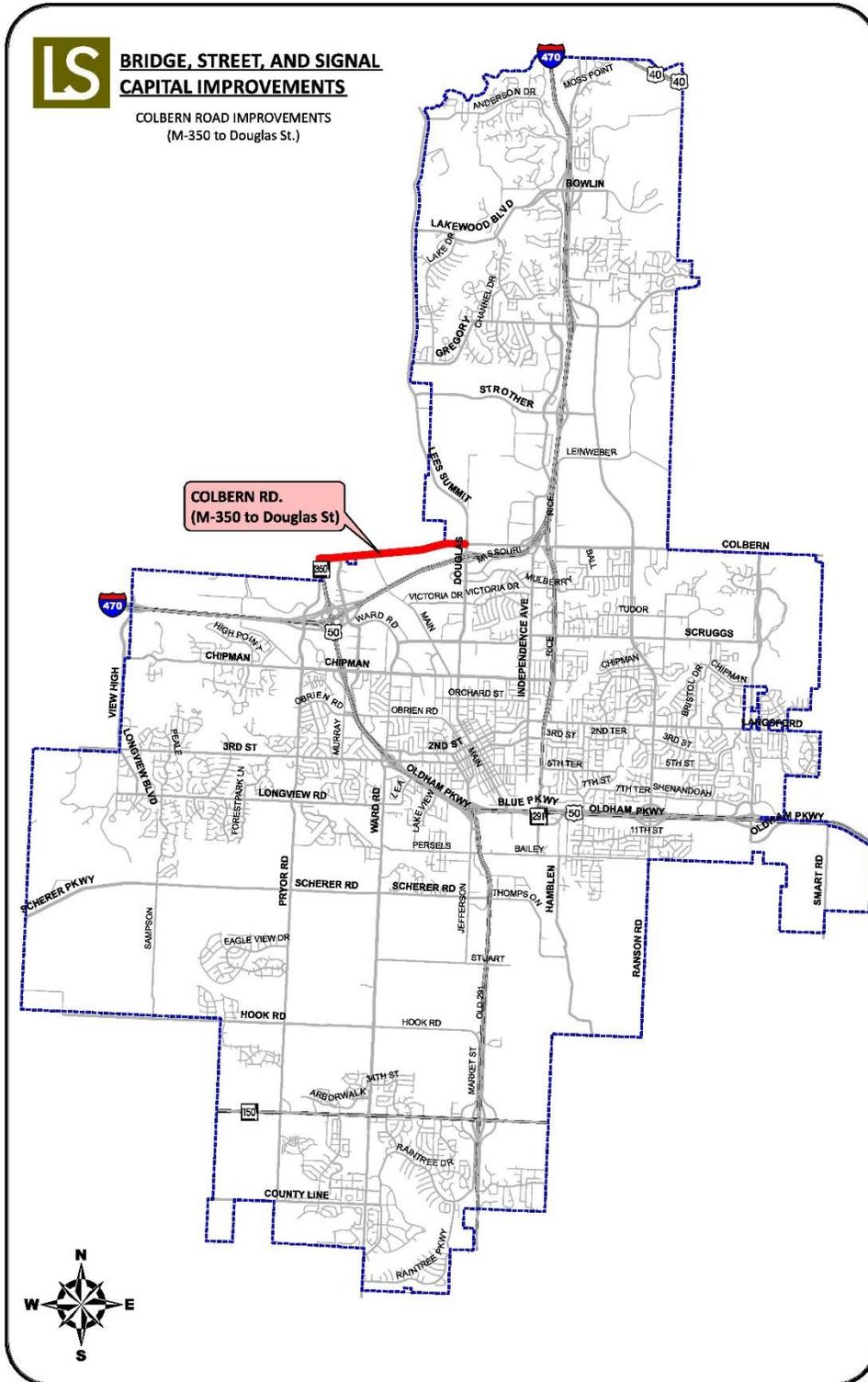


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EXHIBIT B

SCOPE OF WORK

The proposed project reconstructs Colbern Road approximately from Douglas Street to Route 350. Improvements include curb, storm water management, additional lanes of traffic, access management, street lighting, signal enhancements, roundabout improvements, sidewalks, shared-used path, bridge replacement. The proposed project will be a complete street that provides needed safety, capacity and multi-modal improvements. The existing condition is a two-lane unimproved, non-shouldered, roadway. There are currently no pedestrian or bicycle accommodations.

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EXHIBIT C COST ESTIMATE

Activity	Cost	GCS/Federal Eligible
Construction	16,000,000	16,000,000

Funding Source	Costs	% Share
Governor's Cost Share	\$8,000,000	50%
STP/Sub-allocated Federal	\$3,975,000	25%
City of Lee's Summit/FFOS	\$4,025,000	25%

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EXHIBIT D

PROJECT SCHEDULE

May	2019	Consultant Selection
June	2019	Survey and Begin Design
Sept	2020	Preliminary Plans
May	2021	Final PS&E
Sept	2021	Advertised
Oct	2021	Awarded
Nov	2021	Notice to Proceed

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EXHIBIT E

Insert the following form when sending to entity

[GCS Certification Form.pdf](#)

To be included as part of the DocuSign Envelope

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EXHIBIT F

FHWA 1273 To be included with PDF