

Route I-70, St. Charles County
Sonderen Overpass

**MISSOURI HIGHWAY AND TRANSPORTATION COMMISSION
OVERPASS AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highway and Transportation Commission, (hereinafter, "Commission") and the City of O'Fallon, a municipal corporation in the State of Missouri (hereinafter, "City").

WITNESSETH:

WHEREAS, the City desires to construct an I-70 overpass approximately 1/2 mile east of the Route K / M interchange; and

WHEREAS, the commission is willing to cooperate with the city under the terms and conditions set out in this agreement; and

WHEREAS, the general location of the improvement is shown on the sketch marked Exhibit "A". Details of the overpass are shown on the mosaic marked Exhibit "B". Exhibits A and B are attached hereto and incorporated herein by reference.

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

(1) CITY RESPONSIBILITIES: The City shall:

(A) Be responsible for preparing the detailed plans and specifications for the proposed overpass as shown on Exhibit "B" and in accordance with the Commission's standards and specifications. Said plans shall not be changed in concept or scope without prior approval of the Commission.

(B) Secure all right of way for the I-70 overpass and convey the limited access right of way for the consideration of One Dollar and No/Cents (\$1.00), to the State of Missouri by instrument of conveyance in a form acceptable to the commission.

(C) Advertise the project for bids and award the contract.

(D) Administer the contract including construction and materials inspection.

(E) Maintain, as part of the city street system, all portions of Sonderen outside the I-70 limited access right of way limits. The city will also be responsible for snow removal, striping and sweeping within the limited access limits along Sonderen including the I-70 overpass.

(2) COMMISSION RESPONSIBILITIES: The Commission shall:

(A) Review the plans and specifications prepared by the City and, if acceptable, approve said plans and specifications.

(B) Monitor / assist construction and materials inspections for the bridge structure and approach slabs, and inspect / monitor traffic control along I-70. The Commission's expenses incurred thereby shall be considered part of the construction costs of the overpass as provided in paragraph No. 4

(3) INTERSTATE/DEFENSE HIGHWAY: It is expressly agreed and understood by the City, that Route I-70 is an Interstate and Defense highway and that the work contemplated by this agreement must comply with Federal Highway Administration requirements governing Interstate and Defense highways. The commission will obtain the Federal Highway Administration's approval of the final plans and specifications prepared by the city for the overpass.

(4) COST: The parties recognize that the cost of said overpass structure is now estimated at \$1,412,837.10. The Commission agrees to contribute one hundred twenty-nine thousand dollars (\$129,000) of the construction costs of the overpass. It is estimated that two percent of the total construction cost (\$28,260) will be required to cover the Commission's expenses for inspecting / monitoring the proposed construction and materials and traffic control. These expenses will be deducted from the Commission's \$129,000 contribution. The City agrees to be responsible for 100% of the costs over \$129,000 for the entire project as is herein contemplated. The cost of the overpass shall include the cost of the work contemplated by the plans and specifications and costs incurred due to the relocation or adjustment of utility facilities.

(5) PAYMENT BY COMMISSION: Upon completion of the construction of the overpass project, the City shall notify Commission of completion and request Commission's contribution of \$129,000 less the actual cost of inspecting / monitoring the proposed construction and materials and traffic control.

(6) IMPROVEMENTS: It is understood by the City and the Commission that any improvements placed on the Commission's right of way become the property of the Commission. Effective upon completion of the construction of the overpass, the Commission shall keep control, maintain as part of the State Highway System the entire bridge structure including the bridge approach slabs, and the City shall have no further obligations or responsibility with respect to said improvements except as provided in paragraph 1(E).

(7) NONDISCRIMINATION: The City for themselves, their representatives, successors, in interest and assigns, as part of the consideration hereof, do hereby covenant and agree as a covenant running with the property that no person on the grounds of race, color, religion, creed, national origin, sex, or age shall be denied by them the benefits of, or otherwise be subjected to them, to discrimination in the construction or use of the interchange contemplated herein.

The City shall comply with all provisions of Executive Order No. 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994,

which executive order is incorporated herein by reference and is made a part of this Agreement. This Executive Order promulgates a Code of Fair Practices for the Executive Branch of Missouri Government and prohibits discrimination against recipients of services, and employees or applicants or employment of state contractors and subcontractors, on the grounds of race, color, religion, national origin, sex, age, disability, or veteran status. The City shall also comply with all state and federal statutes applicable to City 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.*).

(8) CHANGE ORDER: The City will have the right to make changes necessary except that no change in scope or concept shall be made unless it has first been approved, in writing, by the Commission.

(9) FHWA APPROVAL: This Agreement is entered into subject to approval by the Federal Highway Administration.

(10) 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.

(11) COMMISSION REPRESENTATIVE: The Commission's chief engineer is designated as Commission's representative for the purpose of administering the provisions of this contract.

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

(13) LAW OF MISSOURI: 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 this Agreement.

(14) 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.

(15) 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 years from the date of final payment made under this Agreement.

(16) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City 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 City.

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

Executed by City this 7th day of JUNE, 1998.

Executed by the Commission this 15th day of JUNE, 1998

MISSOURI HIGHWAY AND
TRANSPORTATION COMMISSION

CITY OF O'FALLON

By *Dave Snider*
Title Assistant To Chief Engineer
Operations

By *Paul Renaud*
Title Mayor

Attest:

Attest:

Marcia L. Mims
Asst. Secretary

By *Jessica Stuber*
Title CITY CLERK.

Approved as to Form:

Bryce D. Gambli
Commission Counsel

Approved as to Form:

Robert Koller
Title CITY ATTORNEY

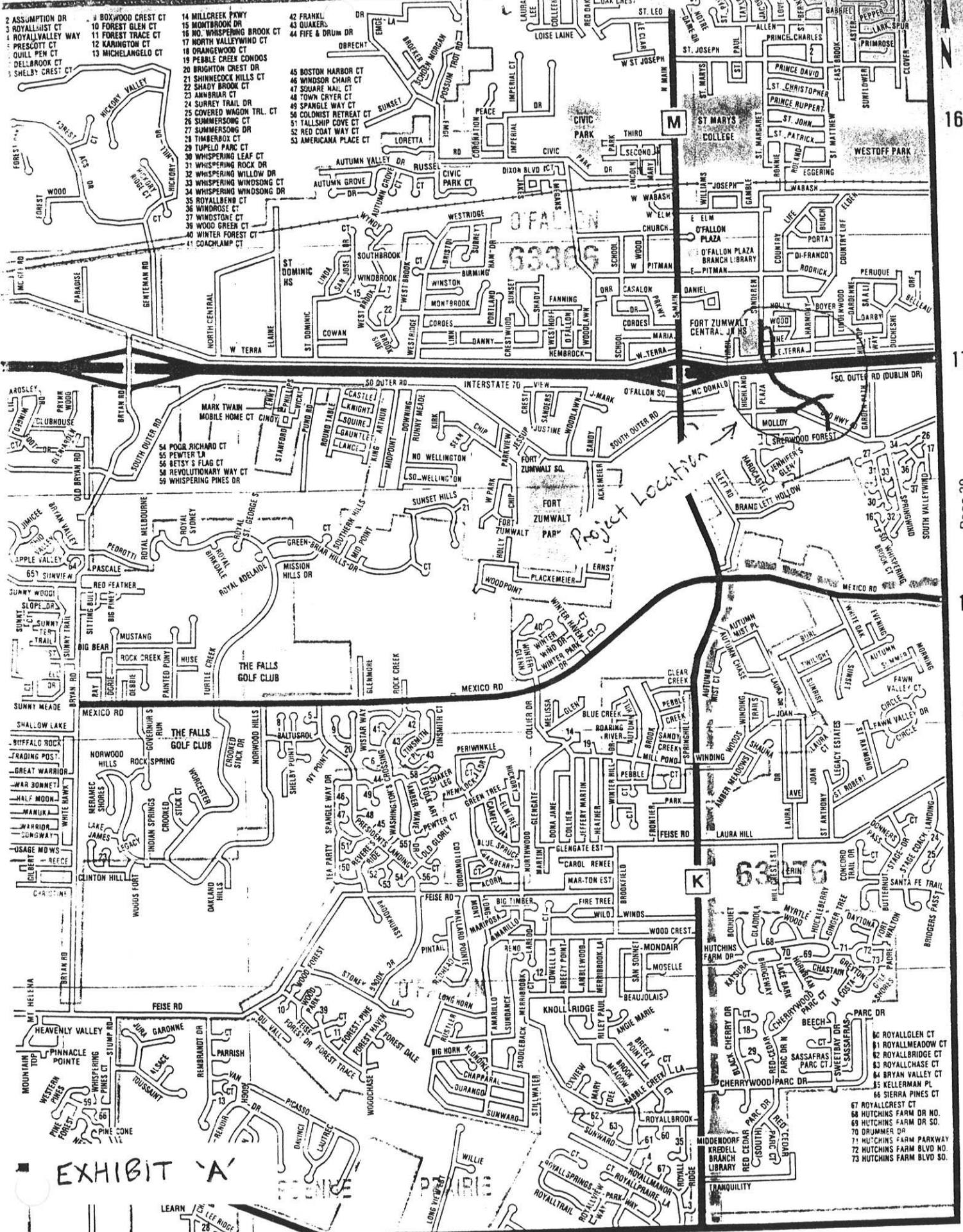


EXHIBIT A

Project Location

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Joins

