

CCO Form: RM15-E
Approved: 03/00 (BDG)
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Modified:

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

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
CONGESTION MITIGATION AND AIR QUALITY AGREEMENT
(Vehicle and Equipment Purchases)**

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:** The (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 If the project is withdrawn for not meeting reasonable progress, the (City/County/Grantee) agrees to repay the Commission for any progress payments made to the (City/County/Grantee) for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) **PROJECT EQUIPMENT**: The purpose of this Agreement is to grant the use of such funds to assist the (City/County/Grantee) in financing the project's expenses that are eligible for federal financial assistance. The following conditions are applicable to equipment financed under this Agreement:

(A) The (City/County/Grantee) agrees to observe the property management standards set forth in 49 CFR sections 18.31, 18.32, and 18.33, or OMB Circular A-110, Attachment N, as appropriate, as now or hereafter amended, and any guidelines or regulations that the United States Government may issue. Any exceptions to these requirements must be specifically approved by the Commission. The Commission reserves the right to require the (City/County/Grantee) to transfer title to any equipment financed with federal assistance made available by this Agreement as set forth in 49 CFR section 18.32 (g) or OMB Circular A-110, Attachment N as may be appropriate, as now or hereafter amended, and any guidelines or regulations that the United States Government may issue. The Commission also reserves the right to direct the disposition of equipment financed with federal assistance funds made available under this Agreement, as set forth in 49 CFR sections 18.31 and 18.32 or OMB Circular A-110, Attachment N as may be applicable, as now or hereafter amended, and any guidelines or regulations that the United States Government may issue.

(B) The (City/County/Grantee) agrees to maintain the project equipment in good operating order, and in accordance with any guidance, directives, and or regulations that the FHWA may issue. If, during the period, any project real property not in service, whether by planned withdrawal, misuse or casualty loss, the (City/County/Grantee) shall immediately notify the Commission. Unless otherwise approved by the Commission, the (City/County/Grantee) shall remit to the Commission a proportional amount of the fair market, if any, of the equipment whose aggregate value exceeds \$5,000 which value shall be determined on the basis of the ratio of the federal assistance awarded by the Commission to the actual cost of the project. The following guidelines shall be followed in determining the fair market value. Unless otherwise approved in writing by the Commission, the fair market value of equipment will be the value of that property at the time immediately before the reason occurred that prompted the decision to withdraw that property from transit use. For example, in the event of loss of or damage to the property by casualty or fire, the fair market value of the property will be calculated immediately before the loss or damage, irrespective of the extent of insurance coverage. In the case of equipment, fair market value shall be based on straight line depreciation of the equipment, based on the industry standard for useful life, irrespective of the reason for withdrawal of that property from transit use.

(C) The (City/County/Grantee) further agrees that the project equipment shall be used for the provision set forth in the Project Description. Should the (City/County/Grantee) unreasonably delay in or refrain from using project equipment in the manner set forth in the Project Description, the Commission reserves the right to require the (City/County/Grantee) to return the entire amount of the federal assistance expended on that equipment. The (City/County/Grantee) shall keep satisfactory records with regard to the use of the equipment and submit to the Commission upon request such information as may be required to assure compliance with this section and shall immediately notify the (City/County/Grantee) in all cases in which project real property are used in a manner substantially different from which is set forth in the Project Description. The Commission reserves the right to require the (City/County/Grantee) to restore project equipment or pay for damage to project equipment as a result of abuse or misuse of such property with the (City's/County's/Grantee's) knowledge and consent. Project closeout will not alter the (City's/County's/Grantee's) property management obligations set forth at 49 CFR sections 18.31 and 18.32 or OMB Circular A-110, Attachment N, as applicable and as now or hereafter amended, and any guidelines or regulations that the United States Government may issue.

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.

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

(A) (Option 1) Any federal funds for project activities shall only be available for reimbursement of eligible costs which 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. 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.

(7) 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.

(8) 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.

(9) ENCUMBRANCE OF PROJECT PROPERTY: The Commission will pass title to the (City/County/Grantee) and will be a lien holder. The (City/County/Grantee) may not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way affects the federal interest in any project equipment, nor may the (City/County/Grantee) obligate itself, in any other manner, to any third party with respect to project equipment, unless such transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation is expressly authorized in writing by the Commission; nor may the Commission, by any act or omission, adversely affect the federal interest or impair the (City's/County's/Grantee's) continuing control over the use of project equipment.

The (City/County/Grantee) agrees that upon purchase with funds provided under this Agreement of any equipment for which a title certificate may be obtained or is required under the laws of Missouri that it will execute such documents as may be necessary to protect and secure a lien upon such equipment in favor of the Commission, if so requested by the Commission. Any and all fees required to be paid to secure and maintain said lien shall be paid by the (City/County/Grantee).

(10) AUDITS, INSPECTION AND RETENTION OF RECORDS: The Commission and the United States Department of Transportation, or any of their representatives, shall have full access to and the right to examine, during normal business hours and as often as the Commission or the United States Department of Transportation deems necessary, all of the (City's/County's/Grantee's) records with respect to all matters covered by this Agreement. Such representatives shall be

permitted to audit under the guidelines of OMB Circulars A-133 "Audits of State and Local Governments" or examine and make excerpts or transcripts from such records and other matters covered by this contract. Such rights shall last for three years beyond the longer of the following periods: (a) the period during which any property acquired with funds provided pursuant to this Agreement is used for purposes for which the federal financial assistance is extended, or for another purpose involving the provisions of similar services or benefits: (b) the period during which the (City/County/Grantee) retains ownership or possession of such property. All documents, papers, accounting records and other material pertaining to costs incurred in connection with the project shall be retained by the (City/County/Grantee) for three years from the date of final payment to facilitate any audits or inspections.

(11) INSURANCE: The (City/County/Grantee) shall maintain in amount and form satisfactory to the Commission such insurance as will be adequate to protect it in case of accident. If permitted by law, the (City/County/Grantee) may maintain a self-insurance program in lieu of purchasing insurance coverage. The (City/County/Grantee) shall verify compliance with this section by submitting a copy of its certificate of insurance, or if self-insured, a copy of its self-insurance plan.

(12) SECURITY: The (City/County/Grantee) agrees that upon purchase with funds provided under this Agreement of any vehicle(s) for which a title certificate may be obtained or is required under the laws of Missouri that it will execute such documents as may be necessary to protect and secure a lien upon such equipment in favor of the Commission, is so requested by the Commission. Any and all fees required to be paid to secure and maintain said lien shall be paid by the (City/County/Grantee).

(13) REPLACEMENT OF VEHICLE AND DISPOSITION GUIDELINES: The (City/County/Grantee) is required to submit a written request for an inspection of the vehicle(s) or equipment they wish to dispose of, to be conducted by the Commission. This inspection will determine if the useful life of the vehicle(s) or equipment has been reached and before the Commission would consider replacement. Standards for vehicle useful life are listed below:

Cars and trucks	100,000 miles
Straight or modified vans	100,000 miles
Bus Body on Medium Duty Chassis	200,000 miles
City transit buses (30 ft or more)	350,000 miles

DISPOSITION PROCEDURE: The following state procedures will apply to the disposition of vehicles by the (City/County/Grantee).

(1) A vehicle may be sold outright to a third party through a variety of approved processes, including advertised sealed bids, auto auction or the average of three competent appraisals.

(2) A vehicle may be sold by the (City/County/Grantee) to itself. In this case the implicit price to be paid by the recipient will be the average wholesale value of the vehicle as specified in the most recent National Automobile Dealers Association (NADA) Official Used Car Guide.

DIVISION OF DISPOSITION PROCEEDS: Proceeds from the sale of vehicles and other equipment will be distributed in accordance with the provisions of 49 CFR section 18.32, as now or hereinafter amended, as follows:

(1) Vehicles or items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of by the (City/County/Grantee) with no further obligation to the Commission.

(2) Vehicles or items of equipment with a current per unit fair market value of \$5,000 or more may be retained or sold by the (City/County/Grantee) and the Commission shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the Commission's share of the equipment. The balance must be paid to the Commission within 10 working days.

(14) ASSIGNMENT OF CAPITAL EQUIPMENT: Appendix A lists the county or area where the capital equipment is assigned. If the (City/County/Grantee) becomes financially unable to operate within the assigned county in the judgment of the Commission, the (City/County/Grantee) will relinquish the titles of the items in Appendix A to the Commission. The Commission will assist the (City/County/Grantee) in recovering 20% of the current fair market value although the Commission is not obligated to do so and may take possession of vehicles without doing so. Capital equipment once assigned cannot be reassigned to another county unless the Commission concurs. The Commission will be the first lien holder on all capital equipment unless waived.

(15) ALCOHOL AND DRUG TESTING RULES: The (City/County/Grantee) agrees to comply with 49 CFR Parts 40 and 653 and all amendments thereto and any guidelines or regulations that the United States Government may issue.

(16) 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.

(17) 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.

(18) 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 (18) 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 or 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.

(19) 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.

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

(21) 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.

(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 Cole County, Missouri.

(23) 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).

(24) 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.

(25) ELIGIBLE EXPENDITURES: No expenditure or charges shall be eligible for reimbursement that are:

- (A) Contrary to the provisions of this Agreement; or
- (B) Not required for the carrying out of the project.

(26) 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.

(27) 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.

(28) 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.

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

(30) 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/County/Grantee).

[Remainder of Page Intentionally Left Blank]

