



RE: First Reading of Council Bill # 2024-24

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION MUNICIPAL AND COST APPORTIONMENT AGREEMENT

Background:

As directed within the Strategic Plan under Reliable Infrastructure, Action Plans #1, #2 and #4, staff has secured assistance through federal funds to engineer, acquire rights of way, and construct improvements to Main St. from Tracker Rd. to State Hwy CC.

During the nearly three-year process, staff learned of plans by the Missouri Department of Transportation, or Commission, to improve the intersection of Main St and Highway CC. Due to the proximity of the two projects, both parties agree that the combination of projects is mutually beneficial and would provide optimum bid pricing for both improvements.

Analysis:

Within the attached agreement, which has been thoroughly examined by our City Attorney Mr. Woodman, the Commission has agreed to administer our portion of allocated federal and local Funds towards our Main St project. The agreement also provides bid advertising through the Commission, bid award assistance, and contract administration to the winning contractor.

Aside from covering 100% of the construction costs and some administrative time, our responsibilities will be limited to project inspection only.

Recommendation:

To keep pace with progress of the Commission on the intersection improvements, and to meet Federal and State timelines, staff are recommending approval of this ordinance.

It is our intent to bring this bill back to Council at the August 27th meeting and present our recommendation for final approval.

MEMO PREPARED BY:

Jeff Roussell | Street Superintendent

jroussell@nixa.com | 417-725-2353

1 **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**
2 **ADMINISTRATOR TO EXECUTE A COST APPORTIONMENT AGREEMENT WITH**
3 **THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION.**
4

5 **WHEREAS** City staff have secured funding assistance with federal funds to
6 engineer, acquire right-of-way, and construct certain improvements along Main Street,
7 between Tracker Road and State Highway CC; and
8

9 **WHEREAS** the Missouri Department of Transportation (MoDOT) has plans to
10 improve the intersection of Main Street and State Highway CC; and
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12 **WHEREAS** due to the proximity of these two projects, the City and MoDOT have
13 negotiated a Cost Apportionment Agreement whereby MoDOT has agreed to administer
14 our portion of the project with the City agreeing to reimburse MoDOT the City's project
15 costs; and
16

17 **WHEREAS** the City Council desires to authorize the City Administrator to execute
18 the Agreement attached hereto as "Council Bill Exhibit A."
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20 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
21 **NIXA, AS FOLLOWS, THAT:**
22

23 **SECTION 1:** The City Council hereby authorizes the City Administrator, or
24 designee, to enter into a Cost Apportionment Agreement with the Missouri Highways and
25 Transportation Commission. Said Agreement shall be in substantially similar form as the
26 document attached hereto, and incorporated herein by this reference, as "Council Bill
27 Exhibit A." The City Administrator and the officers of the City are hereby authorized to do
28 all things necessary or convenient to carry out the terms and intent of this Ordinance.
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30 **SECTION 2:** This Ordinance shall be in full force and effect from and after its final
31 passage by the City Council and after its approval by the Mayor, subject to the provisions
32 of section 3.11(g) of the City Charter.
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34 **[Remainder of Page Intentionally Left Blank. Signature Page Follows.]**
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47 **ADOPTED BY THE COUNCIL THIS 27th DAY OF AUGUST 2024.**

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ATTEST:

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52 _____
PRESIDING OFFICER

CITY CLERK

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54 **APPROVED BY THE MAYOR THIS _____ DAY OF AUGUST 2024.**

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ATTEST:

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59 _____
MAYOR

CITY CLERK

60

61 APPROVED AS TO FORM:

62

63

64 _____
CITY ATTORNEY

CCO Form: DE63
Approved: 12/17 (BDG)
Revised: 12/21 (BDG)
Modified:

Municipal and Cost Apportionment Agreement
Route: CC/Main Street
County: Christian
Job No.: SU0216
Agreement No.: 2024-03-83586

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

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

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 CC/Main Street, Christian County, Job No. SU0216 shall consist of adding lanes along Main Street from south of Rte. CC to north of Tracker Road in Nixa.

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

Along Main Street from south of Rte. CC to north of Tracker Road in Nixa.

(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 City 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 located within the City limits described in paragraphs (1) and (2) above and designated as Commission Job No. SU0216. The parties' responsibilities with respect to the funding of said improvements are outlined further herein.

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

(A) The City will be responsible for the preparation of detailed right-of-way and construction plans and project specifications. This includes design and

inspection of project. The plans shall be prepared in accordance with and conform to formally adopted Commission requirements.

(B) The City will acquire right-of-way as needed for the project in accordance with formally adopted 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 City, 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. The City will be responsible for inspection of the project work. The project shall be constructed in accordance with and conform to City and Commission requirements.

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

(A) The City will be responsible for one hundred percent (100%) of the total project cost. The details of the estimated cost breakdown are listed in "Exhibit B", which is attached hereto and made part hereof. The current estimate of the City's responsibilities is one million nine hundred eighty-six thousand six hundred seventy dollars (\$1,986,670). The City agrees that the Commission shall program eighty percent (80%) of the City's share of its responsibilities, currently estimated to be one million five hundred eighty-nine thousand three hundred thirty-six dollars (\$1,589,336) from Surface Transportation Block Grant – Urban (STBG-U) funds allocated by the Ozarks Transportation Organization in partial fulfillment of the City's obligation for payment of the project. The remainder of the City's payment obligation shall consist of the twenty percent (20%) local funds match for the City's STBG-U funds, currently estimated to be three hundred ninety-seven thousand three hundred thirty-four dollars (\$397,334). The City shall remit a check in the amount of three hundred ninety-seven thousand three hundred thirty-four dollars (\$397,334) to cover estimated construction no later than five (5) days prior to the Commission's advertisement of the project for bids. This check should be made payable to the *Missouri Highway and Transportation Commission – Local Fund*. If the City fails to make any of the required deposits, the Commission is under no obligation to continue with the project.

(B) The City is responsible for the balance of the project in excess of one million nine hundred eighty-six thousand six hundred seventy dollars (\$1,986,670) and will receive all cost underruns. The City agrees that the Commission may program eighty percent (80%) of the City's share of its responsibility for overruns, up to a maximum of five hundred thousand dollars (\$500,000) from Surface Transportation Block Grant – Urban (STBG-U) funds, allocated by the Ozarks Transportation Organization. The remainder of the City's responsibility shall consist of the twenty percent (20%) match for

the City's STBG-U funds. Any overruns exceeding the maximum STBG-U allocation for overruns plus local match shall be paid entirely by local funds.

(C) If, at the time of the letting, the lowest responsive bid is higher than the estimated construction cost amount, the City, upon written notification from the Commission shall remit a check in the amount of its share of the difference between the estimated amount and the lowest responsive bid no later than one (1) day prior to the date of the Commission meeting wherein the subject bid will be considered for award or a later date set by the Commission in its sole discretion. In the event the Commission, in its sole discretion, extends the day the City payment is due, it shall notify the City of the new due date in writing, which shall be binding immediately upon the City's receipt of the written notice. The check must be made payable to the *Missouri Highways and Transportation Commission – Credit Local Fund*. The Commission, in its sole discretion, reserves the right to take action at the said Commission meeting and either reject all bids if the City fails to make the payment by the due date, or award the contract to the lowest responsive bidder contingent upon receipt of the additional funds from the City by the extended due date. If the Commission makes a contingent award of the contract and the City fails to make the required deposit(s) by the extended due date, the contingency of the contract award by the Commission shall be deemed unsatisfied, the award of the contract shall be deemed null and void and the Commission shall be under no obligation to continue with the project.

(8) COMMINGLING OF FUNDS: The City agrees that all funds deposited by the City, 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 *Local Fund* and credited to the project. If the amount deposited plus any applicable credited interest with the Commission shall be less than the actual obligation of the City for this project, the City, 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 or interest credited to the City shall be refunded to the City.

(9) 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.

(10) CLOSE: The City shall temporarily close all streets or roads, or parts thereof, which may be necessary to permit the construction of the project in accordance with the detailed plans.

(11) RIGHT-OF-WAY ACQUISITION: No acquisition of additional right-of-way is anticipated in connection with Job No. SU0216 or contemplated by this Agreement. If the City and Commission determine that additional right-of-way is necessary for construction of the improvement designed by the City, the City shall acquire at its expense, at no cost to the Commission, any necessary right-of-way.

(12) UTILITY RELOCATION:

(A) The City shall 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 City shall secure the removal, relocation, or adjustment of any public or private utilities located upon private easements and shall pay any costs incurred therein.

(13) DRAINAGE: The Commission will construct drainage facilities along the improvement and may reasonably use any existing storm and surface water drainage facilities now in existence in the area.

(14) 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 of the highway.

(15) COMMENCEMENT OF WORK: 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 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.

(16) ACCEPTED WITHIN HIGHWAY SYSTEM: Effective upon execution of this Agreement, the Commission temporarily accepts the portion of the City street system described in this Agreement 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.

(19) 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.

(20) 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.

(21) 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 (\$600,000 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.

(22) 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.

(23) COMMISSION REPRESENTATIVE: The Commission's Assistant Chief 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.

(24) CITY REPRESENTATIVE: The 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.

(25) 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:
City of Nixa
City Administrator
Jimmy Liles
715 West Mt. Vernon Street
Nixa, MO 65714
417-725-3785
- (B) To the Commission:
Southwest District Engineer
Stacy Reese
3025 E. Kearney Street
Springfield, MO 65803
417-895-7689

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

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

(27) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The parties shall comply with all applicable local, state and federal laws and regulations relating to the performance of the contract.

(28) 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.

(29) 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.

(30) 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.

(31) 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.

(32) AUDIT OF RECORDS: The City 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.

(33) 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.

(34) NO INTEREST: By contributing to the cost of this project or improvement, the City gains no interest in the constructed roadway or improvements on Commission right of way 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 City shall not be entitled to a refund of the funds contributed by the City pursuant to this Agreement.

(35) 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 City 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 City with the Commission pursuant to this Agreement. In the event the Commission agrees to grant the City'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 City'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 City and the Commission.

(36) 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.

(37) 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.

(38) 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.

(39) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations or for convenience by providing the City 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 City. If canceled by the Commission, unexpended local funds shall be returned to the City.

[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 _____(Date).

Executed by the Commission on _____(Date).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF NIXA

Assistant Chief Engineer City Administrator

ATTEST:

ATTEST:

Secretary to the Commission

City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Commission Counsel

City Attorney

Financial Officer

Ordinance Number _____

EXHIBIT A – Location of the Project

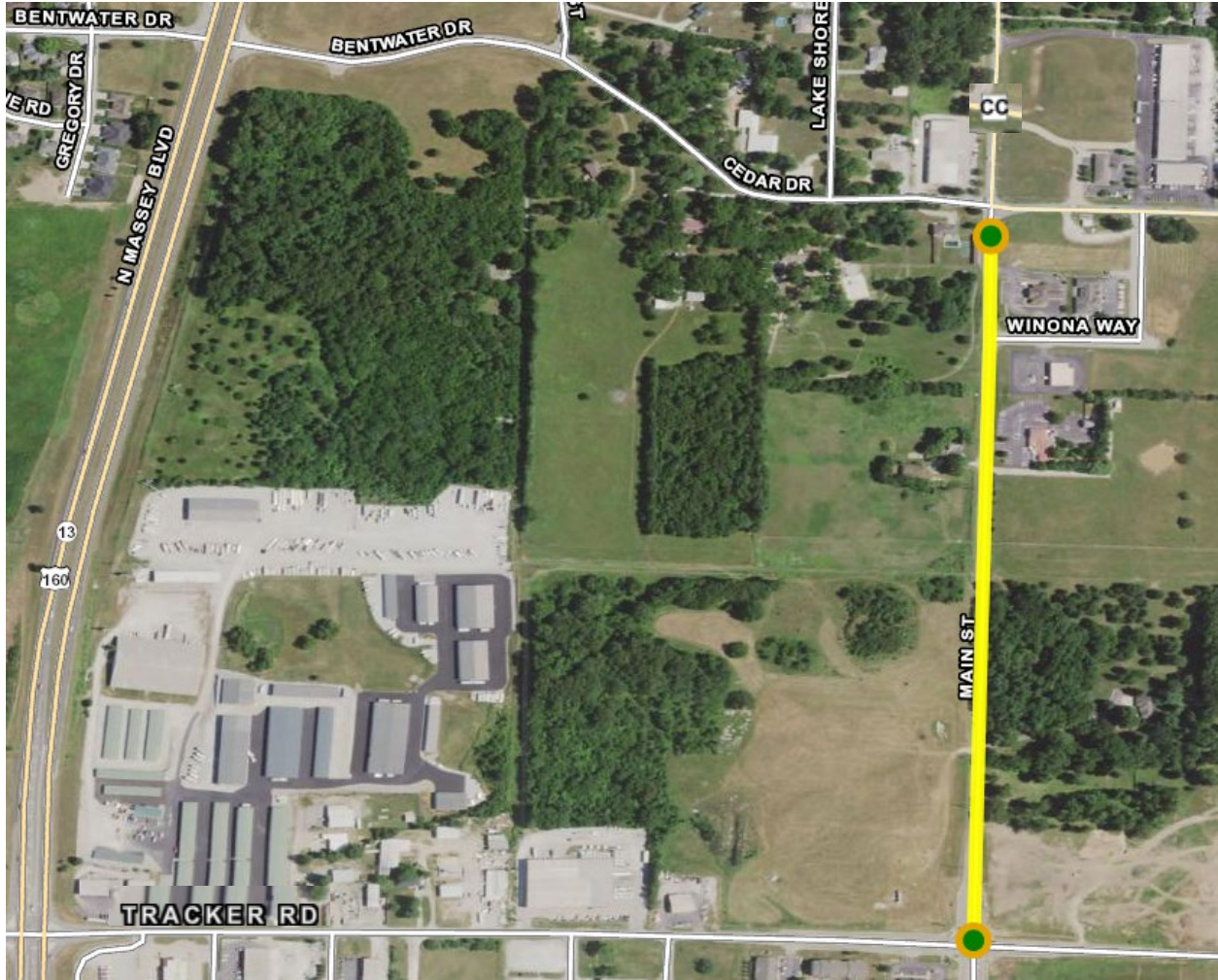


Exhibit B

Project Name: Nixa Main Street

MoDOT Project Number: SU0216

Description: Add lanes from south of Rte. CC to north of Tracker Road in Nixa.

Total Project Cost Estimate: \$1,986,670

Local Entity: City of Nixa

	Current Estimate Construction Cost Only
Preliminary Engineering	\$0
Right of Way Acquisition (including easements)	\$0
Utilities	\$0
Construction	\$1,986,670
Construction Engineering	\$0
Total	\$1,986,670

Project Responsibilities:

Design	City of Nixa
Right of Way Acquisition	City of Nixa
Letting	MoDOT
Inspection	City of Nixa

Financial Responsibilities:

MoDOT SW District Funds	\$0	0%
City – STBG Match (20%)	\$397,334	20%
STBG Funds – OTO Allocation to City	\$1,589,336	80%
Total:	\$1,986,670	100%

How are overruns and underruns handled?

The City shall be responsible for the balance of the project cost in excess of \$1,986,670. The City may provide 80% of the City’s share of its responsibility for overruns, up to a maximum of \$500,000 from STBG-U funds. The remainder of the City’s responsibility shall consist of the 20% match for the City’s STBG-U funds. Any overruns exceeding the maximum STBG allocation for overruns plus the local match shall be paid for entirely by local funds. The City will receive all cost underruns, with the City’s share of underruns based on their pro-rata share of the investment.