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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, "_____").

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, _____ 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 congestion mitigation and improvement of air quality. The purpose of this Agreement is to grant the use of such funds to **[Describe scope/project]**

(2) **SCOPE OF WORK:** _____ 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 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 If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City.

(4) **INDEMNIFICATION:** The _____ 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 _____'s performance of its obligations under this Agreement.

DRAFTER'S NOTE: *If requested by a city, county or other public entity, the phrase, "To the extent allowed by law" may be inserted at the beginning of the first sentence.*

(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 _____ and the Commission.

(6) **COMMISSION REPRESENTATIVE:** The Commission's **[Name Representative]** 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 _____ agrees as follows:

(A) **Civil Rights Statutes:** The _____ 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 _____ 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 _____ 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 _____ 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 _____ 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 _____. These apply to all solicitations either by competitive bidding or negotiation made by the _____ for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the _____ 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 _____ 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 _____ is in the exclusive possession of another who fails or refuses to furnish this information, the _____ 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 _____ 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 complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The _____ 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 _____ 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 _____ 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 _____ 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 _____ 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 _____ 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 _____.

(13) ACCESS TO RECORDS: The _____ 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 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 _____ receives reimbursement of their final invoice from the Commission.

(14) BUDGET: The _____ 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 _____ as follows:

DRAFTER'S NOTE: Choose only one of the (A) Options below and delete the Option not chosen. 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.

(A) (Option 1) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by _____. Any costs incurred by _____ prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. All costs incurred by _____ will be reimbursed up to the lump sum amount of \$_____ not to exceed the legal pro rata share of _____ percent. 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 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 _____. Any costs incurred by _____ 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 _____ will be reimbursed at the legal pro rata share established for each project phase. The legal 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 legal pro rata share for the Construction Phase shall be established at concurrence in award and cannot be increased after concurrence in award. This project has a maximum of \$_____ of federal funds available. The legal pro rata share cannot exceed eighty percent (80%). 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 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 _____ may request that progress payments be made during the construction of the herein improvements. The _____ shall submit to the Commission any invoice for progress payment no less than on a monthly basis. The _____ shall repay any progress payments which involve ineligible costs.

(18) **PERMITS:** _____ 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: _____ 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. _____ 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) AUDIT OF RECORDS: The Commission may perform a final audit of project costs. The United States Government will pay through the Commission to the _____ any moneys due, and _____ will refund any overpayment, as determined by final audit of eligible costs incurred by _____. If the _____ expend(s) five hundred thousand (\$500,000) or more in a year in federal finance 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 the Missouri Department of Transportation (MoDOT) within thirty (30) days of the issuance of the report. Subject to the requirements of OMB Circular A-133, if the _____ expend(s) less than five hundred thousand dollars (\$500,000) a year, the _____ may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(21) FHWA APPROVAL: This Agreement is made and entered into subject to the approval of the Federal Highway Administration.

(22) ACQUISITION OF RIGHT OF WAY: [Choose the option which applies to this project.]

Option (A): [No acquisition of additional right of way is anticipated in connection with Project _____ or contemplated by this Agreement.]

Option (B): [With respect to the acquisition of right of way necessary for the completion of the project, _____ 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 _____ and written acceptance by the Commission, the Commission shall acquire right of way for the _____. Upon approval of all agreements, plans and specifications by the Commission and by the Federal Highway Administration, 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 _____, and the _____ 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 _____. The _____ shall pay into court all awards and final judgments in favor of any such condemnees. The _____ 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 _____ this _____ day of _____, 20____.

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

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

By _____

Title _____

Title _____

ATTEST:

ATTEST:

By _____

Secretary to the Commission

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.