

CCO Form: TR53
Approved: 05/16 (BDG)
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Modified:

MoDOT District: Southeast District
MoDOT Agreement Administrator: Jake Butler
eAgreement No.: 2024-11-85789

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION INSTALLATION OF ROADSIDE FLASHERS FOR CITY/COUNTY OPERATION AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission"), whose address is P.O. Box 270, 105 W. Capitol, Jefferson City, Missouri 65102, and City of Jackson (hereinafter, "Applicant"), whose address is 101 Court St Jackson, MO 63755.

WITNESSETH:

WHEREAS, the Commission and the Applicant agree on the roadside flasher installation.

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

(1) LOCATION: The general location of the roadside flasher to be installed pursuant to this Agreement is at the intersection of US 61 and Deerwood Drive in Jackson, Missouri.

(2) INSTALLATION: The roadside flasher shall include a breakaway post assembly, a flashing beacon, power supply equipment, and all necessary wiring and other equipment required to complete the installation in accordance with Commission requirements. The Applicant shall provide plans with the specific details of this installation for approval by the Commission. All costs associated with this installation shall be borne by the Applicant. These signs shall meet Missouri Department of Transportation standards.

(3) PERMIT: The Applicant shall obtain a permit from the Missouri Department of Transportation's District Office for the roadside flasher installation.

(4) BOND: The Applicant shall secure sufficient bond, as determined by the Commission's District Engineer or his authorized representative, for the construction of the proposed improvement on Commission right-of-way.

(5) OWNERSHIP AND MAINTENANCE: Upon completion of this installation, the Applicant shall own and be responsible for maintenance of all improvements that are made as part of the permit, and maintain those improvements the same as, and for all purposes, a part of the Applicant's street system at its own cost and expense and at no cost and expense whatsoever to the Commission. The Applicant shall maintain these items in accordance with any applicable provisions contained in the Commission's maintenance manual and in an aesthetically pleasing condition that will be safe to the

general public. The Applicant shall coordinate any planned maintenance activities that are accomplished pursuant to this Agreement with the Commission's representative and shall give a minimum of 1 week notice prior to any intended maintenance activity. In the event the Commission determines that the Applicant is not properly maintaining these items, the Commission will send a notice to the Applicant describing the nature of the condition that needs to be remediated. If the safety function of the roadway features are in any way deemed by the Commission to present an unsafe condition to vehicular or pedestrian traffic the Applicant shall make immediate accommodations to address the unsafe condition. Any modifications to the flasher equipment maintained by the Applicant shall be made by the Applicant after approval by the Commission.

(6) OPERATING COST: All initial and future electrical operating costs shall be borne by the Applicant.

(7) REMOVAL: If the Applicant fails to comply with the provisions stated herein regarding the operation and financial responsibilities, the Commission may remove the roadside flasher installation. If the Commission determines the roadside flasher is no longer justified, the Commission may remove same. In addition, the Commission may remove the roadside flasher from its right of way if the Commission, in its sole discretion, determines that the Applicant has abused the use of the roadside flasher. Abuse includes, but is not limited to, repeated activation of the roadside flasher when circumstances do not warrant its use. In addition, if the Commission, in its sole discretion, determines that the removal of the roadside flasher from the Commission's right of way is in the best interests of the state highway system, the Commission may remove the roadside flasher.

(8) OPERATION: The roadside flasher will be operational year-round when actuated by the pedestrian button.

(9) UTILITY LOCATING RESPONSIBILITY: The Applicant shall be responsible for any utility locate request information at the intersection(s) concerning any equipment not owned by the Commission.

(10) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, with the exception of hours of operation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Applicant and the Commission. Changes in hours of operation shall be submitted in writing to the Missouri Department of Transportation's District Office for approval.

(11) COMMISSION REPRESENTATIVE: The Commission's chief engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement.

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

(13) 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.

(14) INDEMNIFICATION: To the extent allowed or imposed by law, the Applicant 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 Applicant's wrongful or negligent performance of its obligations under this Agreement.

(15) INSURANCE:

(A) The Applicant is required or will require any contractor procured by the Applicant 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 insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$600,000 per claimant and \$4,000,000 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.

(B) 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.

(16) 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 Applicant.

(17) 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.

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

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

(20) CONTINUING DURATION: The term of this Agreement will be of a continuing duration until terminated pursuant to the terms of this Agreement or by mutual consent of the parties.

(21) NO ADVERSE INFERENCE: This Agreement shall not be construed more strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

(22) 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.

(23) NO INTEREST: By contributing to the cost of the maintenance of this roadway, the Applicant gains no property interest in the roadway features or roadway whatsoever. The Commission shall not be obligated to keep the constructed roadway features or roadway in place if the Commission, in its sole discretion, determines removal or modification of the roadway is in the best interests of the state highway system or the Commission.

(24) NON-LIABILITY OF COMMISSION PERSONNEL: Neither the commissioners, nor any other officer, official, employee, or agent of the Commission or Missouri Department of Transportation shall be *personally* responsible for any liability arising under or growing out of this Agreement.

(25) NOT A JOINT VENTURE: Nothing contained in this Agreement shall be deemed to constitute the Commission and Applicant as partners in a partnership or joint venture for any purpose whatsoever.

(26) 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.

(27) SUCCESSORS AND ASSIGNS: The provisions of this Agreement shall apply to and be binding upon the parties executing this Agreement, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including officers, employees, agents, servants, corporations, and any persons acting under, through, or for the parties agreeing hereto.

[Remainder of Page Intentionally Left Blank]

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

Executed by Applicant this _____ (date).

Executed by Commission this _____ (date).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

City of Jackson

By: _____

By: _____

Title: _____

Title: _____

ATTEST:

By: _____
Secretary to the Commission

APPROVED AS TO FORM:

ATTEST:

By: _____
Commission Counsel

By: _____

Title: _____

Ordinance No. _____