

CCO Form: BR04
Approved: 04/94 (MLH)
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Modified:

Bridge No. A4649
Rte. US-169
Clay/Jackson Co.
Job No. J4S3085C

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION UTILITY ATTACHMENT AGREEMENT

THIS AGREEMENT is made by and between City of Kansas City MO Office of Emergency Management (hereinafter, "City") and the Missouri Highways and Transportation Commission (hereinafter, "Commission").

WITNESSETH:

WHEREAS, the **City** has requested the Commission to include in the design plans and construction contract, provisions for a utility attachment on Bridge No. A4649 which is located over the Missouri River in Kansas City.

WHEREAS, the Commission is willing to provide in the design and construction of the bridge said one (1) four-inch (4") conduit(s) (hereinafter, "**bridge attachment**") on the terms herein set out.

WHEREAS, the Commission proposes to construct and improve a section of state highway designated as Job No. J4S3085C, Route US-169, Jackson and Clay County, in the vicinity of downtown Kansas City in accordance with certain road plans on file in the office of the County Clerk of Jackson County, Missouri; and

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

(1) COSTS: The **City** and the Commission hereby agree that the installation of the **bridge attachment** upon the bridge may entail upon the Commission extra maintenance and inspection costs for said bridge and may interfere, to a certain degree, with the free and unhampered traffic thereupon; and therefore, the **City** does hereby agree to compensate Commission in the premises and as a consideration for the installation of the **bridge attachment** as herein set out, to pay the Commission a lump sum amount computed as follows:

(A) Design: The **City** shall pay the costs associated with the design of the **bridge attachment** to be placed on the bridge. This cost is a lump sum design fee of \$0.00.

(B) Construction: The **City** shall pay the costs associated with the construction of the **bridge attachment** to be placed on the bridge. This amount will be based on the construction contractor's bid price for furnishing and placing the **bridge attachment** and supporting equipment on the bridge as shown in the tabulation of bids.

This cost is \$0.00.

(C) Construction Engineering: The **City** shall pay the costs associated with construction engineering of the bridge attachment which shall be 10% of the cost of item (B).

(D) Attachment: The **City** shall pay a lump sum fee to cover extra bridge maintenance and inspection costs incurred by the Commission over a fifty-year (50) period in the amount of \$0.00.

The **City** will, in all cases, be responsible for the payment of the actual costs incurred in Item 1(D) which costs shall be supplied to the **City** by letter in accordance with paragraph 2.

(2) PAYMENT PERIOD: The **City** will be advised of the amounts due when the contract is awarded. The lump sum payments for attachment costs will be due when the contract is awarded. If the **City** fails to make payment within **60** days of notification from the Commission, the Commission may terminate this Agreement and the Commission may choose not to include the attachment to Bridge No. A4649 as part of Job No. J4S3085C.

(3) PAYMENT ADJUSTMENTS: In the event of overruns or underruns in bid quantities during construction, adjustments in payments will be made in the form of additional billings to the **City** or in refunds of the overpayments in the event of underruns.

(4) PERIOD OF PERFORMANCE: This Agreement shall be for a period of fifty (50) years, beginning with the date last written in this Agreement, or for the period of maintenance of the bridge involved as a part of the state highway system, whichever is of shorter duration. The Commission will not be obligated to maintain said bridge solely for the benefit of the **City** in the event of abandonment of said bridge for any cause.

(5) INSTALLATION AND MAINTENANCE: The **bridge attachment** shall be located on the bridge in accordance with approved plans and made a part of this Agreement. Satisfactory construction shall be that which is mutually agreed upon by the parties. The **City** shall maintain the **bridge attachment** and supporting equipment, at the expense of the **City**, to the satisfaction of the Commission's chief engineer. Should either functionality or maintenance not be satisfactory, the **City** shall, immediately upon notice, do whatever is necessary to make the same satisfactory; and should the **City** fail to do so within a reasonable time, the Commission may do whatever is necessary, in the opinion of the chief engineer, to make such construction, attachment, or maintenance satisfactory, or may cause said **bridge attachment** and supporting equipment to be removed entirely from the bridge, and in either such event the **City** shall reimburse the Commission for the cost.

(6) REINSTALLATION OR REMOVAL: In the event of any repair, widening, improvement, or reconstruction of the bridge or work on it, the Commission will provide

reasonable protection to the **bridge attachment** and supporting equipment. If necessary, the Commission may require the removal and reinstallation or relocation of the **bridge attachment** and supporting equipment, and the **City** shall at its own expense remove, reinstall or relocate said **bridge attachment** and supporting equipment in accordance with plans and specifications approved by the Commission, its chief engineer, successors or assigns. Should the Commission replace the bridge with a new structure, the **City** may at its own expense place its **bridge attachment** and supporting equipment on such new bridge in accordance with plans and specifications approved by the Commission, with no additional fee charge to be made during the term of this Agreement, provided such new structure is not a part of the National System of Interstate and Defense Highways.

(7) TERMS OF AGREEMENT: The terms of this Agreement shall be subject to alteration under any law or laws of the State of Missouri which may be enacted after this Agreement takes effect relating to the location, maintenance, operation, or removal of public utility facilities within the right of way or on the structure of the state highways.

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

(9) INDEMNIFICATION: The **City** shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the **City'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** and the Commission.

(11) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

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

[Remainder of Page Intentionally Left Blank. Signatures Appear of Following Page.]

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

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

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

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

City of Kansas City MO Office of
the City Manager

By _____

By _____
Brian Platt

Title _____

Title City Manager

Attest:

Attest:

Secretary to the Commission

By _____
Marilyn Sanders

Title City Clerk

Approved as to form:

Approved as to form:

Commission Counsel

Title _____

Ordinance No. _____

Seal

ACKNOWLEDGMENT BY CITY

STATE OF _____)

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COUNTY OF _____)

On this ____ day of _____, 20__, before me appeared _____ personally known to me, who being by me duly sworn, did say that he/she is the _____ of the City of _____ and that the foregoing instrument was signed and sealed on behalf of the City of _____ and that he/she acknowledged said instrument to be the free act and deed of the City of _____ 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.

Notary Public

My Commission Expires: _____

