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Approved: 10/96 (KMH)
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Modified:

CFDA Number: CFDA #20.205
CFDA Title: Highway Planning and Construction
Award name/number: CMAQ- (proj. no.)
Award Year: (state fiscal year monies awarded)
Federal Agency: Federal Highway Administration, Department of Transportation

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION CONGESTION MITIGATION AND AIR QUALITY AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and _____(hereinafter, "City/County/Grantee").

WITNESSETH:

WHEREAS, 23 U.S.C. §149 authorizes the funding of projects providing for congestion mitigation and air quality (CMAQ); and

WHEREAS, the Commission is the agency designated to receive and dispense such funds; and

WHEREAS, the Commission has determined that **[Describe or Name Project]** is consistent with the goals of the CMAQ funding; and

WHEREAS, the (City/County/Grantee) has the resources to develop and provide such services.

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

(1) **PURPOSE:** The United States Congress has authorized, in 23 U.S.C. §149, funds to be used for activities for CMAQ. The purpose of this Agreement is to grant the use of such funds to **[Describe scope/project]**

(2) **SCOPE OF WORK:** (City/County/Grantee) shall provide planning and implementation of an _____ in the _____ area as more fully described in the attached Appendix A which is incorporated herein by reference.

(3) **REASONABLE PROGRESS POLICY:** The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the (City/County/Grantee) agrees to repay the Commission for any progress payments made to the (City/County/Grantee) for the project and agrees that the Commission may deduct progress payments made to the (City/County/Grantee) from future payments to the (City/County/Grantee).

DRAFTER'S NOTE: Use Option 1 below for Cities, Counties, and other public entities. Use Option 2 below for not-for-profit and for-profit business entities. Delete the Option not chosen.

(4) **INDEMNIFICATION** (***Option 1***):

(A) To the extent allowed or imposed by law, the (City/County/Grantee) 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 (City's/County's/Grantee's) wrongful or negligent performance of its obligations under this Agreement.

(B) The (City/County/Grantee) will require any contractor procured by the (City/County/Grantee) 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 (City/County/Grantee) 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.

(4) INDEMNIFICATION (Option 2): The Grantee 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 Grantee's performance of its obligations under this Agreement.

(5) 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 (City/County/Grantee) and the Commission.

(6) COMMISSION REPRESENTATIVE: The Commission's [Name the Representative's Job Title] 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.

(7) NONDISCRIMINATION ASSURANCE: with regard to work under this Agreement, the (City/County/Grantee) agrees as follows:

(A) Civil Rights Statutes: The (City/County/Grantee) shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the (City/County/Grantee) is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The (City/County/Grantee) shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The (City/County/Grantee) shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors including procurement of materials and leases of equipment. The (City/County/Grantee) shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the (City/County/Grantee). These apply to all solicitations either by competitive bidding or negotiation made by the

(City/County/Grantee) for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the (City/County/Grantee) of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The (City/County/Grantee) shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the (City/County/Grantee) is in the exclusive possession of another who fails or refuses to furnish this information, the (City/County/Grantee) shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the (City/County/Grantee) fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the (City/County/Grantee) complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

DRAFTER'S NOTE: Subparagraph (G) below is to refer back to the NONDISCRIMINATION ASSURANCE paragraph #.

(G) Incorporation of Provisions: The (City/County/Grantee) shall include provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission of the United States Department of Transportation. The (City/County/Grantee) will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the (City/County/Grantee) may request the United States to enter into such litigation to protect the interests of the United States.

(8) DISADVANTAGED BUSINESS ENTERPRISES (DBE): It is the policy of the U.S. Department of Transportation and the Commission that businesses owned by socially and economically disadvantaged individuals (DBE's), as defined in 49 C.F.R. Part 26, have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds.

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

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

(11) 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.

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

(13) ACCESS TO RECORDS: The (City/County/Grantee) and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the (City/County/Grantee) receives reimbursement of their final invoice from the Commission.

(14) BUDGET: The (City/County/Grantee) shall incur obligations in connection with the performance of the period only in conformity with the latest budget approved by the Commission as specified in Appendix B - Project Budget. This budget may be revised as necessary; however no budget or revision shall be effective unless approved by the Commission's representative and FHWA.

(15) ELIGIBLE EXPENDITURES: No expenditure or charges shall be eligible for reimbursement that are contrary to the provisions of this Agreement or not required for the carrying out of the project.

(16) **REIMBURSEMENT:** The cost of the contemplated improvements will be borne by the United States Government and by the (City/County/Grantee) as follows:

DRAFTER'S NOTE: Choose only one (A) option below. Option 1 and 2 may be further refined by the district to fit the situation. However, any revisions must be reviewed by CCO prior to execution. Delete the Option not chosen.

(A) (Option 1) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by (City/County/Grantee). Any costs incurred by (City/County/Grantee) prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be _____ percent not to exceed \$_____. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of the (City/County/Grantee). The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(A) (Option 2) Any federal funds for project activities shall only be available for reimbursement of eligible costs that have been incurred by the (City/County/Grantee). Any costs incurred by the (City/County/Grantee) prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. A pro-rata share shall be established for each phase of a project, i.e. Preliminary Engineering, Right of Way, Utilities and Construction. All costs incurred by the (City/County/Grantee) will be reimbursed at the pro-rata share established for each project phase. The pro-rata share for federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to that project phase by the total participating costs for that phase. The pro-rata share for the Construction Phase shall be established at concurrence in award and cannot be increased. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of the (City/County/Grantee). The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) **PROGRESS PAYMENTS:** The (City/County/Grantee) may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly for amounts equal to or greater than \$10,000.00. The (City/County/Grantee) shall repay any progress payments which involve ineligible costs.

(18) PERMITS: The (City/County/Grantee) shall secure any necessary approvals or permits from any federal or state agency as required for the completion of this project.

(19) INSPECTION OF CONTRACTOR'S RECORDS: The (City/County/Grantee) shall assure that its contractors, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with this Agreement. The (City/County/Grantee) shall make such materials available at such contractor's office at all reasonable times during the contract period, and for three (3) years from the date of final payment under the contract, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri. Copies thereof shall be furnished at no charge, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(20) FINAL AUDIT: The Commission will perform a final audit of project costs. The United States Government shall reimburse the (City/County/Grantee), through the Commission, any monies due. The (City/County/Grantee) shall refund any overpayments as determined by the final audit.

(21) OMB AUDIT: If the (City/County/Grantee) expend(s) five hundred thousand dollars (\$500,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with OMB Circular A-133. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of OMB Circular A-133, if the (City/County/Grantee) expend(s) less than five hundred thousand dollars (\$500,000) a year, the (City/County/Grantee) may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(22) FHWA APPROVAL: This Agreement is made and entered into subject to the approval of the FHWA.

(23) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the (City/County/Grantee), and the (City/County/Grantee) may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit A. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the (City/County/Grantee)" is to be substituted. The (City/County/Grantee) agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(24) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The (City/County/Grantee) shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

DRAFTER'S NOTE: Choose the Option below which applies to this project. Delete the Option not chosen.

(25) ACQUISITION OF RIGHT OF WAY: (**Option 1**): No acquisition of additional right of way is anticipated in connection with Project _____ or contemplated by this Agreement.

DRAFTER'S NOTE: Remove the information within the brackets [] below when not applicable to the Agreement. Remove the brackets [].

(26) ACQUISITION OF RIGHT OF WAY: (**Option 2**): With respect to the acquisition of right of way necessary for the completion of the project, the (City/County/Grantee) shall acquire any additional necessary right of way required for this 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 (City/County/Grantee) and written acceptance by the Commission, the Commission shall acquire right of way for the (City/County/Grantee). Upon approval of all agreements, plans and specifications by the Commission and by the 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 the (City/County/Grantee), and the (City/County/Grantee) 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 (City/County/Grantee). The (City/County/Grantee) shall pay into court all awards and final judgments in favor of any such condemnees. The (City/County/Grantee) 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.]

[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/County/Grantee) this _____ day of _____, 20____.

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

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

(City/County/Grantee)

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title _____

*If the contracting party is a county with a commission form of government, additional lines need to be inserted to allow all three commissioners to sign the agreement.

Exhibit A - Required Contract Provisions
Federal-Aid Construction Contracts

DRAFTER'S NOTE: *Print Form 1273 from the following website and attach as Exhibit A <http://www.fhwa.dot.gov/programadmin/contracts/1273.pdf>.*