

CCO Form: FR01
Approved: 07/14 (MWH)
Revised:
Modified:

Project No. FRE17000304

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
AGREEMENT FOR FREIGHT ENHANCEMENT PROGRAM**

This AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and City of Columbia, Missouri (hereinafter, "Grantee").

WITNESSETH:

WHEREAS, the purpose of this Agreement is to provide financial assistance to the Grantee, pursuant to section 226.225 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, 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 Eighty Thousand dollars (\$80,000). 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 freight enhancement 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 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 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.

(H) Concurrence to Proceed: Grantee costs incurred with the project phases listed below must have prior review and concurrence to proceed from Commission to be eligible for funding, including local match requirements, through this Agreement.

1. Advertisement for Professional Services
2. Notice to Proceed for Professional Services Contract
3. Purchase of Right of Way
4. Advertisement for Contractor Services
5. Contractor Selection
6. Contractor Notice to Proceed
7. Contractor Change Orders

(4) PROJECT PERIOD: This Agreement provides funding to the Grantee for the 2017 Fiscal Year (July 1, 2016 to June 15, 2017).

(5) REVIEW OF BIDS AND CONTRACT AWARD: The Commission shall review all contractors' bids and concur with the selection of the apparent successful bidder prior to the Sponsor awarding the construction contract.

(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 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. Requests for reimbursement shall be supported with invoices. 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. The Commission will promptly provide payment for its obligation to the Grantee's contractor for the project.

(B) A five percent (5%) retainage will be deducted from each statement or voucher submitted for payment by the Grantee. This retainage will be paid to the Grantee upon final written acceptance of the project by Commission.

(C) 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.

(D) Within ninety (90) days of final inspection of the project funded under this grant, the Sponsor shall provide to the Commission a final payment request and all financial performance and other reports as required by the conditions of this grant.

(E) 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 RE-APPROPRIATION OF FUNDS AND 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 the re-appropriation of funds and an extension of the time to complete the project. This written request must be made no later than February 1, 2017. The request shall identify in detail the reason(s) why an extension is necessary. Upon receipt of a request for the re-appropriation of funds and 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) The Grantee will require any contractor procured by the Grantee to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$500,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to section 537.610, RSMo.

(C) 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

Director of Multimodal Operations 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's Railroad Operations Supervisor is designated as the Grantee's representative for the purpose of administering the provisions of this Agreement. The Grantee's representative may designate by written notice 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:

David Sprague
Colt Railroad
City of Columbia
P.O. Box 6015
Columbia, Missouri 65205
Facsimile No: (573) 474-8784

(B) To the Commission:

Michelle Teel, MoDOT
105 W. Capitol
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.

(24) ENGINEER'S DESIGN REPORT: Prior to development of the plans and specifications, the Grantee shall provide an engineer's report setting forth the general analysis and explanation of reasons for design choices. Said report shall include an itemized cost estimate, design computations, reasons for selections and modifications, comparison of alternatives, life cycle cost analysis, geotechnical report and any other elements that support the engineer's final plans and specifications.

(25) 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.

(26) 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.

(27) 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 a weekly 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.

(28) CHANGE ORDERS/SUPPLEMENTAL AGREEMENTS: All change orders/supplemental agreements must be submitted to the Commission for approval 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.

(29) 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.

(30) 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.

(31) 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 http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm.

(B) By sworn affidavit, affirm 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 Exhibit 1.

[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 this _____ day of _____, 20____.

Executed by the Commission this _____ day of _____, 20____.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF COLUMBIA, MISSOURI

By _____

By _____

Title _____

Title _____

Attest:

Attest:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

City Counselor

Ordinance No. _____
(if applicable)

Columbia Terminal Railroad

Project Description Appendix A

The City of Columbia, Columbia Terminal Railroad, has identified the need in Mid Missouri to receive used vehicles by rail as opposed to truck delivery from multiple locations (Ohio, Michigan, New York, and New Jersey). With the Missouri Department of Transportation Freight Enhancement Funds, Columbia Terminal Railroad intends to purchase a new railcar unloading ramp capable of unloading bi and tri level auto rack rail cars. Columbia Terminal, in partnership with several private automotive affiliated companies, will develop a portion of the existing COLT Transload site into an automotive loading and unloading facility.

ANNUAL WORKER ELIGIBILITY VERIFICATION AFFIDAVIT
(for joint ventures, a separate affidavit is required for each business entity)

STATE OF _____)
) ss
COUNTY OF _____)

On the ____ day of _____, 20____, before me appeared _____,
Affiant name
personally known to me or proved to me on the basis of satisfactory evidence to be a person whose name is subscribed to this affidavit, who being by me duly sworn, stated as follows:

• I, the Affiant, am of sound mind, capable of making this affidavit, and personally certify the facts herein stated, as required by Section 285.530, RSMo, to enter into any contract agreement with the state to perform any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.

• I, the Affiant, am the _____ of _____, and I am duly authorized, directed, and/or empowered to act officially and properly on behalf of this business entity.
title business name

• I, the Affiant, hereby affirm and warrant that the aforementioned business entity is enrolled in a federal work authorization program operated by the United States Department of Homeland Security, and the aforementioned business entity shall participate in said program to verify the employment eligibility of newly hired employees working in connection with any services contracted by the Missouri Highways and Transportation Commission (MHTC). I have attached documentation to this affidavit to evidence enrollment/participation by the aforementioned business entity in a federal work authorization program, as required by Section 285.530, RSMo.

• I, the Affiant, also hereby affirm and warrant that the aforementioned business entity does not and shall not knowingly employ, in connection with any services contracted by MHTC, any alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. § 1324a(h)(3).

• I, the Affiant, am aware and recognize that, unless certain contract and affidavit conditions are satisfied pursuant to Section 285.530, RSMo, the aforementioned business entity may be held liable under Sections 285.525 through 285.550, RSMo, for subcontractors that knowingly employ or continue to employ any unauthorized alien to work within the state of Missouri.

• I, the Affiant, acknowledge that I am signing this affidavit as a free act and deed of the aforementioned business entity and not under duress.

Affiant Signature

Subscribed and sworn to before me in _____, _____, the day and year first above-written.
city (or county) state

Notary Public

My commission expires:

[documentation of enrollment/participation in a federal work authorization program attached]