

**ORDINANCE #68351**  
**Board Bill No. 68**

An Ordinance recommended by the Board of Public Service, authorizing and directing the Mayor and the Comptroller of the **City of St. Louis (City)** to enter into an agreement with **Missouri Highways and Transportation Commission (MoDOT)**, to expedite relocation work on Water Division Facilities. This agreement, known as the "Missouri Highways and Transportation Master Reimbursable Utility Agreement", and containing an emergency clause.

**WHEREAS**, in order to reduce paperwork which will improve the Business operations of the City and the Commission, it is agreed that this Master Agreement will be the only Agreement executed to cover the reimbursement of the City's costs to relocate or adjust the City's facilities required by the Commission's state-wide highway projects. This Agreement will remain in full force until both parties agree, in writing, that further amendments are needed, or unless the Agreement is terminated by either party.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

**SECTION ONE.** The Mayor and the Comptroller, acting on behalf of the City of St. Louis, are hereby authorized and directed to enter into an Agreement with Missouri Highways and Transportation Commission execute this Agreement as described in this **EXHIBIT 1** of this Ordinance.

**EXHIBIT 1**

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
MASTER REIMBURSABLE UTILITY AGREEMENT**

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

**WITNESS THEREOF:**

**WHEREAS**, the Commission proposes to construct and improve numerous sections of state highways designated by **Job Number, Route, and County**, in accordance with road plans filed in the office of the City Clerk in the City of St. Louis in which the job is located; and

**WHEREAS**, in order to improve said highway in accordance with said plans, it will be necessary to adjust certain facilities now located on private easement(s) of the City in order to maintain the present services of said City. Such changes are generally shown in legend on separate plans marked Exhibit A, and on separate estimate of cost marked Exhibit B. The percentage thereof located on private easement(s) is set out in Exhibit B and in the Section below entitled "COST"; and

**WHEREAS**, in order to reduce paperwork which will improve the business operations of the City and the Commission, it is agreed that this Master Agreement will be the only Agreement executed to cover the reimbursement of the City's costs to relocate or adjust the City's facilities required by the Commission's state-wide highway projects. This Agreement will remain in full force until both parties agree, in writing, that amendments are needed, or unless the Agreement is terminated by either party. It is further agreed that the Commission will acknowledge approval of Exhibits A and B on each project by letter to the City. The City agrees to accept the Commission's approval letter in the same spirit with the same effect as a fully signed utility agreement which was accepted on each Commission highway project in the past.

**NOW, THEREFORE**, in consideration of these mutual covenants, the parties agree as follows:

- (1) **USE OF RIGHT OF WAY:** The City grants to the Commission the right to use the right of way within any existing street, alley or other public way which is under the jurisdiction of the City as may be necessary to construct and maintain said highway through the City.
- (2) **COMPLY WITH FEDERAL AID POLICY GUIDE (FAPG):** The City agrees that the detail plan and estimate of cost for the required adjustment of the City's facilities have been prepared in accordance with FAPG 23 CFR 645A and any amendments which by reference are made a part of this Agreement. The City also agrees that the work hereunder will be performed in accordance with said regulation.
- (3) **HIGHWAY IMPROVEMENT INFORMATION:** The Commission agrees to furnish the City all necessary

information on the highway improvement in order to properly carry out the utility relocation. Known hazardous waste sites will be identified on the right of way.

(4) 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.

(5) CITY (COMPANY) REPRESENTATIVE: The City shall designate a representative for each project to sign transmittal letters for Exhibits "A" and "B" approvals.

(6) COST: The Commission will furnish written approval of the City's plan of adjustment, estimate of cost and percentage of the Commission's obligation of cost for each Commission project. The Commission shall then promptly pay the City one hundred percent (100%) of the estimated cost of the Commission's obligation. When a lump sum cost estimate is approved, the Commission shall pay no more or no less than the approved Commission obligation. When an actual cost estimate is approved, the Commission shall pay the Commission's obligation. If the final invoice is greater than the Commission's payment, the Commission shall promptly pay the City the additional Commission obligation. Conversely, if the final invoice is less than the Commission's payment, the City shall promptly remit the Commission's overpayment. If the Commission instructs the City not to proceed with the work, the Commission shall reimburse the City for the Commission's hereinabove stated percentage share of the City's costs incurred prior to the date the work is canceled, as allowed pursuant to FAPG 23 CFR 645A. The City shall promptly return any funds to the Commission in excess of those actually incurred prior to the date work is canceled.

(7) CHANGE ORDER: If any substantial change is made in the original plan and extent of the work, the City agrees that reimbursement shall be limited to costs covered by a supplemental agreement or change order prepared by the Commission's resident engineer or his/her representative and having approval of the Commission and Federal Highway Administration PRIOR to the performance of the work, as set out in FAPG 23 CFR 645A.

(8) PERMIT REQUIREMENT: The City shall obtain a no cost permit from the Commission's district engineer prior to adjusting or relocating its property from, within, or onto the Commission's right of way. The permit shall be signed by an authorized City representative.

(9) SUBCONTRACT: If the City determines to contract any of the work of adjusting its facilities, it shall furnish the Commission with evidence that it is not adequately staffed or equipped to perform the work and shall comply with the procedures outlined in FAPG 23 CFR 645A relating to performing part or all of the work by contract. Furthermore, if the City solicits bids for the work, the City shall furnish the Commission a tabulation of bids received, a copy of the invitation to bid, and any other information to support the City's recommendation for award to the lowest qualified bidder prior to any contract work being performed. The City shall obtain the Commission's written approval prior to awarding the contract. The Commission's approval or disapproval shall be communicated in writing to the City no later than twenty-one (21) days after the City provides the above information to the Commission. If the Commission fails to notify the City in writing of its decision within the twenty-one (21) day period, the Commission shall be deemed to have approved the City's selection. When the lump sum method of reimbursement is approved, the Commission shall not require approval of the City's contractors.

(10) COMMENCEMENT AND COMPLETION OF WORK: After approval of the detail plan and estimate of cost and upon notification by the Commission, the City will commence, without unnecessary delay, to make the changes to its facilities. The City will actively pursue completion of the work to reach the earliest possible completion date and to minimize interference with the Commission's roadway contractor. The City agrees to provide a written estimated time schedule of its planned work and a written notification to the Commission's district engineer at least five (5) days prior to beginning the work. If the City falls behind in its work schedule, it shall submit a revised work schedule to the Commission's resident engineer. The City will make every effort to get back on schedule and complete its work.

(11) COOPERATION: When the City's relocation work is being done concurrent with the Commission's roadway contractor operation, the City agrees to cooperate and coordinate its work to minimize disturbance to the roadway contractor or other utility companies working on the project. The Commission's contractor has a contractual duty to cooperate and coordinate its activities with utility companies.

(12) BACKFILL: The City agrees to compact backfill of all excavation within the roadway limits in accordance with the Missouri Standard Specifications for Highway Construction, current edition, or as approved by the Commission's resident

engineer.

(13) SAFETY DEVICES: At all times when work is being performed by the City under such conditions as will affect traffic on the public highways, the City will display warning signs, barricades, flags, lights and/or flares as circumstances may require and shall employ and use a flagger when required for safety of the traveling public, all in accordance with the standards set forth in the "Manual on Uniform Traffic Control Devices" (MUTCD).

(14) CONDITION OF RIGHT OF WAY: Upon completion of the work provided in this Agreement, all leftover materials and debris resulting from the work shall be removed by the City and the right-of-way left in a neat, workmanlike condition, free of holes, mounds of dirt, or other objectionable material.

(15) FINAL INVOICE SUBMITTAL: After completion of the utility work, the City agrees to submit a final invoice for the cost of the work to the Commission within sixty (60) days or as mutually agreed to by the City and the Commission's resident engineer or his/her representative. The final invoice shall be in as much detail as possible to verify the cost of the completed work. It should follow the format of the original cost estimate (Exhibit B) when possible to promote faster processing by the Commission. The Commission's resident engineer will process the final invoice for payment as soon as possible after receipt.

(16) AUDIT OF RECORDS: For actual cost reimbursement only, the City's final invoice shall be based on the actual direct and related indirect costs. The direct costs shall be in accordance with an established accounting procedure used by the City for its regular operations. The City shall keep a detailed and accurate account of all services, labor, materials, supplies, incidentals, additional necessary private easement acquisition, if any, and other necessary costs involved in making such changes. The Commission's resident engineer in charge of said project, or any authorized agent of the Commission or the Federal Highway Administration, shall have access during normal business hours to audit such City records. These records shall be available at no charge during the contract period and any extension thereof, and for three (3) years from the date of final payment. If the audit reveals that the City has been overpaid, the City will immediately refund to the Commission such overpayment. If the audit reveals that the City has been underpaid, the Commission will immediately pay the City the difference. For lump sum reimbursement, the Commission shall not audit the City's records.

(17) 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.

(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 respecting its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

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

(20) CANCELLATION: It is agreed that either party may cancel this Agreement at any time by providing the other party with thirty (30) days advance written notification of such cancellation, and only after active utility relocation projects have been completed.

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

\_\_\_\_\_

By \_\_\_\_\_

Title

Print Name \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

ATTEST:

