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Approved: 10/06 (BDG)
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Modified:

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

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
SAFE ROUTES TO SCHOOL PROGRAM AGREEMENT**

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

WITNESSETH:

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 funds to be used for Safe Routes to School program activities. The Grantee has applied to the Commission for using these funds for qualified purposes. The purpose of this Agreement is to grant the use of such Safe Routes to School funds to the Grantee.

(2) LOCATION AND NATURE OF PROJECT/ACTIVITY: The Safe Routes to School funds which are the subject of this Agreement are for the project/activity at the following location: [**Drafter's Note**: describe the project/activity and location; if the project/activity is construction, name the physical location; if the project/activity is public information, name subject school or school district. Delete this Drafter's Note]. The general location of the project/activity is shown on an attachment marked "Exhibit A" and incorporated herein by reference.

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.

(3) INDEMNIFICATION (Option 1):

(A) To the extent allowed or imposed by law, 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 wrongful or negligent performance of its obligations under this Agreement.

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

(3) 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.

(4) 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 Grantee and the Commission.

(5) 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.

(6) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the Grantee agrees as follows:

(A) Civil Rights Statutes: The 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 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 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 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 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 Grantee. These apply to all solicitations either by competitive bidding or negotiation made by the 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 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 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 Grantee is in the exclusive possession of another who fails or refuses to furnish this information, the 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 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 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 Grantee shall include the provisions of paragraph (6) 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 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 Grantee becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Grantee may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

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

(11) FEDERAL-AID PROVISIONS: Because responsibility for the performance of functions or work contemplated as part of this project is assumed by the Grantee, and the 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 B. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the Grantee" is to be substituted. The 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.

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

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

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

(12) ACQUISITION OF RIGHT OF WAY: (Option 2): With respect to the acquisition of right of way necessary for the completion of the project/activity, Grantee shall acquire any additional necessary right of way required for this project/activity 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, 49 CFR Part 24 and any other regulations promulgated in connection with the Act. In addition Grantee shall comply with applicable state laws, rules and regulations including those contained in Chapter 523 RSMo. [However, upon written request by the Grantee and written acceptance by the Commission, the Commission shall acquire right of way for the 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 Grantee, and the 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 Grantee. The Grantee shall pay into court all awards and final judgments in favor of any such condemnees. The 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.]

(13) MAINTENANCE OF DEVELOPMENT: If the project/activity identified in Paragraph 2, above, involves the construction or dedication of public improvements, the Grantee shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the 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 Grantee shall inspect and maintain the sidewalks or bike trails constructed by this project/activity 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 Grantee fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the Grantee in writing of the Grantee's failure to maintain the improvement. If the 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 Grantee. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(14) PLANS: The 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.

(15) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the 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 Grantee. Any costs incurred by 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 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. The reimbursable eligible costs for this project/activity are shown on an attachment marked "Exhibit C" and incorporated herein by reference.

(A) (Option 2) Any federal funds for project activities shall only be available for reimbursement of eligible costs that have been incurred by Grantee. Any costs incurred by 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 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 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. The reimbursable eligible costs for this project/activity are shown on an attachment marked "Exhibit C" and incorporated herein by reference.

(B) 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 Plans, Specification and Estimate (**PS&E**) have been completed. **Any costs incurred by the Grantee prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs.**

DRAFTER'S NOTE: Subparagraph (14)(C) is optional. Delete (14)(C) if your District has adopted a reasonable progress policy. Delete this Drafter's note before sending a draft to the other party.

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

(D) In the event the Grantee does not complete the project/activity within the timelines set forth in the Safe Routes to School Administrative Guidelines Issued 03/01/2010, all monies previously programmed or spent for this project/activity shall be surrendered by the Grantee at this time to the Commission. **Any costs incurred by the Grantee prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs.**

DRAFTER'S NOTE: Subparagraph (14)(E) may be removed with the SRTS Coordinator's approval. Delete this Drafter's Note before sending a draft to the other party.

(E) The Grantee shall complete the "SURVEY ABOUT WALKING AND BIKING TO SCHOOL FOR PARENTS" (Survey) for each child in the grades Kindergarten (K) through 8 of each school involved in the application. An example of the Survey form is attached hereto as Exhibit D and incorporated herein by reference. The Grantee shall complete the Survey prior to the project/activity beginning. The Grantee shall complete the Survey again within 6 months following the completion of the project/activity. The Grantee shall complete the "SAFE ROUTES TO SCHOOL STUDENT ARRIVAL AND DEPARTURE TALLY SHEET" (Tally Sheet) for each child in the grades of K-8 of each school listed in the application prior to the project/activity beginning and again within 6 months following the completion of the project/activity. An example of the Tally Sheet form is attached hereto as Exhibit E and incorporated herein by reference. **The Surveys and Tally Sheets are a requirement of the applicant per the Safe Routes to School Administrative Guidelines Issued 03/01/2010. All costs incurred by the Grantee for the Surveys or Tally Sheets are non-reimbursable. In the event that the Grantee does not meet these requirements, all monies previously programmed or spent for this project/activity shall be surrendered by the Grantee at this time to the Commission.**

(16) USE OF FUNDS: Any employee of Grantee whose salary or wages are paid in whole or in part with federal funds is prohibited from participating in certain partisan political activities, including, but not limited to, being a candidate for elective office pursuant to Title 5 United States Code (hereinafter, "U.S.C."), Sections 1501-1508. If an employee of Grantee participates in activities prohibited by the Hatch Act, Grantee shall no longer pay that employee's salary or wages with federal funds unless the requirements of 5 U.S.C. Sections 1501-1508 are not applicable to that employee pursuant to 5 U.S.C. Section 1502(c).

(17) PROGRESS PAYMENTS: The 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 Grantee shall repay any progress payments which involve ineligible costs.

(18) PERMITS: The Grantee shall secure any necessary approvals or permits from any federal or state agency as required for the completion of the herein improvements. 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. If this improvement is on the right of way of the Commission, the Grantee must secure a permit from the Commission prior to the start of any work on the right of way. The Grantee shall comply with any additional conditions placed on the issuance of the permit by the Commission, including, but not limited to any bonding requirements of the Commission.

(19) INSPECTION OF IMPROVEMENTS AND RECORDS: The Grantee shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the Grantee's contractor and subcontractor on the herein project/activity. The 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 Safe Routes to School 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.

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

(21) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the Grantee of any required goals for participation by DBEs to be included in the Grantee proposal for the work to be performed. The Grantee shall submit for Commission approval a disadvantaged business enterprise goal or plan. The 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.

(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) NOTICE TO BIDDERS: The Grantee shall notify the prospective bidders that disadvantaged business enterprises 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.

(24) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project/activity costs. The United States Government shall reimburse the Grantee, through the Commission, any monies due. The Grantee shall refund any overpayments as determined by the final audit.

(25) OMB AUDIT: If the 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 Grantee expend(s) less than

five hundred thousand dollars (\$500,000) a year, the 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.

(26) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The 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.

[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 Grantee this ____ day of _____, 20__.

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

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

[INSERT NAME OF 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 _____

*Note: If agency is a County with a county commission form of government, 3 signatures are required

Exhibit A - Location of Project

Exhibit B - Required Contract Provisions
Federal-Aid Construction Contracts

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

Exhibit C – Reimbursable Eligible Cost

Exhibit D – Survey about Walking and
Biking to School for Parents

Exhibit E – Safe Routes to School Student
Arrival and Departure Tally Sheet