BILL 2013-4

****** Full Reading ******

AGENDA ITEM

TO: Mayor and City Council

FROM: Drew Bontrager, Public Works Director

DATE: February 4, 2013

RE: **Missouri Highways and Transportation Commission Municipal Agreement for the Walnut Street Improvement Project J1P2214**

PURPOSE

The attached bill would authorize the City Manager to execute an agreement with the Missouri Highways and Transportation Committee for the improvements associated with the Walnut Street stormwater project.

DISCUSSION & FINANCING

In November 2011 the voters of the City of Cameron passed a 1/4 cents sales tax to support various stormwater improvements throughout the Cameron. A list of known and identified areas was presented to the voters from a May 2011 report conducted by an independent third party engineer. In the report, Walnut Street stormwater improvements were identified as the highest priority based on level of service, the safety of motorists, pedestrians and property; along with a scheduled project by the Missouri Department of Transportation for an overlay of this section of roadway in the summer of 2013. Improvements along this corridor have also been identified by the Council and the City Comprehensive Plan as a priority.

MoDot will bid and hire a contractor to complete an asphalt mill and overlay of the driving surface of Walnut from approximately Pence Road to south of Eagles Landing Parkway. The anticipated start date is scheduled for August of 2013.

We are still on schedule for the City portion, the drainage and other associated improvements such as sidewalks and intersections. The anticipated award date is March of 2013 with substantial completion of construction along Walnut before MoDot's overlay in August of 2013.

A section of this project involves drainage structures and other improvements MoDot is responsible for repairing and maintaining. Additionally, as intersections along Walnut are improved additional pavement will be required. In order to make efficient use of the contractor hired by MoDot for the asphalt work and the contractor hired by the City to construct the drainage improvements the parties will exchange work. The City will complete the drainage improvements MoDot is responsible for and MoDot will mill and overlay the intersections the City is responsible for improving. These items have been evaluated and considered equivalent, with no additional compensation on either parties' part.

RECOMMENDATION

Bids for both MoDot and the City will be let and awarded in the upcoming weeks. Therefore, we are recommending the Council adopt the attached bill, in one reading, authorizing the City Manager to sign the Municipal Agreement with the Missouri Highways and Transportation Commission.

Bill 2013-4

AN ORDINANCE AUTHORIZING THE CITY MANAGER OF THE CITY OF CAMERON, CLINTON AND DeKALB COUNTIES, MISSOURI TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE MISSOURI HIGHWAYS & TRANSPORTATION COMMISSION FOR THE WALNUT STREET IMPROVEMENTS, PROJECT J1P2214

WHEREAS, the City of Cameron has determined the Walnut Street storm water improvements a high priority; and

WHEREAS, the improvements will occur within the Missouri Highways and Transportation Commission right-of-way; and

WHEREAS, the Missouri Highways and Transportation Commission plans to make public improvements along this route within the city limits; and

WHEREAS, the purpose of this Agreement is to define the responsibilities of both parties for the completion of the public improvements and exchange of work on the Walnut Street Project J1P2214.

NOW, THEREFORE, BE IT ORDAINED by the City of Cameron, Clinton and DeKalb Counties, Missouri as follows:

Section 1. The City Manager is hereby authorized to execute the Municipal Agreement with the Missouri Highways and Transportation Commission for the Walnut Street Improvements, J1P2214, all as per the agreement attached hereto and made a part hereof.

Section 2. The City Manager is authorized to execute any ancillary documents associated with this project.

Section 3. The Mayor is hereby authorized to sign this Ordinance on behalf of the City of Cameron.

Section 4. The City Clerk is hereby directed to attest to the Mayor's signature.

Section 5. This Ordinance shall be in full force and effect from and after its passage.

Read two times, passed and approved this 4th day of March 2013.

_____
Mayor Dennis M. Clark

ATTEST:

_____
City Clerk/Finance Clerk

Full Reading

CCO Form: DE11
Approved: 04/93 (CEH)
Revised: 03/10 (MRA)
Modified:

Municipal Agreement
Route: 69
County: Clinton/DeKalb
Job No.: J1P2214

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
MUNICIPAL AGREEMENT

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

WITNESSETH:

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 69, Clinton and DeKalb County, Job No. J1P2214 shall consist of resurfacing from Pence Road to south of Route BB.

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

Beginning at Station 49+46 near Pence Road, run in a generally southerly direction along existing US 69 to station 79+10 near Eagle Landing Parkway. Length of improvement within city is approximately 2.5 miles.

(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 Commission for the above-designated route and project.

(5) PURPOSE: It is the intent of this Agreement that the Commission shall provide without cost to the City, except as otherwise provided in this Agreement, a highway for traffic in the City and the Commission shall so design and construct the highway to serve operating necessities and requirements of local and through traffic.

(6) RIGHT-OF-WAY USE: The City grants the right to use the right-of-way of public roads, streets, and alleys as necessary for construction and maintenance of said public improvement.

(7) CLOSE AND VACATE: The City shall allow the Commission to temporarily close and vacate all streets or roads, or parts thereof, which may be

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necessary to permit the construction of the project in accordance with the detailed plans. Likewise, the Commission shall allow the City to temporarily close and vacate Route 69 as necessary to construct the City's drainage, sidewalk, and curb and gutter project in 2013.

(8) RIGHT-OF-WAY ACQUISITION: No acquisition of additional right-of-way is anticipated in connection with Job No. J1P2214 or contemplated by this Agreement.

(9) UTILITY RELOCATION:

(A) It is understood and agreed by the parties to this Agreement that no city-owned utility facilities will require relocation or adjustment in connection with this improvement, but that should utility facilities be discovered at any time during development or construction of this improvement, relocation or adjustment of the same will be done and performed under a supplemental agreement covering the subject, and in accordance with Commission policy then in effect on division of costs for adjustment of utility facilities.

(B) The City agrees that any installation, removal, relocation, maintenance, or repair of public or private utilities involving work within highway right-of-way included in this project shall be done only in accordance with the general rules and regulations of the Commission and after a permit for the particular work has been obtained from the Commission's district engineer or his authorized representative. Similarly, the City will grant approval for no work on the highway right-of-way involving excavation or alteration in any manner of the highway as constructed, including but not limited to driveway connections, except in accordance with the rules and regulations of the Commission and only after a permit for the specific work has been obtained from the Commission's district engineer or his authorized representative. The City shall take whatever actions that are necessary to assure compliance with this Subsection.

(10) LIGHTING Previous agreements between the City and the Commission regarding lighting will remain in effect.

(11) TRAFFIC CONTROL DEVICES: The installation, operation and maintenance of all traffic signals, pavement markings, signs, and devices on the improvement, including those between the highway and intersecting streets shall be under the exclusive jurisdiction and at the cost of the Commission. The City shall not install, operate, or maintain any traffic signals, signs or other traffic control devices on the highway or on streets and highways at any point where they intersect this highway without approval of the Commission.

(12) DRAINAGE:

(A) The Commission will reconstruct some drainage facilities along the improvement and may use any existing storm and surface water drainage facilities now in existence in the area. The City shall be responsible for receiving and disposing of storm and surface water discharged from those drainage facilities which the Commission constructs within the limits of highway right-of-way to the extent of the

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City's authority and control of the storm sewer facilities or natural drainage involved.

(13) 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 and maintenance of the highway.

(14) 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. 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.

(15) MAINTENANCE:

(A) Except as provided in this Agreement, upon completion of the public improvement, the Commission will maintain all portions of the improvement within the Commission owned right-of-way. Maintenance by the Commission shall not in any case include maintenance or repair of sidewalks whether new or used in place, water supply lines, sanitary or storm sewers (except those storm sewers constructed by the Commission to drain the highway), city-owned utilities within the right-of-way or the removal of snow other than the machine or chemical removal from the traveled portion of the highway.

(B) When it is necessary to revise or adjust city streets, the right-of-way acquired for these adjustments and connections will be deeded to the City.

(C) The City shall inspect and maintain the sidewalks constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalks.

(16) EXCHANGE OF WORK: In order to make efficient use of the contractor hired by the commission to construct the asphalt resurfacing for this project and the contractor hired by the City to construct drainage, sidewalk, and curb and gutter improvements within the city owned right of way between 8th street and Route BB, each party will do the following work within the others right of way:

(A) The Commission will mill and resurface the parking areas between 4th and 2nd Street and the side street approaches where radius reconstruction is being done.

(B) The City shall reconstruct the Commission’s deficient curb, gutter and sidewalk and restore disturbed areas between Grand Avenue and 8th Street.

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(C) These items of work, further detailed in Exhibit B, will be considered equivalent for the purpose of this exchange, with no additional compensation on eithers part. In the event that either party is unable to meet their obligations under this section, they will notify the other party in writing prior to any of the described work being performed and neither party will do the work described in Exhibit B.

(17) 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. However, the City will enact, keep in force, and enforce only such ordinances relating to traffic movement and parking restrictions as may be approved by the Commission and as are not in conflict with any regulations for federal aid. The Commission shall not arbitrarily withhold approval of reasonable traffic regulations, signs, and markings which will permit the movement of traffic in accordance with accepted traffic regulation practices.

(18) RESTRICTION OF PARKING: Since the improvement is being designed and constructed to accommodate a maximum amount of traffic with a minimum amount of right-of-way, the City shall take whatever actions that are necessary to prevent parking upon the highway or any part of the area of the Commission's highway right-of-way within the limits of the improvement.

(19) OUTDOOR ADVERTISING: Previous agreements between the City and the Commission regarding outdoor advertising will remain in effect.

(20) 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.

(21) 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.

(22) ACCEPTED WITHIN HIGHWAY SYSTEM: Effective upon execution of this Agreement, the Commission accepts the side road approaches and parking area portion of the City street system shown in Exhibit B 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.

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(23) CITY TO MAINTAIN: Upon completion of construction of this improvement, the City shall accept control and maintenance of the side road approaches and parking areas south of and including 8th St. 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 under this Agreement shall cease upon completion of the improvement.

(24) 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 ($500,000 per claimant and $3,000,000 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.

(25) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved on or between the duly authorized representatives of the City and Commission.

(26) COMMISSION REPRESENTATIVE: The Commission's NW 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

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Commission in furtherance of the performance of this Agreement.

(27) CITY REPRESENTATIVE: The City's City Manager 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.

(28) 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:
Mark Gaugh
City Manager
101 W. Second St.
Cameron, MO 64429

Facsimile No: 816 632-1067

(B) To the Commission:
Don Wichern, P.E.
NW District Engineer
3602 N. Belt Highway
St. Joseph, MO 64506

Facsimile No: 816 387-2359

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

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

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

(31) 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.

(32) 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.

Full Reading

(33) 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.

(34) 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.

[remainder of page intentionally left blank]

Full Reading

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

Executed by the City this ___ day of _____, 20__.

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

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By: _____

Title: _____

ATTEST:

_____
Secretary to the Commission

APPROVED AS TO FORM:

_____
Commission Counsel

CITY OF CAMERON

By: _____

Title: _____

ATTEST:

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Title: _____

Ordinance Number_____

Full Reading