



MoDOT District: Southeast
MoDOT Agreement Administrator:
eAgreement No.: 2023-04-78540

Jake Butler

CCO Form: TR39
Approved: 10/03 (BDG)
Revised: 03/23 (GH)
Modified: 06/23 (GH)

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION LIGHTING MAINTENANCE AGREEMENT

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

WITNESSETH:

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

(1) PURPOSE AND SCOPE: It is the purpose of this Agreement to outline the responsibilities of the Commission and the City for installation and lighting maintenance of the portion of Route US 61

(2) INSTALLATION OF LIGHTING:

(A) The Commission shall install 29 lighting assemblies along US 61 from approximately 300' south of Pepper Alley to Rte. D (Independence St.). The City will incur the installation expense of the lighting assemblies. The Commission shall be responsible for all maintenance and traffic control devices on and along US 61 from approximately 300' south of Pepper Alley to Rte. D (Independence St.), with the exception of the lighting assemblies.

(B) The City shall maintain, at the City's cost, all basic intersection and interchange lighting within the Commission's limited access right of way. The lighting shall be maintained in accordance with the Missouri Department of Transportation's Engineering Policy Guide. The City shall pay the cost of electrical current for the operation of the lighting, basic intersection lighting and interchange lighting. The City shall provide and maintain power at the locations designated.

(3) MAINTENANCE BY CONTRACT:

(A) 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.

(B) 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.

(4) MAINTENANCE BY CITY WITHIN COMMISSION RIGHT OF WAY: 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's Operational Support 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.

(5) 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 representative of the City and the Commission.

(6) UTILITY LOCATING RESPONSIBILITY: The City shall be responsible for any utility locate request information along US 61 from approximately 300' south of Pepper Alley to Rte. D (Independence St.) concerning the cable(s) for the lighting system, including the pullbox(es) and conduit(s).

(7) 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 to each of the City Representatives, additional persons having the authority to act on behalf of the Commission in the performance of this Agreement.

(8) CITY REPRESENTATIVE: The Mayor for the City is designated as the City's representative for the purpose of administering the provisions of this Agreement. The City Representatives may designate by written notice to the Commission's Representative additional persons having the authority to act on behalf of the City or a City Department in the performance of this Agreement.

(9) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given upon

delivery by First Class, Priority or Express United States mail, postage prepaid, or upon actual receipt by courier, personal or facsimile delivery, addressed as follows:

(A) To the Commission:

Mark Croarkin, District Engineer
Missouri Department of Transportation
2675 N. Main St.
Sikeston, MO 63801
Fax: (573) 472-5219

(B) To the City:

Dwain Hahs, City Mayor
City of Jackson
101 Court St
Jackson, MO 63755
Fax: (573) 243-4588

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.

(10) 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.

(11) 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.

(12) 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 is required or 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.

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

(14) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations or for convenience by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(15) AUDIT OF RECORDS: The City must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final payment made under this Agreement.

(16) 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.

(17) 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.

(18) 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.

(19) COMMISSION RIGHT OF WAY: All improvements made within the state-owned right-of-way shall become the Commission's property.

(20) NO INTEREST: By contributing to the cost of the maintenance of this project or improvement, the City gains no interest in the constructed lighting improvements whatsoever. The Commission shall not be obligated to keep the constructed lighting in place if the Commission, in its sole discretion, determines removal or modification of the lighting is in the best interests of the state highway system. In the event the Commission decides to remove the lighting improvements, the City shall not be entitled to a refund of the funds contributed by the City pursuant to this Agreement.

(21) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

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

Executed by City this _____(date).

Executed by Commission this _____(date).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

City of Jackson

By _____

Title _____

Title **City Mayor**

ATTEST:

ATTEST:

By _____
Secretary to the Commission

By _____

Title **City Clerk**

Ordinance No. _____

APPROVED AS TO FORM:

By _____
Commission Counsel

