

ST. CHARLES COUNTY
PORT AUTHORITY WORK SESSION

SEPTEMBER 27, 2023
8:00 AM

ST. CHARLES COMMUNITY COLLEGE
BUILDING 1 SCM, ROOM 1210 (STUDENT SERVICES CONF. ROOM)
4601 MID RIVERS MALL DR.
COTTLEVILLE, MO 63376

Agenda

CALL TO ORDER

ROLL CALL

INTRODUCTION OF GUESTS

CLOSED MEETING

- . NOTICE IS HEREBY GIVEN THAT, SUBJECT TO A MOTION DULY MADE AND ADOPTED, THE ST. CHARLES COUNTY PORT AUTHORITY WILL HOLD A CLOSED MEETING FOR THE PURPOSE OF DEALING WITH MATTERS RELATING TO MISSOURI STATUTE RSMO 610.021.2 AND RSMO 610.021.3 (CLOSED MEETINGS AND CLOSED RECORDS AUTHORIZED WHEN, EXCEPTIONS)

PUBLIC COMMENT

NEW BUSINESS

- . STRATEGIC PLAN ASSESSMENT
- . BUDGET
- . FUNDING SOURCES
- . MEETING SCHEDULE AND CONTENT
- . GOALS AND PRIORITIES

BOARD ACTIONS

- . ACTION ITEM NO. 1 - RESOLUTION 23-09 - RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A FISCAL YEAR 2024 INTERGOVERNMENTAL PORT AID AGREEMENT FOR CAPITAL IMPROVEMENT PROJECTS WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

Documents:

[230927- SCCPA RESOLUTION 23-09 - AUTHORIZING CONTRACT WITH MHTC FOR CIP FUNDS.PDF](#)
[EXHIBIT A TO SCCPA RESOLUTION 23-09 - 2023-2024 MHTC PA CIP GRANT CONTRACT.PDF](#)

- . ACTION ITEM NO. 2 - RESOLUTION 23-10 - RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL PORT AID AGREEMENT FOR 2023-2024 ADMINISTRATIVE EXPENSES WITH THE MISSOURI HIGHWAY AND

TRANSPORTATION COMMISSION AND ACCEPTING GRANT FUNDS THEREUNDER

Documents:

[230927- SCCPA RESOLUTION 23-10 - APPROVING THE FISCAL YEAR 2024
MHTC ADMIN GRANT CONTRACT, AUTHORIZING SIGNATURE, AND
ACCEPTING FUNDS.PDF](#)
[EXHIBIT A TO SCCPA RESOLUTION 23-10 - 2023-2024 MHTC PA
ADMINISTRATIVE FUNDING CONTRACT.PDF](#)

AGENDA SUGGESTIONS FOR NEXT MEETING - OCTOBER 11, 2023

MEETING ADJOURNMENT

RESOLUTION 23-09

A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A FISCAL YEAR 2024 INTERGOVERNMENTAL PORT AID AGREEMENT FOR CAPITAL IMPROVEMENT PROJECTS WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

WHEREAS, the St. Charles County Port Authority (“Port Authority”) is a port authority authorized under Chapter 68 of Revised Statutes of Missouri (“RSMo.”) and Chapter 170 of the Ordinances of St. Charles County, Missouri (“OSCCMo.”), as amended; and

WHEREAS, the Board of Commissioners (“Board”) is the governing body of the Port Authority; and

WHEREAS, the Missouri Highway and Transportation Commission (“MHTC”) is authorized to make grants for capital improvements projects to port authorities; and,

WHEREAS, the Board desires that the Port Authority enter into an agreement with the MHTC, the purpose of which is for the MHTC to provide financial assistance to the Port Authority, pursuant to Section 68.035.2 RSMo, and to state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed aid in the Port Authority’s project; and

WHEREAS, the project shall entail feasibility analysis and land acquisition for new river services; and

WHEREAS, pursuant to Section 68.025.1(11) RSMo., the Port Authority has the power to enter into any agreement with any other states, agencies, authorities, commissions, municipalities, persons, corporations, or the United States, to effect any of the provisions contained in Chapter 68 RSMo.; and

WHEREAS, Section 6.2 of the By-Laws of the St. Charles County Port Authority, requires that “All contracts executed by the Board shall be formally approved by resolution of the Board and signed on behalf of the Board by the Chairperson, Vice Chairperson, or Executive Director, after such approval.”; and

WHEREAS, pursuant to Section IV.4 of the Spending Policy for the Port Authority (“Spending Policy”), any funding agreements issued with the grant of State and Federal Funding must be presented to the Board for approval prior to execution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE ST. CHARLES COUNTY PORT AUTHORITY AS FOLLOWS:

1. That the Board hereby authorizes Chairman P. Roger Ellis to execute an intergovernmental agreement with the Missouri Highways and Transportation Commission for the MHTC to provide financial assistance to the Port Authority, pursuant to Section 68.035.2 RSMo, for feasibility analysis and land acquisition for new river services (the “Agreement”).

2. That the Agreement shall be substantially the same in form and content as that attached hereto as Exhibit A. The Chairman is further authorized to execute any amendments of the Agreement as may be required.
3. The Board hereby authorizes staff to work with all parties necessary to affect the purpose of this resolution and to take all other actions necessary to effectuate the intent and purpose of this Resolution.
4. This Resolution shall be in full force and effect immediately from and after its adoption as provided by law and the Agreement shall be valid upon its execution as required by Chapter 70 RSMo.

**ADOPTED THIS 27th DAY OF SEPTEMBER, 2023.
ST. CHARLES COUNTY PORT AUTHORITY**

Roger Ellis, Chairperson

ATTEST:

Monica Combest, Vice Chairperson

Vote:

Aye: _____

Nay: _____

Abstain: _____

Absent: _____

Not Present at vote: _____

EXHIBIT A

CCO Form: MO29
Approved: 05/98 (RMH)
Revised: 02/23 (MWH)
Modified:

Project No. WCI24000211

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION PORT AID AGREEMENT FOR CAPITAL IMPROVEMENT PROJECTS

This AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and St. Charles County Port Authority (hereinafter, "Grantee").

WITNESSETH:

WHEREAS, the purpose of this Agreement is to provide financial assistance to the Grantee, pursuant to section 68.035.2 RSMo, and to state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

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

(1) SCOPE OF WORK: Grantee agrees to undertake, carry out, and complete the project, as described in Grantee's Project Description Statement, dated September 13, 2023, a copy of which is attached as Appendix A to this Agreement and incorporated herein by reference, within the specified project completion time frame in accordance with the terms and conditions of this Agreement.

(2) AMOUNT OF GRANT: The parties to this Agreement agree that the Commission's financial share for this project shall not exceed Eighty percent (80%) of the total cost of this project, or Five Hundred Forty Thousand dollars (\$540,000.00). Funds made available to the Grantee are subject to appropriations made by the General Assembly, gubernatorial release of such funds appropriated to the Commission, and Commission decisions regarding the allocation of such funds. In the event state funds available to the Commission for port authority capital improvement projects are reduced so that the Commission is incapable of completely satisfying its obligations to all the Grantees for the current state fiscal year, the Commission may recompute and reduce this grant. The designation of this grant does not create a lump sum quantity contract, but rather only represents the amount of funding available for qualifying expenses. In no event will the Commission provide the Grantee funding for improvements or work that are not actually performed.

(3) COMPLETION OF PROJECT BY GRANTEE:

(A) Permits: The Grantee shall secure all necessary state and federal approvals or permits required to accomplish the construction and maintenance of the

project.

(B) Commencement of Work: The Grantee shall commence work on the project upon receipt of written notice to proceed from the Commission.

(C) Project Efficiency: The Grantee will proceed with the project in a sound, economical and efficient manner in order to accomplish the items listed in the Project Description Statement, Appendix A, within the prescribed time frame.

(D) Compliance With Laws: The Grantee shall proceed with the project in accordance with the provisions contained herein, the Project Description Statement, Appendix A, and the attachments hereto, and all applicable laws and regulations.

(E) Information Furnished by the Grantee: The Grantee shall submit to the Commission such data, reports, contracts, records, documents, and other information relating to the project as the Commission may require at any time.

(F) Project Inspection: The Commission shall have the right to inspect and review the work performed on this project.

(G) Notification of Change of Conditions: The Grantee shall immediately notify Commission, in writing, of any change in conditions or law or of any event which may significantly impair its ability to carry out the project in accordance with the provisions of this contract.

(4) PROJECT PERIOD: This Agreement provides funding to the Grantee for the Fiscal Year 2024 (July 1, 2023 to June 30, 2024).

(5) PROJECT REQUIREMENTS: In accordance with section 68.055.2 RSMo, Grantee costs incurred with the project phases listed below must have prior written concurrence from Commission to be eligible for funding, including local match requirements, through this Agreement.

(A) Advertisement for Professional Services

(B) Notice to Proceed for Professional Services Contract

(C) Procurement, whether purchased or donated by property owner, of any real property rights, including but not limited to leases, easements, and fee simple title.

(D) Plans, Specifications, and Engineer's Estimate (PS&E) for Contractor Services.

(E) Advertisement for Contractor Services

(F) Contractor Award

(G) Contractor Notice to Proceed

(6) AUDIT OF RECORDS: The Grantee 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.

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

(8) PROGRESS REPORTS AND PAYMENTS:

(A) At intervals, not exceeding twice monthly, Grantee shall furnish to the Commission statements or vouchers indicating the items completed on the project and the cost thereof for the preceding period. The Grantee shall clearly indicate on this statement or voucher the amount of the Grantee's obligation and the amount of the Commission's obligation. Grantee's reimbursement request shall include supporting documentation for each expense to verify the following:

1. The goods or service purchased is within the **Project Description Statement**, Appendix A;
2. The vendor who incurred the expenses; and
3. The amount charged for the goods or services.

(B) Grantee shall submit proof of payment to the Commission within thirty (30) days for each expense reimbursed in Paragraph (8)(A). Additional invoices will not be processed by the Commission until the Grantee's documentation is received by and acceptable to the Commission.

(C) The Commission will promptly reimburse the Grantee for eligible expenses on a timely basis subject to Paragraphs (8)(A) and (8)(B).

(D) Progress reports outlining the work completed during the preceding period shall be attached to the statement or voucher requesting payment by the Commission. This report will identify any problems or issues which might prevent the Grantee from the successful accomplishment of the Project Description Statement, Appendix A, by the end of the project period.

(E) Within forty-five (45) days of final inspection of the project funded under this grant, the Grantee shall provide to the Commission a final payment request

and all financial performance and other reports as required by the conditions of this grant.

(F) The Commission may, in its sole discretion, perform a final audit of project costs. The Commission shall reimburse the Grantee any moneys due. The Grantee shall refund any overpayments as determined by the final audit.

(9) REQUEST FOR EXTENSION OF TIME FOR COMPLETION OF PROJECT: If the Grantee is unable to complete the project as planned, the Grantee may submit a written request to the Commission for an extension of the time to complete the project. This written request must be made no later than March 1, 2024. The request shall identify in detail the reason(s) why an extension is necessary. Upon receipt of a request for an extension of time, the Commission will consider the request and notify the Grantee in writing of the Commission's decision as soon as possible.

(10) INDEMNIFICATION:

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

(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.

(11) 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 Grantee and the Commission.

(12) COMMISSION REPRESENTATIVE: The Department of Transportation's Multimodal Operations Director 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.

(13) GRANTEE'S REPRESENTATIVE: The Grantee, as designated in paragraph (14)(A), will designate by written notice to the Commission all other persons having the authority to act on behalf of the Grantee in furtherance of the performance of this Agreement.

(14) 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 Grantee:
St. Charles County Port Authority, Board President
201 N. Second Street, Suite 560
St. Charles, MO 63301
Facsimile No: (696) 949-7336

(B) To the Commission:

Multimodal Operations Director
105 West Capitol Avenue
Jefferson City, MO 65102
Facsimile No: 573.526.4709

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.

(15) NONDISCRIMINATION CLAUSE: The Grantee shall comply with all state and federal statutes applicable to the Grantee 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.*).

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

(17) BANKRUPTCY: Upon filing for any bankruptcy or insolvency proceeding by or against the Grantee, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the Grantee responsible for damages.

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

(19) 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.

(20) 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.

(21) NONSOLICITATION: The Grantee warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Grantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

(22) DISPUTES: Any disputes that arise under this Agreement shall be decided by the Commission or its representative.

(23) PROFESSIONAL SERVICES BY COMPETITIVE PROPOSALS: Contracts for architectural, engineering and/or land surveying services, as defined in section 8.287 RSMo, shall be procured by competitive proposals, and the procurement process shall comply with sections 8.285-8.291 RSMo. In accordance with section 68.055.2, Grantee must post public announcement of the invitation for proposals on Commission's website a minimum of twenty-one (21) days.

(24) NOTICE TO PROCEED: After the Commission receives copies of the executed construction contract between the Grantee and the contractor, the performance and payment bonds, and any other documentation as required by this Agreement, the Commission will authorize the Grantee to issue a notice to proceed with construction.

(A) The Grantee shall issue a notice to the contractor within ten (10) days of authorization by the Commission, unless otherwise approved by the Commission.

(B) Any construction work performed prior to the Grantee's issuance of a Notice to Proceed shall not be eligible for funding participation.

(25) CONSTRUCTION OBSERVATION/INSPECTION REQUIREMENTS: In conjunction with submittal of the Notice to Proceed documentation, the Grantee shall provide a construction observation/inspection program setting forth a format for accomplishment of resident observation, construction inspection and overall quality assurance.

(26) CONSTRUCTION PROGRESS AND INSPECTION REPORTS: The Grantee shall provide and maintain adequate, competent and qualified engineering supervision and construction inspection at the project site during all stages of the work to ensure that the completed work conforms with the project plans and specifications. Project oversight by the Commission's project manager or other personnel does not relieve the Grantee of this responsibility.

(A) The Grantee shall require the resident project representative to keep

daily construction records and shall submit to the Commission monthly the construction progress and inspection report, completed by the resident project representative. A weekly summary of tests completed shall be included.

(B) Prior to final acceptance, the Grantee shall provide to the Commission a testing summary report bearing the engineer's seal and including a certification from the engineer that the completed project is in compliance with the plans and specifications.

(C) Certification statements from construction contractors must be provided to ensure all workers, material suppliers, etc. have been paid.

(27) CHANGE ORDERS/SUPPLEMENTAL AGREEMENTS: All change orders/supplemental agreements must be submitted to the Commission for concurrence prior to implementation to ensure funding eligibility. Requests for additional work for items not included in the original bid must be accompanied by a cost analysis to substantiate the proposed costs.

(28) PROMPT PAYMENT: The Commission and the Grantee require all contractors to pay all subcontractors and suppliers for satisfactory performance of services in compliance with Section 34.057 RSMo, Missouri's prompt payment statute. Pursuant to section 34.057 RSMo, the Commission and the Grantee also require the prompt return of all retainage held on all subcontractors after the subcontractors' work is satisfactorily completed, as determined by the Grantee and the Commission.

(29) STATE WAGE LAWS: The Grantee and its subcontractors shall pay the prevailing hourly rate of wages for each craft or type of worker required to execute this project work as determined by the Department of Labor and Industrial Relations of Missouri, and they shall further comply in every respect with the minimum wage laws of Missouri. The Grantee shall take those acts which may be required to fully inform itself of the terms of, and to comply with, any applicable state wage laws.

(30) NON-EMPLOYMENT OF UNAUTHORIZED ALIENS: Pursuant to section 285.530, RSMo, no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of any contract or grant in excess of five thousand dollars by the State or by any political subdivision of the State to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall:

(A) By sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. E-Verify is an example of a federal work authorization program. The business entity must affirm its enrollment and participation in the E-Verify federal work authorization program with respect to the employees proposed to work in connection with the services requested herein by

providing acceptable enrollment and participation documentation consisting of **completed** copy of the E-Verify Memorandum of Understanding (MOU). For business entities that are not already enrolled and participating in a federal work authorization program, E-Verify is available at <https://www.e-verify.gov/>.

(B) By sworn affidavit, the Grantee affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. A copy of the affidavit referenced herein is provided within this document, attached as Appendix B.

(31) WARRANTY: The construction contract documents and specifications shall not require contractor to warranty work after acceptance by Grantee unless based in latent defects, fraud or gross mistakes as may amount to fraud. Manufacturer's warranties for capital equipment acquired through this project are permitted.

(32) CONTRACTOR QUALIFICATIONS. Grantee may require all contract bidders be prequalified prior to submitting bids on the project. Contract awards where qualifications are considered after the bid opening will not be eligible for reimbursement through the Agreement.

[The Remainder of This Page Is Intentionally Left Blank.]

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

Executed by the Grantee on _____ (date).

Executed by the Commission on _____(date).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

ST. CHARLES COUNTY
PORT AUTHORITY

Title _____

By _____
Title Chairman

Attest:

Attest:

Secretary to the Commission

By _____
Title _____

Approved as to Form:

Commission Counsel

PROJECT DESCRIPTION STATEMENT
(APPENDIX A)
Scope of Work

Reimbursement of Capital Investment grant expenses related to the feasibility analysis and land acquisition for new river services.

RESOLUTION 23-10

A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL PORT AID AGREEMENT FOR 2023-2024 ADMINISTRATIVE EXPENSES WITH THE MISSOURI HIGHWAY AND TRANSPORTATION COMMISSION AND ACCEPTING GRANT FUNDS THEREUNDER.

WHEREAS, the St. Charles County Port Authority (“Port Authority”) is a port authority authorized under Chapter 68 of Revised Statutes of Missouri (“RSMo.”) and Chapter 170 of the Ordinances of St. Charles County, Missouri (“OSCCMo.”), as amended; and

WHEREAS, the Board of Commissioners (“Board”) is the governing body of the Port Authority; and

WHEREAS, the Missouri Highway and Transportation Commission (“MHTC”) is authorized to make grants for administration and planning expenses to the Port Authority; and

WHEREAS, the MHTC has awarded such a grant to the Port Authority for the period beginning July 1, 2023 and ending June 30, 2024 (the “2023-2024 MHTC Administrative Expenses Grant”) in the amount of twenty-eight thousand eight hundred thirty-five dollars and eighty-two cents (\$28,835.82); and

WHEREAS, as a condition for receiving the 2023-2024 MHTC Administrative Expenses Grant funding, the Port Authority must enter into a Missouri Highways and Transportation Commission Port Aid Agreement for Administrative Expenses (“Port Aid Agreement”) with the MHTC, attached hereto as Exhibit A; and

WHEREAS, pursuant to Section 68.025.1(11) RSMo., the Port Authority has the power to enter into any agreement with any other states, agencies, authorities, commissions, municipalities, persons, corporations, or the United States, to effect any of the provisions contained in Chapter 68 RSMo.; and

WHEREAS, Section 6.2 of the By-Laws of the St. Charles County Port Authority, requires that “All contracts executed by the Board shall be formally approved by resolution of the Board and signed on behalf of the Board by the Chairperson, Vice Chairperson, or Executive Director, after such approval.”; and

WHEREAS, pursuant to Section IV.4 of the Spending Policy for the Port Authority (“Spending Policy”), any funding agreements issued with the grant of State and Federal Funding must be presented to the Board for approval prior to execution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE ST. CHARLES COUNTY PORT AUTHORITY AS FOLLOWS:

1. The Board hereby approves the Missouri Highways and Transportation Commission Port Aid Agreement for Administrative Expenses (“Port Aid Agreement”) attached hereto as EXHIBIT A and authorizes the Board Chairperson to execute the Port Aid Agreement.

2. The Board hereby authorizes the Port Authority to accept the 2022-2023 MHTC Administrative Expenses Grant funds provided by the MHTC through the Port Aid Agreement.
3. This Resolution shall be in full force and effect immediately from and after its adoption as provided by law.

**ADOPTED THIS 27TH DAY OF SEPTEMBER 2023
ST. CHARLES COUNTY PORT AUTHORITY**

Roger Ellis, Chairperson

ATTEST:

Monica Combest, Vice Chairperson

Vote:

Aye: _____

Nay: _____

Abstain: _____

Absent: _____

Not Present at vote: _____

EXHIBIT A

CCO Form: MO27
Approved: 05/91 (KRR)
Revised: 02/23 (MWH)
Modified:

Project No. WPA24000221

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION PORT AID AGREEMENT FOR ADMINISTRATIVE EXPENSES

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and St. Charles County Port Authority (hereinafter, "Grantee").

WITNESSETH:

WHEREAS, the purpose of this Agreement is to provide state financial assistance from the state port fund, as appropriated by the General Assembly, to the Grantee under section 68.035 RSMo and to state the conditions upon which such assistance will be provided.

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

(1) SCOPE OF WORK: The Grantee shall undertake and complete the work described in Grantee's Scope of Work, which is attached as Appendix A and incorporated herein by reference.

(2) AMOUNT OF GRANT: The parties to this Agreement agree that the Commission's financial share for this project shall not exceed One Hundred percent (100%) of the total cost of this project, or Twenty-Eight Thousand Eight Hundred Thirty-Five dollars Eighty-Two cents (\$28,835.82). Funds made available to the Grantee are subject to appropriations made by the General Assembly, gubernatorial release of such funds appropriated to the Commission, and Commission decisions regarding the allocation of such funds. In the event state funds available to the Commission for port projects are reduced so that the Commission is incapable of completely satisfying its obligations to all the Grantees for the current state fiscal year, the Commission may recompute and reduce this grant. The designation of this grant does not create a lump sum quantity contract, but rather only represents the amount of funding available for qualifying expenses. In no event will the Commission provide the Grantee funding for improvements or work that are not actually performed.

(3) DURATION OF AGREEMENT: This Agreement provides funding to the Grantee for the 2024 Fiscal Year (July 1, 2023 to June 30, 2024).

(4) COMPLETION OF PROJECT BY GRANTEE:

(A) Permits: The Grantee shall secure all necessary state and federal approvals and permits required to accomplish the construction and maintenance of the project.

(B) Advertisement of Professional or Contractor Services: In accordance with section 68.055.2 RSMo, all advertisement of all professional or contractor services shall be posted on the Missouri Department of Transportation's (**MoDOT**) web page for a minimum of twenty-one (21) days.

(C) Commencement of Work: The Grantee shall commence work on the project upon receipt of written notice to proceed from the Commission.

(D) Project Efficiency: The Grantee will proceed with the project in a sound, economical and efficient manner in order to accomplish the items listed in the Scope of Work Statement within the prescribed time frame.

(E) Compliance With Laws: The Grantee shall proceed with the project in accordance with the provisions contained herein, the Scope of Work, attachments hereto, and all applicable laws and regulations.

(F) Information Furnished by the Grantee: The Grantee shall submit to the Commission such data, reports, contracts, records, documents, and other information relating to the project as the Commission may require at any time.

(G) Project Inspection: The Commission shall have the right to inspect and review the work performed on this project.

(H) Notification of Change of Conditions: The Grantee shall immediately notify Commission, in writing, of any change in conditions or law or of any event which may significantly impair its ability to carry out the project in accordance with the provisions of this Agreement.

(5) PROJECT REQUIREMENT PROCEDURES: In accordance with section 68.055.2 RSMo, Grantee's costs incurred during the project phases listed below must have prior written concurrence from Commission to be eligible for funding, including local match requirements, through this Agreement.

(A) Advertisement for Professional Services or Equipment Procurement.

(B) Advertisement for Contractor Services.

(C) Notice to Proceed for Professional Services Contract.

(D) Procurement, whether purchased or donated by property owner, of any real property rights, including but not limited to leases, easements, and fee simple title.

- (E) Contractor Award.
- (F) Contractor Notice to Proceed.

(6) EXPENDITURE OF GRANT FUNDS: All funds not expended by the Grantee at the end of the term of this Agreement shall be retained by the Commission. Funds returned to the Commission may be redistributed to the other port authorities within the state at the discretion of the Commission.

(7) INFORMATION FURNISHED AND WORK PERFORMED BY THE GRANTEE: The Grantee shall make available to the Commission such data, reports, analysis, documents, and other pertinent information relating to Grantee's activities and projects under this Agreement as the Commission may require at any time.

(8) AUDIT OF RECORDS: The Grantee 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 end of the term of this Agreement.

(9) THIRD PARTY CONTRACTS:

(A) Prior to execution by either party, the Grantee shall submit to the Commission for review, comment, and approval all contracts for services included in the Scope of Work to be provided to the Grantee by a third party.

(B) The Commission shall not be liable to contractors or subcontractors of the Grantee or any other person not a party to this Agreement in connection with the performance of the projects in the Scope of Work funded under this Agreement without specific written consent of the Commission.

(10) PROGRESS REPORTS AND PAYMENTS:

(A) At intervals, not exceeding twice monthly, Grantee shall furnish to the Commission statements or vouchers indicating the items completed on the project and the cost thereof for the preceding period. The Grantee shall clearly indicate on this statement or voucher the amount of the Grantee's obligation and the amount of the Commission's obligation. Grantee's reimbursement request shall include supporting documentation for each expense to verify the following:

1. The goods or services purchased is within the **Scope of Work**, Appendix A;
2. The vendor who incurred the expenses; and
3. The amount charged for the goods or services.

(B) Grantee shall submit proof of payment to the Commission within thirty (30) days for each expense reimbursed in Paragraph (10)(A). Additional invoices will not be processed by the Commission until the Grantee's documentation is received by and acceptable to the Commission.

(C) The Commission will promptly reimburse the Grantee for eligible expenses on a timely basis subject to Paragraphs (10)(A) and (10)(B).

(D) Progress reports outlining the work completed during the preceding period shall be attached to the statement or voucher requesting payment by the Commission. This report will identify any problems or issues which might prevent the Grantee from the successful accomplishment of the Project Description Statement by the end of the project period.

(E) Within forty-five (45) days of final inspection of the project funded under this grant, the Grantee shall provide to the Commission a final payment request and all financial performance and other reports as required by the conditions of this grant.

(F) The Commission may, in its sole discretion, perform a final audit of project costs. The Commission shall reimburse the Grantee any moneys due. The Grantee shall refund any overpayments as determined by the final audit.

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

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

(13) COMMISSION REPRESENTATIVE: The MoDOT Multimodal Operations Director 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.

(14) GRANTEE'S REPRESENTATIVE: The Grantee, as designated in paragraph (15)(B), will designate by written notice to the Commission all other persons having the authority to act on behalf of the Grantee in furtherance of the performance of this Agreement.

(15) 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 Commission:
Multimodal Operations Director, MoDOT
105 W. Capitol
Jefferson City, MO 65102
Facsimile No: (573) 526-4709

- (B) To the Grantee:
St. Charles County Port Authority, Board President
201 N. Second Street, Suite 560
St. Charles, MO 63301
Facsimile No: (696) 949-7336

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.

(16) INDEMNIFICATION:

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

(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.

(17) NONDISCRIMINATION CLAUSE: The Grantee shall comply with all state and federal statutes applicable to the Grantee 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.*).

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

(19) 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.

(20) NONSOLICITATION: The Grantee warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Grantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

(21) DISPUTES: Any disputes that arise under this Agreement shall be decided by the Commission or its representative.

(22) 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 Grantee and the Commission.

(23) 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 in this Agreement.

(24) NON-EMPLOYMENT OF UNAUTHORIZED ALIENS: Pursuant to section 285.530, RSMo, no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of any contract or grant in excess of five thousand dollars by the State or by any political subdivision of the State to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall:

(A) By sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. E-Verify is an example of a federal work authorization program. The business entity must affirm its enrollment and participation in the E-Verify federal work authorization program with respect to the employees proposed to work in connection with the services requested herein by providing acceptable enrollment and participation documentation consisting of **completed** copy of the E-Verify Memorandum of Understanding (MOU). For business entities that are not already enrolled and participating in a federal work authorization program, E-Verify is available at <https://www.e-verify.gov/>.

(B) By sworn affidavit, the Grantee affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. A copy of the affidavit referenced herein is provided within this document, attached as Appendix B.

(25) WARRANTY: The construction contract documents and specifications shall

not require contractor to warranty work after acceptance by Grantee unless based in latent defects, fraud or gross mistakes as may amount to fraud. Manufacturer's warranties for capital equipment acquired through this project are permitted.

(26) CONTRACTOR QUALIFICATIONS. Grantee may require all contract bidders be prequalified prior to submitting bids on the project. Contract awards where qualifications are considered after the bid opening will not be eligible for reimbursement through the Agreement.

[The Remainder of This Page Is Intentionally Left Blank.]

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

Executed by the Grantee this _____(DATE).

Executed by the Commission this _____(DATE).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

ST. CHARLES COUNTY
PORT AUTHORITY

Title _____

By _____
Title chairman

Attest:

Attest:

Secretary to the Commission

By _____
Title _____

Approved as to Form:

Commission Counsel

SCOPE OF WORK
(APPENDIX A)
Scope of Work

Reimbursement of port overhead expenses such as rent, employee salaries, office expenses, and other similar expenses.