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Approved: 04/93 (CEH)
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Modified:

Municipal Agreement
Route: I-670
County: Jackson
Job No.: J4S3225

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION MUNICIPAL AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Kansas City, Missouri, a municipal corporation (hereinafter, "City").

WITNESSETH:

WHEREAS, the City desires enhanced bridge and roadway features beyond what the Commission requires, and is willing to participate subject to the terms and conditions herein.

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

(1) IMPROVEMENT DESIGNATION: The public improvement designated as Grand Boulevard, Jackson County, Job No. J4S3225 shall consist of replacement of the Grand Boulevard Bridge over I-670.

(2) IMPROVEMENT WITHIN CITY: The improvement within the City is located as follows:

Beginning at the intersection of eastbound Truman Road, run in a generally northerly direction along the alignment of Grand Boulevard, to westbound Truman Road. Length of improvement 0.037 miles.

(3) EXTENT OF AGREEMENT: This Agreement shall apply only to the portion of the improvement lying within the city limits as they exist on the date this Agreement is executed by the City.

(4) LOCATION: The general location of the public improvement is shown on an attached sketch marked "Exhibit A" and made a part of this Agreement. The detailed location of the improvement is shown on the plans prepared by the Commission for the above-designated route and project.

(5) PURPOSE: It is the intent of this Agreement to outline the parties' responsibilities with respect to the construction and maintenance of those improvements

to the State Highway System located within the City limits described in paragraphs (1) and (2) above and designated as Commission Job No. J4S3225. The parties' responsibilities with respect to the funding of said improvements are outlined further herein.

(6) PAYMENT RESPONSIBILITIES: With regard to payment responsibilities under this Agreement, the parties agree to contribute as follows:

(A) The City is responsible for 100% of the cost associated with the construction of the enhanced bridge and roadway aesthetic features. The currently estimated cost of additional enhancement items desired by the City to be included in this project is **four hundred seventy thousand three hundred eighty eight dollars (\$470,388)**. The details of the estimated cost breakdown may be seen in "Exhibit B," which is incorporated herein and attached hereto. The Commission is responsible for the remaining projects costs.

(B) The City shall remit a check to pay the Commission in the amount of **four hundred seventy thousand three hundred eighty eight dollars (\$470,388)**, no later than five (5) days prior to the Commission's advertisement of the project for bids. This check shall be made payable to the "Missouri Highways and Transportation Commission – Local Fund." If the City fails to make this payment, the Commission is under no obligation to construct the enhanced bridge and roadway aesthetics features as a part of this project. The City agrees that all funds deposited by the City, pursuant to this Agreement with the Commission, may be commingled by the Commission with other similar monies deposited from other sources. Any deposit may be invested at the discretion of the Commission in such investments allowed by its Investment Policy. All interest monies shall be payable to the fund and credited to the project. If the amount deposited plus any applicable credited interest with the Commission shall be less than the actual obligation of the City for this project, the City, upon written notification by the Commission, shall tender the necessary monies to the Commission to completely satisfy its obligation. If the City fails to completely satisfy its obligation, the Commission is under no obligation to construct the enhanced bridge and roadway aesthetic features as a part of this project. Upon completion of the project, any excess funds or interest credited to the City shall be refunded to the City based on its pro rata share of the investment.

(C) The City is responsible for 100% of the cost associated with the construction of the enhanced bridge and roadway aesthetic features to be constructed as a part of this project as well as any aesthetic features that may be constructed at this location in the future. The City is responsible for all costs associated with maintaining and replacing any enhanced bridge and roadway aesthetic features to be constructed as a part of this project as well as any aesthetic features that may be constructed at this location in the future.

(7) RIGHT-OF-WAY USE: The City grants the right to use the right-of-way of public roads, streets, and alleys as necessary for construction and maintenance of said

public improvement.

(8) CLOSE AND VACATE: The City shall temporarily close and vacate all streets or roads, or parts thereof, which may be necessary to permit the construction of the project in accordance with the detailed plans.

(9) RIGHT-OF-WAY ACQUISITION: No acquisition of additional right-of-way is anticipated in connection with Job No. J4S3225 or contemplated by this Agreement.

(10) UTILITY RELOCATION:

(A) The Commission and the City shall cooperate to secure the temporary or permanent removal, relocation, or adjustment of public utilities or private lines, poles, wires, conduits, and pipes located on the right-of-way of existing public ways as necessary for construction of the improvement and the cost shall be borne by such public utilities or the owners of the facilities except where the City is by existing franchise or agreement obligated to pay all or a portion of such cost, in which case the City will pay its obligated portion of the cost.

(B) The Commission shall secure the removal, relocation, or adjustment of any public or private utilities located upon private easements and shall pay any costs incurred therein.

(C) In cases of public utilities owned by the City which must be moved, adjusted, or altered to accommodate construction of this improvement, and such city-owned utilities, poles, wires, conduits, and pipes are located within the present city limits and located on an existing city street, not state highway right-of-way, but being taken over by the Commission as a part of its highway right-of-way, the City will perform the necessary removal, adjustment, alterations and relocation, and the Commission will reimburse the City except as otherwise provided. The City shall perform the removal, adjustment, alterations and relocation in accordance with the detail plans, estimates of costs and bills of materials prepared by the City in accordance with Federal Aid Policy Guide, Title 23 CFR Subchapter G, Part 645, Subpart A (FAPG 23 CFR 645A), dated December 9, 1991 and any revision of it, and approved by the Commission's district engineer, and shall perform all work and keep the records of the costs in accordance with FAPG 23 CFR 645A and its revisions. Upon the completion of any such work and on receipt by the Commission of the original and four copies of a bill for the actual costs incurred by the City in making any such removal, adjustment, alteration and relocation, the Commission shall reimburse the City for the actual cost necessitated by construction of this public improvement. The Commission's obligation toward the cost of any such removal, adjustment, alteration and relocation shall extend only to those costs incurred in accordance with FAPG 23 CFR 645A and its revisions.

(D) Should it be necessary to alter, relocate or adjust any city-owned utility facilities outside the present city limits on public right-of-way or on state highway right-of-way within or outside the city limits or within the right-of-way of a public way

other than a city street or alley, the alteration, relocation, or adjustment shall be made by the City at its cost.

(E) The City agrees that any installation, removal, relocation, maintenance, or repair of public or private utilities involving work within highway right-of-way included in this project shall be done only in accordance with the general rules and regulations of the Commission and after a permit for the particular work has been obtained from the Commission's district engineer or his authorized representative. Similarly, the City will allow no work on the highway right-of-way involving excavation or alteration in any manner of the highway as constructed, including but not limited to driveway connections, except in accordance with the rules and regulations of the Commission and only after a permit for the specific work has been obtained from the Commission's district engineer or his authorized representative. The City shall take whatever actions that are necessary to assure compliance with this Subsection.

(11) LIGHTING

(A) The installation, operation, and maintenance by the Commission of any lighting system on the public improvement covered by this Agreement shall be only in accordance with the Commission's policy on highway lighting in effect at the time of any such installation and only to the extent the Commission then deems warranted. No street lighting system shall be installed or maintained by or for the City on the improvement without approval of the Commission.

(B) The Commission will, at its cost and expense, install, operate, and maintain basic highway intersection or interchange lighting at warranted locations on the improvement. The construction, installation, and maintenance of any other or further lighting system on the public improvement covered by this Agreement shall be only in accordance with the Commission's policy on highway lighting in effect, and to the extent deemed warranted by the Commission, at the time of any such installation. No lighting system shall be installed or maintained by the City on the improvement without approval of the Commission.

(C) Continuous street and pedestrian lighting on Grand Boulevard, including lighting on the bridges over I-670, shall be maintained and electrical costs paid for by the City.

(D) The City shall maintain, at the City's cost, all lighting owned by the City within the Commission's limited access right of way. The lighting shall be maintained in accordance with the Commission's Traffic Highway Lighting manual, a copy of which is available to the City. The City shall pay the cost of electrical current for the operation of the lighting. The City shall provide and maintain power at the locations designated.

(E) The City may have the maintenance work required pursuant

to this Agreement performed by either its own maintenance personnel or by contract with qualified individuals or companies approved by the Commission to provide a fully functional and dependable lighting system.

(F) The City shall respond to any emergency situation in which repair or maintenance of damage to the lighting is required immediately to correct a dangerous condition or restore the safe, unobstructed flow of traffic on the improvement.

(G) In order to coordinate maintenance activities on the improvement, the City shall notify the Commission either by telephone, telefax, or in writing, prior to performing maintenance work within Commission right of way. Such notification shall be made to the District Engineer or a designated assistant, and shall include the location and nature of the work to be performed. Any maintenance activities done by the City which involves closing one or more of the through lanes of the improvement, affects the safety of the traveling public, or which will cause permanent changes to the configuration of the improvement, may require a permit from the Commission. The City will be informed of whether or not a permit is required at the time the City notifies Commission of the proposed maintenance activities. The City shall comply with any additional condition placed upon the issuance of the permit.

(H) The City shall be responsible for any utility locate request information near Grand Boulevard Bridge and I-670 concerning the cable(s) for the lighting system, including the pullbox(es) and conduit(s).

(12) TRAFFIC CONTROL DEVICES: The installation, operation and maintenance of all traffic signals, pavement markings, signs, and devices on the improvement, including those between the highway and intersecting streets shall be under the exclusive jurisdiction and at the cost of the Commission. The City shall not install, operate, or maintain any traffic signals, signs or other traffic control devices on the highway or on streets and highways at any point where they intersect this highway without approval of the Commission.

(13) DRAINAGE: The Commission will construct drainage facilities along the improvement and may use any existing storm and surface water drainage facilities now in existence in the area. The City shall be responsible for receiving and disposing of storm and surface water discharged from those drainage facilities which the Commission constructs within the limits of highway right-of-way to the extent of the City's authority and control of the storm sewer facilities or natural drainage involved.

(14) PERMITS: The Commission shall secure any necessary approvals or permits from the Surface Transportation Board, the Public Service Commission of Missouri, or any other state or federal regulating authority required to permit the construction and maintenance of the highway.

(15) COMMENCEMENT OF WORK: The Commission shall construct the highway in accordance with final detailed plans approved by the Federal Highway

Administration (or as they may be changed from time to time by the Commission with the approval of the FHWA) at such time as federal and state funds are allocated to the public improvement in an amount sufficient to pay for the federal and state government's proportionate share of construction. The obligation of the Commission toward the actual construction of the public improvement shall be dependent upon the completion of plans in time to obligate federal funds for such construction, upon approval of the plans by the FHWA, upon the award by the Commission of the contract for the construction, and upon the approval of the award by the FHWA.

(16) MAINTENANCE:

(A) Except as provided in this Agreement, upon completion of the public improvement, the Commission will maintain all portions of the improvement within the Commission owned right-of-way. Maintenance by the Commission shall not in any case include maintenance or repair of sidewalks whether new or used in place, water supply lines, sanitary or storm sewers (except those storm sewers constructed by the Commission to drain the highway), city-owned utilities within the right-of-way or the removal of snow other than the machine or chemical removal from the traveled portion of the highway. The City shall be responsible for the cleaning, snow removal and debris removal on the sidewalks for the section on Commission owned right of way.

(B) When it is necessary to revise or adjust city streets, the right-of-way acquired for these adjustments and connections will be deeded to the City.

(C) The City shall inspect and maintain the sidewalks 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.

(D) The City shall inspect and maintain the enhanced bridge and roadway aesthetics including but not limited to graffiti removal on abutments, traffic barriers, coatings and damages to the handrails and fence. If the Commission inspects the enhanced bridge and roadway aesthetics and deems that repairs are necessary, the City shall make the necessary repairs in a timely manner upon written notification by the Commission's representative. If the City fails to make the necessary repairs in a timely manner, the Commission retains the right to remove the enhanced bridge and roadway aesthetics and replace with necessary apprentices, and bill the City for all costs incurred.

(E) The term sidewalk also refers to multi-use paths used for pedestrian and other non-vehicle use.

(17) ACCEPTED WITHIN HIGHWAY SYSTEM: Effective upon execution of this Agreement, the Commission temporarily accepts the portion of the City street

system described in this Agreement as part of the State Highway System for the purposes of this project. However, during the construction period contemplated in this Agreement:

(A) The Commission will assume no police or traffic control functions not obligatory upon Commission immediately prior to the execution of this Agreement, and

(B) The City shall perform or cause to be performed normal maintenance on the project site.

(18) CITY TO MAINTAIN: Upon completion of construction of this improvement, the City shall accept control and maintenance of the improved City street that was temporarily accepted as part of the State Highway System for the purposes of this project pursuant to paragraph (17) above and shall thereafter keep, control, and maintain the same as, and for all purposes, a part of the City street system at its own cost and expense and at no cost and expense whatsoever to the Commission. All obligations of the Commission with respect to the City street system under this Agreement shall cease upon completion of the improvement.

(19) POLICE POWERS: It is the intent of the parties to this Agreement that the City shall retain its police powers with respect to the regulation of traffic upon the improvement contemplated. However, the City will enact, keep in force, and enforce only such ordinances relating to traffic movement and parking restrictions as may be approved by the Commission and as are not in conflict with any regulations for federal aid. The Commission shall not arbitrarily withhold approval of reasonable traffic regulations, signs, and markings which will permit the movement of traffic in accordance with accepted traffic regulation practices.

(20) RESTRICTION OF PARKING: Since the improvement is being designed and constructed to accommodate a maximum amount of traffic with a minimum amount of right-of-way, the City shall take whatever actions that are necessary to prevent parking upon the highway or any part of the area of the highway right-of-way within the limits of the improvement.

(21) OUTDOOR ADVERTISING: No billboards or other advertising signs or devices or vending or sale of merchandise will be permitted within the right-of-way limits of the project and the City shall take whatever actions that are necessary to enforce this Section.

(22) WITHHOLDING OF FUNDS: In the event that the City fails, neglects, or refuses to enact, keep in force or enforce ordinances specified or enacts ordinances contrary to the provisions in this Agreement, or in any other manner fails, neglects or refuses to perform any of the obligations assumed by it under this Agreement, the Commission may, after serving written request upon the City for compliance and the

City's failure to comply, withhold the expenditure of further funds for maintenance, improvement, construction, or reconstruction of the state highway system in the City.

(23) FEDERAL HIGHWAY ADMINISTRATION: This Agreement is entered into subject to approval by the Federal Highway Administration, and is further subject to the availability of federal and state funds for this construction.

(24) INDEMNIFICATION:

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

(B) The City will require any contractor procured by the City 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 the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$500,000 per claimant and \$3,000,000 per occurrence) 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.

(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.

(25) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment approved and signed by representatives of the City and Commission, respectively, each of whom being duly authorized to execute the contract amendment on behalf of the City and Commission, respectively.

(26) COMMISSION REPRESENTATIVE: The Commission's District Engineer for Kansas City 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.

(27) CITY REPRESENTATIVE: The City's Director of Public Works is designated as the City's representative for the purpose of administering the provisions of this Agreement. The City's representative may designate by written notice other persons having the authority to act on behalf of the City in furtherance of the performance of this Agreement.

(28) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

(A) To the City
Director of Public Works
20th Floor, City Hall
414 East 12th Street
Kansas City, MO 64106

(B) To the Commission
District Engineer, Kansas City District
Missouri Department of Transportation
600 Northeast Colbern Road
Lee's Summit, MO 64086

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

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

(30) 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 the contract.

(31) 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.

(32) 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.

(33) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(34) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

[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 this ____ day of _____, 20__.

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

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

City of Kansas City, Missouri

By: _____

By: _____

Title: _____

Title: _____

ATTEST:

ATTEST:

Secretary to the Commission

By: _____

Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Commission Counsel

By: _____

Title: _____

Ordinance Number _____