

CCO Form: RM12-ARRA TE  
Approved: 06/09 (MWH)  
Revised: 08/10 (MWH)  
Modified:

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

***DRAFTER'S NOTE: THIS AGREEMENT IS TO BE USED ONLY FOR PROJECTS RECEIVING FUNDS FROM THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009. DELETE THIS DRAFTER'S NOTE BEFORE SENDING A DRAFT TO THE OTHER PARTY.***

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
AMERICAN RECOVERY AND REINVESTMENT ACT  
TRANSPORTATION ENHANCEMENT  
PROGRAM AGREEMENT**

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

WITNESSETH:

WHEREAS, the Congress of the United States of America has passed the American Recovery and Reinvestment Act of 2009, which provides specific federal funding for certain projects;

WHEREAS, the Commission administers these funds from the United States of America; and

WHEREAS, the (City/County/Grantee) is the local agency responsible for the construction of the project.

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

(1) AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009: The (City/County/Grantee) agrees to abide by the provisions of the American Recovery and Reinvestment Act of 2009 (**ARRA**) (Pub.L. 111-5, 2009 H.R. 1).

(2) SECTION 902 OF ARRA: The U.S. Comptroller General and his representatives shall have the authority:

(A) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

(B) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

(3) INCORPORATION OF SECTION 902 PROVISIONS: The (City/County/Grantee) shall include the provisions of paragraph (2) of this Agreement in every subcontract.

(4) SECTION 1515(a) OF ARRA: For each contract or grant awarded using ARRA funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

(A) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and

(B) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

(5) PURPOSE: The purpose of this Agreement is to grant the use of ARRA funds to the (City/County/Grantee) for the transportation enhancement activities described in this Agreement.

(6) PROJECT DESCRIPTION: The activities contemplated by this Agreement and designated as Project ARRA - \_\_\_\_\_ involve:

*[Insert description of project]*

The (City/County/Grantee) shall be responsible for all aspects of the transportation enhancement activities which are the subject of this Agreement.

(7) LOCATION: The ARRA funds which are the subject of this Agreement are for the project at the following location:

*[describe the project location]*

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(8) 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.

(9) 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

(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.

(9) 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 City/County/Grantee's performance of its obligations under this Agreement.

(10) 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.

(11) COMMISSION REPRESENTATIVE: The Commission's \_\_\_\_\_ 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.

(12) 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 the provisions of paragraph (12) 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 (City/County/Grantee) 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.

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

(14) 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.

(15) 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).

(16) 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 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.

(17) ACQUISITION OF RIGHT OF WAY:

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

(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.

(Option 2): With respect to the acquisition of right of way necessary for the completion of the project, (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 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 (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.]

(18) MAINTENANCE OF DEVELOPMENT: The (City/County/Grantee) shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the (City/County/Grantee) shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalks or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the (City/County/Grantee) shall inspect and maintain the sidewalks or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalks or bike trails. If the (City/County/Grantee) fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the (City/County/Grantee) in writing of the (City's/County's/Grantee's) failure to maintain the improvement. If the (City/County/Grantee) continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the (City/County/Grantee). Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(19) PLANS: The (City/County/Grantee) shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

(20) 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 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 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.

(B) The total reimbursement otherwise payable to the (City/County/Grantee) under this Agreement is subject to reduction, offset, levy, judgment, collection or withholding, if there is a reduction in the available federal funding, or to satisfy other obligations of the (City/County/Grantee) to the Commission, the State of Missouri, the United States, or another entity acting pursuant to a lawful court order, which (City/County/Grantee) obligations or liability are created by law, judicial action, or by pledge, contract or other enforceable instrument. Any costs

incurred by the (City/County/Grantee) prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs.

(C) The authority to advertise for bids shall be granted by the Commission when all right-of-way clearances, environmental clearances, and the approval of the PS&E have been completed. Any costs incurred by the (City/County/Grantee) prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs.

***DRAFTER'S NOTE:*** *Subparagraph (20)(D) is optional. Delete (20)(D) if your District has adopted a reasonable progress policy. Delete this Drafter's note before sending draft to other party.*

(D) In the event that the (City/County/Grantee) does not submit the PS&E for this project by \_\_\_\_\_, and does not have construction authorization (authority to advertise for bids) by \_\_\_\_\_, the (City/County/Grantee) agrees to reimburse the Commission for any monies previously reimbursed to the (City/County/Grantee) under this Agreement. All monies previously programmed for this project shall be surrendered by (City/County/Grantee) at this time. **Any costs incurred by the (City/County/Grantee) prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs.**

(21) PROGRESS PAYMENTS: The (City/County/Grantee) may request that progress payments be made during the construction of the herein improvements. The (City/County/Grantee) shall submit to the Commission any invoice for progress payments no less than on a monthly basis. The (City/County/Grantee) shall repay any progress payments which involve ineligible costs.

(22) PERMITS: The (City/County/Grantee) shall secure any necessary approvals or permits from any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the (City/County/Grantee) must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(23) INSPECTION OF IMPROVEMENTS AND RECORDS: The (City/County/Grantee) shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the (City's/County's/Grantee's) contractor and subcontractor on the herein project. The (City/County/Grantee) shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the ARRA Transportation Enhancement Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any

authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(24) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(25) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the (City/County/Grantee) of any required goals for participation by DBEs to be included in the (City/County/Grantee) proposal for the work to be performed. The (City/County/Grantee) shall submit for Commission approval a goal or plan. The (City/County/Grantee) shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(26) 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.

(27) NOTICE TO BIDDERS: The (City/County/Grantee) shall notify the prospective bidders that DBEs shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(28) FINAL AUDIT: The Commission may, in its sole discretion, 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.

(29) OMB AUDIT: If the (City/County/Grantee) 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 MoDOT within thirty (30) days of the issuance of the report. 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.

*[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 \_\_\_\_\_

Ordinance No \_\_\_\_\_

*\*If contracting party is a County with a county commission form of government, the execution page needs to be modified to allow the three county commissioners to execute the agreement.*