

CCO Form: UT1
Approved:
Revised:
Modified:

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
MASTER REIMBURSABLE UTILITY AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter "Commission") and the City of Kansas City, Missouri through its Water Services Department (hereinafter "City").

WITNESSETH:

WHEREAS, the Commission proposes to construct and improve numerous sections of state highways in accordance with road plans filed in the office of the County Clerk in the county in which the job is located ("Highway Improvements"); and

WHEREAS, in order to improve a highway in accordance with said plans, it will sometimes be necessary to relocate or adjust certain City facilities (a "Project") in order to maintain services of said City and allow the Highway Improvement; and

WHEREAS, for each Project, the City and the Commission desire to allocate the Project costs between the City and the Commission, said allocation depending upon whether the City's facilities are located within the Commission's right of way, the City's right of way, a City easement, or City-owned realty; and

WHEREAS, in order to reduce paperwork and improve operations, the City and the Commission desire to enter into a Master Agreement which will provide for allocation of costs and reimbursement procedures for each Project;

NOW, THEREFORE, in consideration of the mutual covenants, the parties agree as follows:

(1) MASTER AGREEMENT EXCLUSIVITY: This Master Agreement will be the only Agreement executed to cover the allocation of costs and reimbursement procedures for each Project required by the Highway Improvements. This Agreement will remain in full force until both parties agree, in writing, to amend the Agreement, or unless the Agreement is terminated by either party.

(2) PROJECT APPROVAL PROCESS.

- a. The Commission will notify the City that one of its Highway Improvements requires a Project to be undertaken.
- b. The City will prepare specific plans for the Project, which will be contained in an Exhibit A.

- c. The City will prepare a cost estimate and a cost allocation for the Project, which will be contained in an Exhibit B.
- d. The cost allocation will depend upon whether the City's facilities involved in the Project are located within the Commission's right of way, the City's right of way, a City easement, or City-owned realty.
- e. The Commission shall be responsible for costs of relocation of City's utilities: (1) currently located within the City's right of way, City easement, or City-owned realty including acquisition of a replacement easement, or (2) currently located on Commission right of way and was located on said right of way prior to Commission's ownership or was relocated to said right of way as a result of relinquishing prior property rights at no cost to the Commission for a different Commission Project. The City will be responsible for costs of relocation of City's utilities currently located within the Commission's right of way unless located on said right of way prior to Commission's ownership or relocated to said right of way as a result of another Project.
- f. Exhibits A and B will be transmitted by the City's Director of Water Services Department to the Commission.
- g. The Commission will approve Exhibits A and B for each Project by letter to the City
- h. This Master Reimbursable Utility Agreement, the City's transmittal letter, Exhibits A and B, and the Commission's approval letter have the same effect as a fully signed utility agreement between City and Commission for each Project.

(3) COMPLY WITH FEDERAL AND POLICY GUIDE (FAPG): The City agrees that Exhibits A and B for each Project will be prepared in accordance with the FAPG 23 CFR 645A (and any amendments), which by reference is made a part of this Agreement. The City also agrees that the work hereunder will be performed in accordance with said regulation.

(4) HIGHWAY IMPROVEMENTS INFORMATION: The Commission agrees to furnish the City all necessary information on a Highway Improvement in order to properly carry out each Project. Known hazardous waste sites will be identified on the right of way.

(5) COMMISSION REPRESENTATIVE: The Commission's district engineer 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) CITY REPRESENTATIVE: The City shall designate a representative to manage each Project.

(7) CITY'S RIGHT TO DETERMINE PROJECT APPROACH: The City may elect to have a Project performed by its own staff, through a contract with third parties, or included within the Commission's Highway Improvement contract by or through the Commission's highway contractor.

(8) REIMBURSEMENT BY COMMISSION: The Commission shall promptly pay the City one hundred percent (100%) of the estimated cost of the Commission's obligation for a Project for work to be accomplished by the City. When a lump sum cost estimate is approved, the Commission shall pay no more or no less than the approved Commission obligation. When an actual cost estimate is approved, the Commission shall pay the Commission's obligation. If the final invoice is greater than the Commission's payment, the Commission shall promptly pay the City the additional Commission obligation. Conversely, if the final invoice is less than the Commission's payment, the City shall promptly remit the Commission's overpayment. If the Commission instructs the City not to proceed with a Project, the Commission shall reimburse the City for the Commission's hereinabove stated percentage share of the City's costs incurred prior to the date the Project is cancelled, as allowed pursuant to FAPG 23 CFR 645A. The City shall promptly return any funds to the Commission in excess of those actually incurred, prior to the date the Project is cancelled, in proportion to the Commission's obligation.

(9) REIMBURSEMENT BY CITY: Subject to appropriation, the City shall promptly pay the Commission one hundred percent (100%) of the estimated cost of the City's obligation for a Project performed by or through the Commission's highway contractor. When a lump sum cost estimate is approved, the City shall pay no more or no less than the approved City obligation. When an actual cost estimate is approved, the City shall pay the City's obligation. If the final invoice is greater than the City's payment, subject to appropriation, the City shall promptly pay the additional City obligation. Conversely, if the final invoice is less than the City's payment, the Commission shall promptly remit the City's overpayment. If a Project is cancelled, the Commission shall promptly return any funds to the City in excess of those actually incurred prior to the date the Project is cancelled, in proportion to the City's obligation.

(10) CONTRACT BY CITY: If the City determines to contract any of the work of adjusting its facilities, it shall furnish the Commission with evidence that it is not adequately staffed or equipped to perform the work and shall comply with the procedures outlined in FAPG 23 CFR 645A relating to performing part or all of the work by contract. If the City solicits bids for the Project, which will result in reimbursable costs by the Commission, the City shall furnish the Commission a tabulation of bids received, a copy of the invitation to bid, and any other information to support the City's recommendation for award to the lowest qualified bidder prior to any contract work being performed. The City shall obtain the Commission's written approval prior to awarding the contract. The Commission's approval or disapproval shall be communicated in writing to the City no later than twenty-one (21) days after the City provides the above information to the Commission. If the Commission fails to notify the City in writing of its decision within the twenty-one (21) day period, the Commission

shall be deemed to have approved the City's selection. When the lump sum method of reimbursement is approved, the City shall not have to obtain the Commission's written approval.

(11) CHANGE ORDER: If any substantial change is made in the original plan and extent of the work, the City agrees that reimbursement shall be limited to costs covered by a supplemental agreement or change order prepared by the Commission's resident engineer or his/her representative and having approval of the Commission and Federal Highway Administration PRIOR to the performance of the work, as set out in FAPG 23 CFR 645A.

(12) PERMIT REQUIREMENT. The City shall obtain a no cost permit from the Commission's district engineer prior to adjusting or relocating its facilities from, within, or onto the Commission's right of way. The permit shall be signed by an authorized City representative.

(13) COMMENCEMENT AND COMPLETION OF A PROJECT: After the Commission has approved Exhibits A and B for a specific Project and transmitted payment to the City of its reimbursable costs, the City will commence, without unnecessary delay, the Project. The City will actively pursue completion of the Project to reach the earliest possible completion date and to minimize interference with the Commission's highway contractor. The City agrees to provide a written estimated time schedule for the Project and a written notification to the Commission's district engineer at least five (5) days prior to beginning the Project. If the City falls behind in its work schedule, it shall submit a revised work schedule to the Commission's resident engineer. The City will make every effort to get back on schedule and complete the Project.

(14) COOPERATION: When the City's Project is being done concurrent with the Commission's Highway Improvement, the City agrees to cooperate and coordinate its Project to minimize disturbance to the highway contractor or other utility companies working on the Highway Improvement. The Commission's contractor has a contractual duty to cooperate and coordinate its activities with utility companies.

(15) BACKFILL: The City agrees to compact backfill of all excavation within the roadway limits in accordance with the Missouri Standard Specifications for Highway Construction, current edition, or as approved by the Commission's resident engineer.

(16) SAFETY DEVICES: At all times when a Project is being performed by the City under such conditions as will affect traffic on the public highways, the City will display warning signs, barricades, flags, lights and/or flares as circumstances may require and shall employ and use a flagger when required for safety of the traveling public, in accordance with the standards set forth in the "Manual on Uniform Traffic Control Devices" (MUCD).

(17) CONDITION OF RIGHT OF WAY: Upon completion of a Project, all leftover materials and debris resulting from the Project shall be removed by the City and the right-of-way shall be restored to its original condition.

(18) FINAL INVOICE SUBMITTAL: After completion of a Project, each party agrees to submit a final invoice for the cost of reimbursable work to the other party within sixty (60) days or as mutually agreed to by the City and the Commission's resident engineer or his/her representative. The final invoice shall be in as much detail as possible to verify the actual cost of the completed Project. It should follow the format of the original cost estimate (Exhibit B) when possible to promote faster processing by the Commission. The parties will process the final invoice for payment after receipt as described in Paragraphs 8 and 9 above.

(19) AUDIT OF RECORDS: For actual cost reimbursement only, the City's final invoice shall be based on the actual direct and related indirect costs. The direct costs shall be in accordance with an established accounting procedure used by the City for its regular operations. The City shall keep a detailed and accurate account of all services, labor, materials, supplies, incidentals, additional necessary private easement acquisition, if any, and other necessary costs involved in making such changes. The Commission's resident engineer in charge of each Project, or any authorized agent of the Commission or the Federal Highway Administration, shall have access during normal business hours to audit such City records. These records shall be available at no charge during a Project and for three (3) years from the date of final payment for that Project. The audit shall be conducted according to generally accepted government auditing standards (GAGAS). Both the City and Commission shall receive a written audit report and shall be provided at least 30 days to respond to the audit findings. If the audit findings indicate that the City has been overpaid, the City will immediately refund to the Commission such overpayment unless the City elects to contest said findings. If the audit findings indicate that the City has been underpaid, the Commission will immediately pay the City the difference unless the Commission elects to contest said findings. For lump sum reimbursement, the Commission shall not audit the City's records.

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

(21) 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 respecting its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(22) ASSIGNMENT: Neither the City nor the Commission shall assign, transfer, or delegate any interest in this Agreement without the prior written consent of the other party.

(23) TERMINATION: It is agreed that either party may terminate this Agreement at any time by providing the other party with thirty (30) days advance written notification of such cancellation, and only after active Projects have been completed.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the last date written below:

Executed by the City this 27 day of April, 2007.

Executed by the Commission this 7th day of May, 2007.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

City of Kansas City, Missouri Water
Services Department

Robert Becker
Title Chief Financial Officer

By Frankly Papp
Title Director

ATTEST:

Maxine Winters
Secretary to the Commission

Approved as to Form:

Michah Ray Alexander
Commission Counsel

Approved as to Form:

Cecilia Abbott
Assistant City Attorney

Ordinance No. 070424

ACKNOWLEDGMENT BY CITY

STATE OF MISSOURI)

COUNTY OF JACKSON)

ss

On this 27 day of April, 2007, before me appeared Franklyn W. Pogge, personally known to me, who being by me duly sworn, did say that he is the Director of Water Services of the City of Kansas City, Missouri and that the foregoing instrument was signed and sealed on behalf of the City of Kansas City, Missouri, and that he acknowledged said instrument to be the free act and deed of the City of Kansas City, Missouri, and that it was executed for the consideration stated therein and no other.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

John Shugart III

Notary Public

My Commission Expires: July 5, 2009

ACKNOWLEDGMENT BY COMMISSION

STATE OF MISSOURI)
)
COUNTY OF COLE)

SS

On this 7th day of May, 2007, before me personally appeared Roberta Broeker known to me, who being by me duly sworn, did say that ~~he~~/she is the Chief Financial Officer of the Missouri Highways and Transportation Commission and the seal affixed to the foregoing instrument is the official seal of said Commission and that said instrument was signed in behalf of said Commission by authority of the Missouri Highways and Transportation Commission and said Chief Financial Officer acknowledged said instrument to be the free act and deed of said Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

Linda K. Conner
Notary Public



LINDA K. CONNER
My Commission Expires
January 24, 2010
Maries County
Commission #06828941

My Commission Expires: _____

Project: _____

EXHIBIT A

PROJECT-SPECIFIC PLANS FOR
ADJUSTMENTS OR RELOCATIONS OF CITY FACILITIES
(TO BE ATTACHED)

Project: _____

EXHIBIT B

PROJECT-SPECIFIC ESTIMATE OF COSTS FOR
ADJUSTMENTS OR RELOCATION OF CITY FACILITIES WITH
ALLOCATION OF COSTS BETWEEN CITY AND COMMISSION

ORDINANCE NO. 070424

Authorizing the Director of Water Services to execute a Master Reimbursable Utility Agreement with the Missouri Highways and Transportation Commission, relating to the relocation of Water Services Department's facilities required by the Missouri Highways and Transportation Commission's highway improvement projects; and authorizing the Director of Water Services to approve project-specific documents as part of this Master Reimbursable Utility Agreement.

WHEREAS, the Missouri Highways and Transportation Commission proposes to construct and improve numerous sections of state highways in accordance with road plans filed in the offices of the County Clerk in the county in which each job is located; and

WHEREAS, in order to improve said highways and maintain City services in accordance with the filed road plans, at times it will be necessary to adjust or relocate Kansas City Water Services Department's facilities located within easements, City right-of-way, or State right-of-way; and

WHEREAS, in order to improve operations between the Kansas City, Missouri Water Services Department and the Missouri Highways and Transportation Commission, it is desirable that a Master Agreement be executed to cover the allocation of costs to adjust or relocate Water Services Department's facilities required by the Commission's highway improvement projects; and

WHEREAS, the agreement provides a method of allocation of project-specific costs for adjustment or relocation of Water Services Department's facilities between the City and the Commission, a procedure for payment between the City and the Commission based on the cost allocation, and the approval of exhibits which set forth project-specific plans and costs; and

WHEREAS, this ordinance will authorize the Director of Water Services to execute a Master Reimbursable Utility Agreement, and approve exhibits which set forth project-specific plans and costs; NOW, THEREFORE,

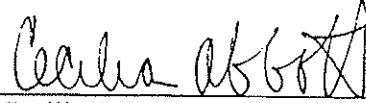
BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of Water Services is hereby authorized to execute, on behalf of the City of Kansas City, Missouri, a Master Reimbursable Utility Agreement with the Missouri Highways and Transportation Commission, providing for a method of allocation of project-specific costs for adjustment or relocation of City facilities required

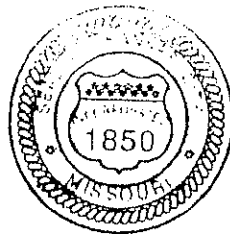
ORDINANCE NO. 070424

by the Commission's highway improvement projects, and approve exhibits which set forth project-specific plans and costs. A copy of this agreement is on file in the office of the Director of Water Services.

Approved as to form and legality:



Cecilia O'Connor Abbott
Assistant City Attorney



ated as Passed


BARNES, Mayor
City Clerk

DATE PASSED APR 12 2007