

ORDINANCE #66370
Board Bill No. 179

An ordinance authorizing and directing the Mayor and Comptroller of the City of St. Louis to execute a Missouri Highways and Transportation Commission Enhancement Maintenance Agreement by and between the City of St. Louis and the Missouri Highways and Transportation Commission.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Mayor and Comptroller are hereby authorized and directed to execute a Missouri Highways and Transportation Commission Enhancement Maintenance Agreement, substantially in the form as attached hereto as Exhibit A and incorporated herein by reference, by and between the City of St. Louis and the Missouri Highways and Transportation Commission.

CCO Form: DE11
Approved: 4/93 (CEH)
Revised: 7/01 (BDG)
Modified: 7/04 (BDG)

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
ENHANCEMENT MAINTENANCE AGREEMENT**

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

WHEREAS, the Commission is authorized by Section 226.130 RSMO to contract with local governments; and

WHEREAS, the City has been authorized by Ordinance _____ to enter into this Agreement; and

WHEREAS, the parties wish to express their agreement concerning certain enhancements to certain of their Commission's rights of way within the City;

WITNESSETH:

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

(1) PURPOSE: The purpose of this Agreement is to designate maintenance responsibilities for certain herein identified and described landscape enhancements on Commission right-of-way in the City of St. Louis, Missouri.

(2) TERM: The term of this agreement is 10 years from the commencement date of this agreement. This Agreement may be renewed by agreement of the parties for 1 additional 10-year period.

(3) ENHANCEMENT LOCATION: As a part of Commission Job Number J6I1581, certain landscaping enhancements were placed on the Commission's right-of-way. The enhancements consist of the planting of trees and shrubs. The general location of the enhancements are shown on an attached sketch marked "Exhibit A" and made a part of this Agreement. The detailed location of the improvement is shown on the plans prepared by the Commission for the above-designated project.

(3) MAINTENANCE:

(A) Upon completion of the installation of the enhancements, the Commission shall notify the City's representative. Prior to January 1, 2005, the City shall have reasonable opportunity to inspect all installed enhancements, and shall make recommendations to the Commission's representative concerning the removal and replacement of enhancements which the City's representative deems to be in poor condition. The Commission's representative shall have the final say concerning which enhancements are removed and replaced by the Commission. Beginning on January 1, 2005, the City, at its sole cost and expense, shall maintain the enhancements as described in paragraph (3), above. The City shall maintain the landscape enhancements in accordance with the conditions stated in Exhibit B. The City shall maintain the enhancements in such a manner that the vegetation remains alive, green, and in a healthy condition and in such a manner so that the vegetation does not interfere with the traveling public. The City shall trim all vegetation in such a manner so that it does not impair the vision of drivers or obscure the visibility

of the roadway and its appurtenances. The City shall provide all equipment, mulch, fertilizer, edging, water, and labor to maintain the enhancements. All watering activities shall be done in such a manner so that no water drains onto the highway. The City shall conduct its maintenance obligations in a manner that will not place the traveling public at risk and shall not interfere with the free flow of traffic on the Commission's highway. The City shall not use chemicals or herbicides on Commission right-of-way that have not been approved by the Commission. The Commission hereby agrees that throughout the term of this Agreement the City shall have access to the Commission's rights-of-way within the City as needed to perform the City's obligations hereunder.

(B) If the City fails to maintain the herein contemplated improvements, the Commission shall notify the City of the deficiency. The City shall have a period of thirty (30) days within which to cure the deficiency, or, if the deficiency is such that it cannot be fully cured within thirty days, to commence and pursue steps to effect a cure. The City representative shall have the right upon receipt of a notice under this Section to meet and confer with the Commission representative to determine if the notice is warranted and, if so, to agree on appropriate corrective measures. If the deficiency is not corrected pursuant to this Section, the Commission may remove the enhancements at the City's sole cost and expense, or it may direct the City to remove the enhancements at the City's sole cost and expense.

(C) The Commission and the City may agree to additional specific items, requirements, or methods of maintenance.

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

(6) INDEMNIFICATION: The parties agree that sovereign immunity shall be retained by each of the parties, and, to that extent, the exercise of such sovereignty shall be a limitation upon this Agreement. Nothing herein shall be construed as a consent by either party as a waiver of its sovereign immunity; provided, however, the City and the Commission enter into this Agreement as instrumentalities of the sovereign state and not as principal and agent or as a joint venture. All officers acting under the authority of the respective parties pursuant to this Agreement shall be deemed to be acting for a governmental purpose and shall enjoy all the immunities which such officers would have within the State of Missouri.

To the extent permitted by law, the City shall accept responsibility and indemnify and hold the Commission harmless for any loss, liability or expense, including reasonable attorney's fees, resulting from all claims by or on behalf of any person, firm, or corporation, arising from the conduct or management of, by or on behalf of the City, or from any work done by or on behalf of the City, on Commission right-of-way as depicted on Exhibit A, attached hereto and incorporated by this reference, except for those which have arisen from the misconduct or negligence of the Commission.

(7) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a duly authorized formal contract amendment signed and approved by and between the duly authorized representatives of the City and Commission.

(8) 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 other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(9) CITY REPRESENTATIVE: The City's Director of Parks, Recreation and Forestry is designated as the City's representative for the purpose of administering the provisions of this Agreement. The City's representative may designate by written notice other persons having the authority to act on behalf of the City in furtherance of 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 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 City:
Director of Parks, Recreation and Forestry
5600 Clayton Road

St. Louis, Mo. 63110

Facsimile No: (314) 535-3901

(B) To the Commission:
District 6 Engineer
1590 Woodlake Drive
Chesterfield, Mo. 63017

Facsimile No: (314) 340-4186

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.

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

(12) 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 the contract.

(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) TERMINATION: The Commission may terminate this Agreement at any time and for any reason upon not less than thirty (30) days prior written notice to the City. In the event the Commission terminates this Agreement, the City shall not be entitled to a refund of the funds expended by the City pursuant to this Agreement.

(15) 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.

(16) 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.

(17) 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.

[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

CITY OF ST. LOUIS

Title _____

By _____
Francis G. Slay
Title: Mayor of the City of St. Louis

By _____
Darlene Green
Title: Comptroller of the City of St. Louis

ATTEST:

ATTEST:

Secretary to the Commission

By _____
Parrie L. May
Title: Register

Approved as to Form:

Approved as to Form:

Commission Counsel

By _____
Thomas J. Ray
Title: Deputy City Counselor

Ordinance Number _____

Exhibit B is on file in the Register's Office.

Approved: July 31, 2004