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Region: SW - Southwest

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM ON CALL WORK ZONE ENFORCEMENT PROGRAM AGREEMENT

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

WITNESSETH:

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

PURPOSE: The Commission has authorized funds to be used to support Statewide Transportation Improvement Program (hereinafter, "STIP") On Call Work Zone Enforcement activities. The purpose of this Agreement is to grant the use of such funds to the City.

(2) ACTIVITY: The funds which are the subject of this Agreement are provided to support law enforcement work zone activities to further STIP On Call Work Zone Enforcement.

(3) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT) 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 MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities 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. The City shall cause insurer to increase the insurance amounts in accordance with those 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.

(4) 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.

(5) COMMISSION REPRESENTATIVE: This 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's Chief of Police is designated as the City's representative for the purpose of administering the provisions of this Agreement. Further, the City's Chief of Police shall have the authority to execute Program Orders in accordance with this Agreement.

(7) NONDISCRIMINATION CLAUSE: The City shall also comply with all state and federal statutes applicable to the City relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq*.); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq*.).

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

(9) 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.

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

(11) FUNDING/REIMBURSEMENT:

(A) General: With regard to work under this Agreement, the City agrees that funds to implement work zone law enforcement activities shall only be available for reimbursement of eligible costs which have been incurred by the City. The City shall

supply to the Commission copies of all bid information, purchase orders, invoices and, for hours worked, certified payroll (on Program Agreements that include salaries). Any costs incurred by the City prior to authorization and notification to proceed from the Commission are **not** reimbursable costs. The Commission shall not be responsible for any costs associated with the activity herein unless specifically identified in this Agreement or subsequent written amendments or Task Orders.

(B) Peace Officer Standards and Training: Law enforcement work performed by a duly licensed, Peace Officer Standards and Training certified law enforcement officer will be reimbursed.

(12) EQUIPMENT:

(A) Procurement: The City may use its own procurement regulations which reflect applicable state/local laws, rules & regulations provided they adhere to the following:

(1) Equipment with a cost of $3,000 or more must be purchased on a competitive bid basis, or purchased through use of state cooperative procurement.

(2) Price or rate quotations shall be solicited from at least three (3) sources.

(3) All procurement transactions, regardless of whether by sealed bids or by negotiation, shall be conducted in a manner that provides maximum open and free competition.

(4) The City shall have a clear and accurate description of the item to be purchased. Such description shall not, in competitive procurements, contain features that unduly restrict competition. A "brand name or equal" description may be used as a means to define the performance or other requirement of procurement.

(5) If for some reason the low bid is not acceptable, the City must have written approval from the MHTC prior to bid approval and purchase.

(6) The City will make a good faith effort to utilize minority and women owned businesses within resource capabilities when procuring goods and services.

(B) Disposition: The City shall make written request to the MHTC for instructions on the proper disposition of all items of equipment provided under the terms of this contract with a cost of $3,000 or more. City must keep and maintain equipment with a cost of under $3,000 until it is no longer useful for its originally intended purpose.

(C) Replacement: No equipment may be funded on a replacement basis. Participation in equipment and manpower projects must be in addition to the City's previous twelve months authorized strength.

(13) ACCOUNTING: The City shall maintain all documentation in file for audit review; failure to provide supporting documentation at the time of audit could result in

questioned costs. The City must document the following: (1) Receipt of funds, (2) date and amount paid to officers, (3) officer's timesheet (regular hours and overtime hours). Documentation shall be kept available for inspection for representatives of the MHTC for a period of three years following date of final payments. Copies of such records shall be made available upon request.

(14) PROGRAM ORDER: On Call Work Zone Enforcement funding will be conducted under a Program Order. Each Program Order must be executed by the Commission and the City's Representative. Each Program Order shall contain, but is not limited to the following:

(A) Program Order Job Number(s).

(B) Funds available for the completion of the Program Order.

(C) Starting and completion dates for the Program Order.

(15) LIMITS ON OVERTIME: The City will not be eligible for reimbursement for any individual law enforcement officer working under this grant where said officer is claiming to have worked as a law enforcement officer for more than 16 hours in any 24 hour period.

(16) USE OF FUNDS: Any employee of the City whose salary or wages are paid in whole or in part with federal funds is prohibited from participating in certain partisan political activities, including, but not limited to, being a candidate for elective office pursuant to Title 5 United States Code (hereinafter, "U.S.C."), Sections 1501-1508. If an employee of the City participates in activities prohibited by the Hatch Act, the City shall no longer pay that employee's salary or wages with federal funds unless the requirements of 5 U.S.C. Sections 1501-1508 are not applicable to that employee pursuant to 5 U.S.C. Section 1502(c).

(17) 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.

(18) 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.

(19) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The City shall refund any overpayments as determined by the final audit.

(20) 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.

(21) EMPLOYEES ONLY: The funding granted by the Commission to the City under this Agreement extends only to reimbursement for work zone enforcement by employees of the City covered by the City worker's compensation plan.

(22) DURATION AND EXTENSION: Unless otherwise terminated, this Agreement shall be in effect for five years from the execution of this Agreement. Upon the approval of both parties, the terms and conditions of this Agreement are renewable for an additional two, one year extensions from the date of the expiration of the Agreement. Any extension shall be memorialized in an appropriate Supplemental Agreement and executed by the duly authorized representatives of the parties.

(23) 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.

[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

By_____

Title_____

ATTEST:

_____
Secretary to the Commission

Approved as to Form

_____
Commission Counsel

CITY OF JOPLIN, MISSOURI

By_____

Title_____

By_____ _____

Title _____

By _____

Title_____

ATTEST:

By _____

Title_____

Approved as to Form:

_____

Title _____

Ordinance No _____