

RESOLUTION 22-09

A RESOLUTION APPROVING THE PORT AID AGREEMENT FOR 2022-2023 ADMINISTRATIVE EXPENSES WITH THE MISSOURI HIGHWAY AND TRANSPORTATION COMMISSION; AUTHORIZING THE BOARD CHAIRPERSON TO EXECUTE SUCH AGREEMENT; AND ACCEPTING 2022-2023 MHTC ADMINISTRATIVE EXPENSES GRANT FUNDS.

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, 2022 and ending June 30, 2023 (the “2022-2023 MHTC Administrative Expenses Grant”) in the amount of Thirty Thousand Six Hundred Seventy-Seven dollars and Fourty-Two cents (\$30,677.42); and

WHEREAS, as a condition for receiving the 2022-2023 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, 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 11TH DAY OF AUGUST, 2022
ST. CHARLES COUNTY PORT AUTHORITY**

Roger Ellis, Chairperson

ATTEST:

Monica Combest, Vice Chairperson

Vote:

Aye: _____

Nay: _____

Abstain: _____

Absent: _____

Not Present at vote: _____



CCO Form: MO27
Approved: 05/91 (KRR)
Revised: 07/22 (MWH)
Modified:

Project No. _____

**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 ____ percent (____%) of the total cost of this project, or Thirty Thousand Six Hundred Seventy-Seven dollars and Fourty-Two cents (\$30,677.42). 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 2023 Fiscal Year (July 1, 2022_ to June 30, 2023).

(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 REQUIREMENTED 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
201 N. Second Street, Suite 410
St. Charles, MO 63301
Facsimile No: (636) 949-1815

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

GRANTEE

Title _____

By _____
Title _____

Attest:

Attest:

Secretary to the Commission

By _____
Title _____

Approved as to Form:

Commission Counsel

SCOPE OF WORK
(APPENDIX A)