



## Board of Alderman Request for Action

**MEETING DATE:** 6/21/2022

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Bill No. 2943-22, An Ordinance authorizing the Mayor to sign an agreement with Missouri Highways and Transportation Commission. 2nd reading.

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**REQUESTED BOARD ACTION:**

A motion to approve Bill No. 2943-22, authorizing the Mayor to sign an agreement with Missouri Highways and Transportation Commission. 2nd reading by title only.

**SUMMARY:**

MoDOT desires to place a communications antenna on the water tower at 169 Highway and Amory Road. The purpose of this antenna is for communications to the traffic signals along Highway 169 in Smithville.

Staff met with Missouri Department Of Transportation (MoDOT) and this will not affect any of our operations at the tower.

**PREVIOUS ACTION:**

**POLICY ISSUE:**

Traffic Safety

**FINANCIAL CONSIDERATIONS:**

No Cost. MoDOT is responsible for all costs of their installation and maintenance.

**ATTACHMENTS:**

- ☒ Ordinance
- ☐ Resolution
- ☐ Staff Report
- ☐ Other:

- ☒ Contract
- ☐ Plans
- ☐ Minutes

**BILL NO. 2943-22**

**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE APPROVING THE TRAFFIC SIGNAL COMMUNICATION  
COOPERATIVE AGREEMENT WITH THE MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION**

WHEREAS The City is the owner of a certain water tower (the "Tower") located at US 169 and Amory Rd, Smithville, Missouri; and,

WHEREAS The Missouri Highways and Transportation Commission desires to use the City's Tower Property for the purpose of maintaining and operating a communications facility.

WHEREAS §70.220(1) R.S.Mo states: *Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides.*

WHEREAS city staff and the Missouri Highways and Transportation Commission have negotiated the agreement attached hereto as Exhibit 1 and incorporated herein by reference as if more fully set forth verbatim.

WHEREAS city staff recommends approval of this cooperative agreement with the Missouri Highways and Transportation Commission.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE  
CITY OF SMITHVILLE, MISSOURI AS FOLLOWS:**

The City hereby approves the agreement with the Missouri Highways and Transportation Commission as set forth in Exhibit 1 attached hereto. The Mayor or the City Administrator are directed to execute said Cooperative Agreement on behalf of the city.

PASSED THIS 21<sup>st</sup> DAY OF JUNE, 2022.

(SEAL)

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DAMIEN BOLEY, MAYOR

ATTEST:

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LINDA DRUMMOND, CITY CLERK

First Reading: 06/07/2022

Second Reading: 06/21/2022

# Ordinance Exhibit 1

CCO Form: TR40  
Approved: 11/05 (BDG)  
Revised: 06/19 (GH)  
Modified: 05/22 (GH)

MoDOT District: Kansas City  
MoDOT Agreement Administrator: Brittany Kracht  
agreement No.: 2022-01-67780

## **MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION TRAFFIC SIGNAL COMMUNICATION ATTACHMENT AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission, whose address is P. O. Box 270, 105 W. Capitol, Jefferson City, Missouri 63102 (hereinafter, "Commission") and the City of Smithville, Missouri, (hereinafter, "City"), whose address is 107 W Main Street, Smithville, Missouri 64089.

WHEREAS, City is the owner of a certain water tower (the "Tower") located at US 169 and Amory Rd, Smithville, Missouri; and,

WITNESSETH:

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

(1) PURPOSE: The purpose of this Agreement is to outline the responsibilities of the parties concerning the use by Commission of property owned/controlled by City.

(2) PROPERTY: City is the owner of a certain water tower (the "Tower") located at US 169 and Amory Rd, Smithville, Missouri, and more particularly described on Exhibit A, attached hereto and incorporated herein by this reference. The Tower and the City's real property located below and adjacent to the Tower, as depicted in Exhibit B, attached hereto and incorporated herein by this reference, is referred hereinafter as "City's Property".

(3) LICENSE: City hereby grants the use and access to Commission that certain space on the Tower, as more accurately described in Exhibit B together with (a) the Communication Equipment (defined below) located thereon, (b) a parcel of land at the base of the Tower sufficient for maintenance of the Communication Equipment, and (c) the non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, on, over and along the private drive extending from the nearest public right of way to the Tower, for the maintenance of the Communication Equipment.

(4) IMPROVEMENTS: Commission agrees to install or cause to be installed on the Tower, at its sole cost and expense, all radio communications equipment, antennas and appurtenances described in the plans and specifications referenced hereto as Exhibit

C, and incorporated herein by reference, and all other ancillary equipment necessary for the installation and operation of the traffic control system, including, but not limited to, all utility wires, poles, cables, conduits and pipes, as well as the smaller radio equipment to be installed at several intersections along US 169 located within the City (Collectively, the "Communication Equipment"). Commission shall maintain and repair the Communication Equipment at its sole cost and expense, and Commission hereby reserves the right to replace the Communication Equipment, as needed in Commission's sole discretion, with similar and comparable equipment, without any prior consent of City, provided said replacement does not increase the load of the Tower. Upon written request by the City, the Commission agrees to remove and/or relocate Communication Equipment at its expense to permit the painting and/or repair of the Tower. Under the circumstances present, the City will endeavor to provide as much advance notice as reasonably possible of the need for the Commission to remove or relocate Communication Equipment for the purpose of painting and/or repair of the tower. In the event of such a request, Commission will have, at a minimum, sixty (60) business days to remove or relocate its Communication Equipment.

(5) SYSTEM INSTALLATION: The installation of the Communication Equipment will be performed by a qualified electrical contractor hired by the Commission. All costs for materials (including cables and connectors), installation and modification to the City's Property will be borne by the Commission. The Commission shall prepare plans for the construction of the communication system for review and approval by the City as shown in Exhibit C. Approval of said plans is within the sole discretion of the City.

(6) SYSTEM MAINTENANCE: The Commission shall maintain all components of the Communication Equipment in order to ensure that the Communication Equipment remains in proper and safe working order.

(7) TERM: The initial term of this Agreement shall be for five (5) years (the "Initial Term") and shall commence on the date of execution of this Agreement. The Initial Term of this Agreement shall automatically be extended for four (4) additional (5) year terms unless the Commission or City terminates it at the end of the then current term by giving the other written notice of the intent to terminate at least thirty (30) days prior to the end of the end of the then current term. If at the end of the fourth (4<sup>th</sup>) five (5) year extension term this Agreement has not been terminated by either Party by giving the other written notice of intention to terminate it at least thirty (30) days prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for five (5) additional five (5) year terms until terminated by either Party by giving the other written notice of intention to terminate it at least thirty (30) days prior to the end of such extended term.

(8) USE: Commission shall use the City's Property for the purpose of maintaining and operating a communications facility and uses incidental thereto. Commission shall have the right to replace, repair, add or otherwise modify the

Communication Equipment, or any portion thereof, whether the equipment is specified or not on any exhibit attached hereto, during the term of this Agreement. Commission will maintain the City's Property in good condition, reasonable wear and tear expected.

(9) ACCESS TO TOWER: City agrees that the Commission shall have free access to City's Property at all times for the purpose of operating, maintaining, repairing and replacing the Communication Equipment. City shall provide Commission with necessary means of access for the purpose of ingress and egress to City's Property. It is agreed however, that only authorized engineers, employees or properly authorized contractors of Commission or persons under their direct supervision will be permitted to enter City Property.

(10) TOWER COMPLIANCE: City covenants that it will keep the Tower in good repair as required by all federal, state, county and local laws. The City shall also comply with all rules and regulations enforced by the Federal Communications Commission regarding the lighting, marking and painting of the Tower. No materials may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower structure or its appurtenances. The Commission antenna(s) on the Tower must be identified by a marking fastened securely to its bracket on the Tower and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.

(11) INTERFERENCE: All Communication Equipment (including replacements thereof) installed by Commission shall be of the type and frequency which will not cause measurable interference to the equipment of tenants of City's Property existing as of the Effective Date of this Agreement. In the event the Communication Equipment installed by Commission causes such interference, Commission will take all steps necessary to correct and eliminate the interference. City agrees that City and any future tenants of City's Property will be permitted to install only such equipment that is of the type and frequency which will not cause measurable interference to the Communication Equipment. The Parties acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this paragraph, and therefore, either Party shall have the right to equitable remedies, such as, without limitation, specific performance.

(12) COMMISSION COMPLIANCE: All installations and operation in connection with this Agreement by Commission shall meet all applicable Rules and Regulations of the Federal Communications Commission, Federal Aviation Agency. Under this Agreement, City assumes no responsibility for the licensing, operation, and/or maintenance of the Commission's Communication Equipment.

(13) REMOVAL UPON TERMINATION: Commission, upon termination of this Agreement, shall within ninety (90) days, remove the Communication Equipment and appurtenances associated therewith and otherwise restore City's Property to its original condition, reasonable wear and tear expected. City agrees and acknowledges that all

Communication Equipment and appurtenances associated therewith shall remain the property of the Commission, and the Commission shall have the right to remove the same, whether said items are considered fixtures and attachments to real property under applicable law.

(14) RIGHTS UPON SALE: Should the City, at any time during the term of this Agreement, decide to sell all or any part of City's Property to a purchaser other than Commission, such sale shall be subject to this Agreement and Commission's rights hereunder, and any sale by the City of the portion of City's Property underlying the right of way as part of this Agreement shall be subject to the right of the Commission pursuant to this Agreement.

(15) 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 representative of the City and the Commission.

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

(17) CANCELLATION: The Commission or City 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 or City exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date the Commission removes its communication system from City's property but not later than 90 days.

(18) CASUALTY: In the event of damage by fire or other casualty to the City's Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if City's Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Commission's operations at the City Property for more than forty-five (45) days, the Commission may at any time following such fire or casualty, provided City has not completed the restoration required to permit Commission to resume its operation at the City's Property, terminate this agreement upon fifteen (15) days written notice to the City.

(19) NO INTEREST: By constructing, operating, and maintaining the Communication Equipment on the City's property, the Commission gains no property interest in the City's property whatsoever. The City shall not be obligated to keep the Tower in place if the City, in its sole discretion, determines removal or modification of the water tower is in the best interests of the City.

(20) NOTICES: All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it



guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

CITY: Charles Soules  
Public Works Director  
City of Smithville  
107 W Main Street  
Smithville, Missouri 64089

COMMISSION: Chris Redline  
District Engineer  
Missouri Department of Transportation  
600 NE Colbern Road  
Lee's Summit, Missouri 64086

(21) 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 this Agreement.

(22) 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 Clay County, Missouri.

(23) 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.

(24) OWNERSHIP: The Communication Equipment and all its components shall be the property of the Commission. The Commission may remove the system from the City's property at the Commission's discretion. Removal of all Communication Equipment for a period of ninety (90) consecutive days shall constitute cancellation of this Agreement except in those circumstances when the removal was at the request of the City for painting and/or repair of the Tower.

(25) NOT A JOINT VENTURE OR COLLABORATION: Nothing contained in this Agreement shall be deemed to constitute the Commission and the City as partners in a partnership, collaboration, or joint venture for any purpose whatsoever.

(26) 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.

(27) COMMISSION REPRESENTATIVE: The Commission's 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.

(28) SEVERABILITY: If any clause or provision of this Agreement is found to be void or unenforceable by a court or agency of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.

(29) NON-LIABILITY OF PERSONNEL: Neither the commissioners, nor any other officer, official, employee, assign, or agent of the Commission or Missouri Department of Transportation or the City or its officers, agents or employees shall be *personally* responsible for any liability arising under or growing out of this Agreement.

(30) 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. It is agreed that more than one copy of this document may be executed, and that the original filed with the Secretary to the Missouri Highways and Transportation Commission shall be deemed to be the controlling original.

(31) 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.

(32) 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.

*[Remainder of Page Intentionally Left Blank]*

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

Executed by the City \_\_\_\_\_(Date).

Executed by the Commission \_\_\_\_\_ (Date).

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

CITY OF Smithville, MISSOURI

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

ATTEST:

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

By \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

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

By \_\_\_\_\_

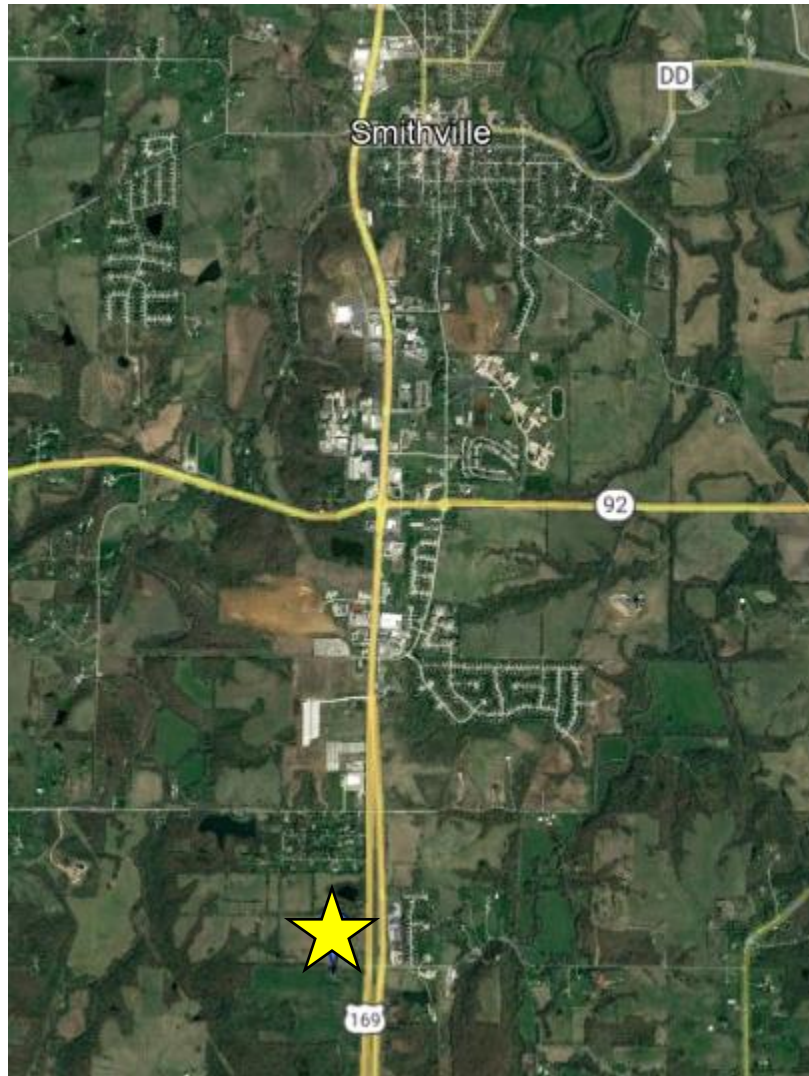
Title: \_\_\_\_\_

Ordinance Number: \_\_\_\_\_

## Exhibit A

Water Tower in City of Smithville

US 169 at Amory Rd



## Exhibit B

### Water Tower in City of Smithville



## Exhibit C

## Project Locations in City of Smithville

