

**ORDINANCE #69266**  
**Board Bill No. 166**

An Ordinance pertaining to a ninety-nine (99) year lease with City of St. Louis (“City”) and the Missouri Highways and Transportation Commission (“MHTC”) and pertaining to the simultaneous swap of certain property on Shreve Avenue, which is currently being used by the City Street Department under a Board of Public Service Permit, owned by the MHTC.

**WITNESSETH, THAT:**

**WHEREAS**, the City has an interest in certain property located at Poplar between Ninth Street and Tucker Blvd., in City Blocks 4400, 4401 and 4402, which the MHTC desires to lease for ninety-nine (99) years in order to make any necessary repairs to Highway 64/40 for the sum of ONE DOLLAR (\$1.00) per year (“Lease Agreement”); and

**WHEREAS**, the MHTC owns certain property located on Shreve Avenue, which is currently being used by the City Street Department under a Board of Public Service Permit and which the City desires to acquire as a swap in consideration of the above Lease Agreement.

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

**SECTION ONE.** The Board of Aldermen hereby approve, and the Mayor and Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the Lease Agreement by and between the City of St. Louis (“City”) and the Missouri Highways and Transportation Commission (“MHTC”) attached hereto as **Exhibit A**, and the City Register is hereby authorized and directed to attest to the Lease Agreement and to affix the seal of the City thereto, contingent upon the simultaneous swap of certain property located on Shreve Avenue, which is owned by MHTC and which is currently being used by the City Street Department under a Board of Public Service Permit. The Lease Agreement shall be in substantially the form attached, with such changes therein as shall be approved by said Mayor and Comptroller executing the same and as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized.

**SECTION TWO.** The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

**SECTION THREE.** The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

**SECTION FOUR.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**EXHIBIT A**

CCO Form:	RW14A	ROUTE:
Approved:	9/96 (RMH)	COUNTY:
Revised:	02/10 (AR)	JOB NO.:
Modified:		PARCEL NO.:
		FED. NO.:

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

## LEASE OF PREMISES AGREEMENT

THIS LEASE OF PREMISES AGREEMENT is entered between the Missouri Highways and Transportation Commission, sometimes hereinafter referred to as the "Commission" or "Lessee" and the City of St. Louis, Missouri, a municipal corporation, hereinafter referred to as the "City" or "Lessor." This Lease of Premises Agreement will be hereinafter referred to as the "Agreement" or the "Lease".

WITNESSETH:

WHEREAS, the City for and in consideration of the covenants, conditions and stipulations of this Agreement, does hereby lease to the Commission, and the Commission hereby leases from the City, the property located in the City of St. Louis and more accurately described in paragraph 1 below.

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

(1) DESCRIPTION OF PROPERTY TO BE LEASED: The City leases to the Commission the properties described in the attached Exhibits consisting of seven parcels known as Parcels 3b, 3h, 4a, 4b, 5a, 5b, and 5c, and shown on the attached plan sheets, together with any and all interest that the City may have in said properties and hereinafter called the "premises".

(2) LEASE TERM: The term of the Lease is for ninety-nine (99) years, beginning on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, and ending on the \_\_\_\_\_ day of 20\_\_\_.

(3) RENT: The Commission shall pay to the City for the rental of the premises the amount of ONE AND NO/100 dollars (\$1.00) per year, payable upon demand therefor by City.

(4) TERMINATION OF LEASE BY CITY: The City may terminate this Lease in the event that Commission abandons or ceases to maintain the highway above the premises. City may also terminate this Lease in the event that Commission attempts to assign this Lease or transfer the premises to another entity without first obtaining written approval pursuant to the provisions of this Lease regarding assignment set forth below. Notwithstanding the Commission may at its sole discretion sublease the premises for parking without triggering the termination provision in this paragraph.

(5) TERMINATION OF LEASE BY COMMISSION: The Commission may terminate this Lease at any time and for no stated reason. The Commission's right to unconditionally terminate this Lease is not subject to or contingent on any breach of this Lease committed by the City. However, the Commission will provide at least fifteen (15) days' written notice of its intention to terminate this Lease before such termination is effective.

(6) NO WARRANTIES: City and Commission agree that Commission shall take possession of the premises in its "as is, where is" condition with all faults, and City makes no warranties or representations as to the condition of the premises or title to the premises. City hereby disclaims all warranties, implied or express, written or oral, as to the premises (including, without limitation, any improvements or personal property compromising a part of the premises, if any). City hereby disclaims any implied warranty of fitness for a particular purpose, any express or implied warranty as to the quality of any of the premises, or any other warranty or representation. Commission hereby acknowledges that Commission has not relied on any warranty or representation of City, implied or expressed, written or oral as to the condition or quality of the premises.

(7) UTILITIES: The Commission agrees to pay for all utilities, if any, relating to Commission's use of the premises.

(8) SNOW REMOVAL: The Commission agrees to direct and pay for removal of snow and ice from the sidewalks and parking lots of the premises.

(9) USE OF PROPERTY DURING TERM OF LEASE: Commission may use the premises for any lawful use, including but not limited to, providing parking for Commission, particular businesses, government operations or for the general public, as well as for the storage of materials and equipment and for work space to maintain bridges, highways, lighting and ramps. Such use of the premises whether by sublease or otherwise shall not constitute a violation of this lease or trigger the termination provision in paragraph (4) above.

(10) ASSIGNMENT: The City shall not assign, transfer, sublet or delegate any interest in this Agreement or the

premises without the prior written consent of the Commission. The Commission shall have the right to assign its rights under this Agreement, in whole or in part, to any other governmental agency, subject to the same conditions as contained in this Agreement. The Commission may not assign its rights under this Lease to any nongovernmental party without the prior written consent of the City's Board of Estimate and Apportionment.

(11) COMMISSION'S RIGHTS TO MAKE ALTERATIONS IN THE PREMISES:

The Commission shall have the right to make alterations, attach fixtures, and erect additions, structures or signs in or upon the premises, which fixtures, additions or structures so placed upon or attached to the premises shall be and remain the property of the Commission and may be removed and otherwise disposed of by the Commission at any time during the term of the Lease or prior to the expiration of the Lease.

The above changes or alterations shall in no way weaken or cause structural injury to the premises, and the altered part of the premises shall, upon removal by the Commission, be returned to the condition existing prior to such change, alteration, installation, ordinary wear and tear excepted. Any signs used by the Commission at the premises shall be approved by the City in writing prior to installation.

(12) OBSERVANCE OF LAWS: The Commission will observe and abide by all applicable federal and state laws and regulations pertaining to the use and occupancy of said premises.

(13) PROTECTION AGAINST DAMAGE: The Commission will protect and defend the premises against damage.

(14) DAMAGE TO PREMISES: The Commission agrees to pay for any damage to the premises caused by the acts of the Commission or its employees, ordinary wear and tear excepted.

(15) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City and Commission shall defend, indemnify and hold each other harmless, including all elected and appointed members and 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 or Commission's wrongful or negligent performance of their respective 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.

(16) RIGHT OF REVERSION: The parties agree and acknowledge that part of the consideration for this Lease is the conveyance of the Commission's maintenance facility located on Shreve Avenue to the City as identified in a Separate Sales agreement between the parties. The conveyance of the Shreve facility is expressly contingent on the right of the City to grant to the Commission the right to use, operate, control and maintain the property identified in this Lease. In the event the right of the City to enter into this Lease or convey the interests identified in this Lease to the Commission is successfully challenged for any reason whatsoever, and the Commission's right to use, operate, control and maintain said leased property ceases, the Commission shall retain the right of reversion of the entire Shreve Facility for the term of the Lease. In the event this right of reversion vests or is invoked, the Commission shall have the right to immediately occupy the Shreve Facility property and oust the City from the premises. A reservation of the Commission's right of reversion shall be placed on the deed of conveyance of the property being conveyed to the City pursuant to a Sales Agreement.

(17) REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT: REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT: Lessor makes no representations or warranties regarding the compliance of the premises, with applicable requirements of the Americans with Disabilities Act, and Lessee shall be solely responsible for the cost of causing the premises to comply with the same.

(18) COMMISSION'S REPRESENTATIVE: The Commission's Right of Way Director, Kelly Lucas, 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.

(19) CITY'S REPRESENTATIVE: The City's Asset Manager 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.

(20) 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 mailing by United States mail, regular mail postage prepaid, or upon receipt by personal delivery, overnight delivery, or facsimile delivery, addressed as follows:

- (A) To the City:  
Comptroller's Office, Asset Manager  
1520 Market Street, Suite 3005  
St Louis, Missouri 63103  
Facsimile No: 314.588.0550
- (B) To the Commission:  
[NOTE: Commission's Representative Designated in Paragraph 17]  
Kelly Lucas  
Right of Way Director  
MODOT – Central Office  
105 West Capitol  
Jefferson City, MO 65102  
Phone: 573-751-7458  
kelly.lucas@modot.mo.gov

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. A business day is any day of the week except Saturdays, Sundays, and legal holidays observed by the State of Missouri.

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

(22) BINDING EFFECT OF AGREEMENT: The covenants and agreements contained in this Agreement shall be binding upon the parties and their successors and assigns in interest, subject, however, to the limitations on assignment set forth herein.

**[Remainder of Page Intentionally Left Blank]**

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

Executed by City on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Executed by Commission on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION,  
COMMISSION

CITY OF ST. LOUIS,  
A Municipal Corporation

By \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Darlene Green, Comptroller

ATTEST:

Approved as to form, only

\_\_\_\_\_

City Counselor

\_\_\_\_\_  
Secretary to the Commission

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Commission Counsel

**Approved: November 2, 2012**