



**REGULAR MEETING  
OF THE  
CITY COUNCIL  
City of Maplewood, Missouri**

City Council Chambers, City Hall  
7601 Manchester Road, Maplewood, MO 63143

**Tuesday, February 11, 2025  
7:00 PM**

**AGENDA**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Motion to Excuse Council Member(s)
5. Approval of the Council Agenda
6. Approval of January 28, 2025, City Council meeting minutes
7. Public Comment
8. Announcements
9. Presentations:
  - a. Honoring and commending Fire Chief Peter C. Marsac for 25 years of service to the City of Maplewood
  - b. Honoring and commending Battalion Chief Roderick J. Latorre for 25 years of service to the City of Maplewood
  - c. Maplewood Richmond Heights School District Propositions B & E by Dr. Bonita Jamison, Superintendent
10. Unfinished Business:
  - a. Bill 6269 – Final Reading: Granting a Conditional Use Permit to Keyonnia Foote of Storybook Learning Center to operate a daycare facility in the AB Arterial Business District at 2425 S. Big Bend Boulevard

- b. Bill 6270 – Final Reading: Granting a Conditional Use Permit to Lucas Farrell of STL Bucket List to operate an office use in the SR Single Family Residential District at 7302 Picadilly Avenue
- c. Bill 6271 – Final Reading: Granting a Conditional Use Permit to Bruce Schwerdt of Reset Vintage Apparel to operate a vintage and collectable clothing and accessories store at 2718 Sutton Boulevard
- d. Bill 6272 – Final Reading: Amending Sections 34-14 and 34-15 of Chapter 34: Offenses of the Maplewood Code of Ordinances to change the age of minor to persons under the age of twenty-one for sale and use of tobacco, electronic cigarettes, vaporizing products, and related products.
- e. Bill 6273 – Final Reading: Amending the Maplewood Code of Ordinances, Chapter 50 – Traffic and Vehicles, Article II. – Licensing, Division I. – Generally, Section 50-23 – State Registration and License Required, to address both operation and parking of motor vehicles, recreational vehicles, and trailers
- f. Bill 6274 – Final Reading: Amending the Maplewood Code of Ordinances, Chapter 6 – Advertising, Article II. – Signs, Division 1. – Generally and Division 3. – Permitted Temporary Signs, to revise regulations for election signs

11. New Business:

- a. Resolution 25-4: Authorizing the City Manager to accept the bid from BP Roofing for the 2025 Deer Creek South Pavilion roof project in the amount of eleven thousand five hundred eighty dollars (\$11,580).
- b. Bill 6275 – First and Second Reading: Authorizing the City Manager to execute a Cost Share Agreement with Great Rivers Greenway for construction of the Deer Creek Greenway trail from Sussex Avenue to Canterbury Avenue

12. Council and Staff Reports:

- a. Mayor’s Report
- b. Ward 1 Report
- c. Ward 2 Report
- d. Ward 3 Report
- e. City Attorney’s Report
- f. City Manager’s Report

13. Public Comment

- 14. Motion to hold a Closed Session to discuss matters relating to litigation, legal actions, and/or communication from the City Attorney as provided for in Section 610.021(1)RSMO. and/or specifications for competitive bidding under Section 610.021(11) and/or sealed bids and

related documents and sealed proposals and related documents under Section 610.021(11) and/or personnel matters under Section 610.021(13)RSMO. and/or employee matters under Section 610.021(3)RSMO. and/or real estate matters under Section 610.021(2)RSMO. and/or documents related to a negotiated contract under Section 610.021(12)RSMO

## 15. Adjournment

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### **Addressing the Council**

Individuals wishing to speak during Public Hearings or Public Comment periods must sign in before the meeting and will be called to the podium when it is their turn. Each speaker has a three-minute time limit. Written comments may be emailed to [cityclerk@maplewoodmo.gov](mailto:cityclerk@maplewoodmo.gov) by 12:00 PM (noon) on the meeting day. The Council will receive all emailed comments, but comments will not be read aloud during the meeting.

### **Accessibility Notice**

The City of Maplewood is committed to making public meetings accessible to all residents. To request accommodations or assistance, please contact the Deputy City Clerk at [cityclerk@maplewoodmo.gov](mailto:cityclerk@maplewoodmo.gov) or 314-646-3602, or Relay Missouri at 800-736-2966 (TTY). Please make your request at least 48 hours prior to the meeting to ensure appropriate arrangements can be made.

### **Virtual Access**

Watch this meeting live at [www.youtube.com/@cityofmaplewood8819](https://www.youtube.com/@cityofmaplewood8819)

*Posted on February 7, 2025, at Maplewood City Hall and [maplewoodmo.gov](http://maplewoodmo.gov)*



## **RECORD OF PROCEEDING**

### **REGULAR MEETING OF THE CITY COUNCIL City of Maplewood, Missouri**

City Council Chambers, City Hall  
7601 Manchester Road, Maplewood, MO 63143

**Tuesday, January 28, 2025  
7:00 PM**

1. **Call to Order:** The meeting was called to order at 7:00 p.m., with Mayor Greenberg presiding.
2. **Pledge of Allegiance:** The Pledge of Allegiance was recited.
3. **Roll Call:** The following members were present:
  - Mayor Greenberg
  - Council Member Faulkingham
  - Council Member Garcia
  - Council Member Homa
  - Council Member Page
4. **Motion to Excuse Council Member(s):**  
Council Member Coriell and Council Member Mattox  
**Motion to Approve:** Council Member Faulkingham  
**Seconded by:** Council Member Homa  
**Outcome:** The Council voted unanimously to excuse the Council Members
5. **Approval of the Council Agenda**  
**Motion to Approve:** Council Member Faulkingham  
**Seconded by:** Council Member Homa  
**Outcome:** The Council voted unanimously to approve the minutes.
6. **Approval of January 14, 2025 City Council Meeting Minutes**  
**Motion to Approve:** Council Member Faulkingham  
**Seconded by:** Council Member Homa  
**Outcome:** The Council voted unanimously to approve the minutes
7. **Approval of Findings of Fact, Conclusions of Law and Decision** Regarding the Business License Revocation of Mape Vape, LLC.  
**Motion to Approve:** Council Member Faulkingham  
**Seconded by:** Council Member Homa.  
**Discussion:** No discussion  
**Roll Call Vote Result:**

**Ayes:** Greenberg, Faulkingham, Garcia, Homa, and Page

**Nays:** None

**Outcome:** City of Maplewood's Business License for Mape Vape, LLC will be revoked.

## 8. Public Hearings:

- a. **Request for a conditional use permit** for Storybook Learning Center to operate a daycare facility at 2425 S. Big Bend Boulevard. Keyonna Foote was present to describe the learning Center. It has another location in the Metro Area. This location, the former 7-11 building, will have a 40-child occupancy rate.
- b. **Request for a conditional use permit** for STL Bucket List to operate a digital marketing office use in the SR Single Family Residential District at 7302 Picadilly Avenue. Kyle Stevens was present to describe the business, which will be moving to Maplewood from Grand Ave. It has 8 full time employees that will be moving to this location, and no additional parking will be necessary.
- c. **Request for a conditional use permit** for Reset Vintage to operate a vintage clothing store at 2718 Sutton Boulevard. Bruce Schwartz currently operates a store on Bellevue Avenue. A recent pop-up on Sutton proved that Sutton is a good location for the Vintage Retail store.

## 9. Public Comment: None

## 10. Announcements:

- Mayor Greenberg announced that the Sweet Tooth Tour had Great weather and good participation.

## 11. Presentations:

- a. **Resolution Honoring and Commending Moriah Bolin** for her attainment of the Eagle Scout Award. Mayor Greenberg Presented Moriah with a Proclamation of the Historic Achievement. Moriah is the first female from Maplewood to attain this honor.
- b. **"Making Maplewood Green" Capstone Presentation** by Trey Maxwell, MRH High School Senior. Mr. Maxwell reported the history of sustainability of Maplewood and presented ideas to the City for making Maplewood more sustainable.
- c. **Second Quarter Budget Update by Alexis Miller, Finance Director.** Alexis Miller presented the Second Quarter fiscal year budget analysis to the Council. She addressed budget vs. actual spending on major funds and reasons for large variances.

## 12. Unfinished Business:

- a. **Bill 6268: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, TO APPROVE A COOPERATION AGREEMENT FOR THE CONSTRUCTION, OPERATION, AND**

**MAINTENANCE OF THE DEER CREEK GREENWAY PEDESTRIAN TRAIL FROM S. BIG BEND BOULEVARD TO CANTERBURY AVENUE** received its final reading.

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Discussion:** No discussion

**Roll call vote results:**

**Ayes:** Greenberg, Faulkingham, Garcia, Homa, and Page

**Nays:** None

**Outcome:** Bill 6268 was approved and became Ordinance No. 6062

### 13. New Business:

- a. **Bill 6269: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, GRANTING A CONDITIONAL USE PERMIT TO KEYONNIA FOOTE OF STORYBOOK LEARNING CENTER TO OPERATE A DAYCARE FACILITY IN THE AB AARTERIAL BUSINESS DISTRICT AT 2425 S. BIG BEND BOULEVARD**

**First Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Discussion:** No discussion

**Second Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Outcome:** The Bill was unanimously approved by voice vote of the Council. The third and final reading will take place during the next Council Meeting.

- b. **Bill 6270: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, GRANTING A CONDITIONAL USE PERMIT TO LUCAS FARRELL OF STL BUCKET LIST TO OPERATE AN OFFICE USE IN THE SR SINGLE FAMILY RESIDENTIAL DISTRICT AT 7302 PICADILLY AVENUE**

**First Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Discussion:** No discussion

**Second Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Outcome:** The Bill was unanimously approved by voice vote of the Council. The third and final reading will take place during the next Council Meeting.

- c. **Bill 6271: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, GRANTING A CONDITIONAL USE PERMIT TO BRUCE SCHWERDT OF RESET VINTAGE APPAREL TO OPERATE A VINTAGE AND COLLECTABLE CLOTHING AND ACCESSORIES STORE AT 2718 SUTTON BOULEVARD**

**First Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Discussion:** No discussion

**Second Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Outcome:** The Bill was unanimously approved by voice vote of the Council. The third and final reading will take place during the next Council Meeting.

- d. **Bill 6272 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AMENDING SECTIONS 34-14 AND 34-15 OF CHAPTER 34: OFFENSES OF THE MAPLEWOOD CODE OF ORDINANCES TO CHANGE THE AGE OF MINOR TO PERSONS UNDER THE AGE OF TWENTY-ONE FOR SALE AND USE OF TOBACCO, ELECTRONIC CIGARETTES, VAPORIZING PRODUCTS, AND RELATED PRODUCTS**

**First Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Discussion:** Council Member Faulkingham explained that our city code currently sets the minimum age for purchase of tobacco products at 18 years. This amendment is to bring our code into alignment with St. Louis County regulations.

**Second Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Outcome:** The Bill was unanimously approved by voice vote of the Council. The third and final reading will take place during the next Council Meeting.

- e. **Bill 6273 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI AMENDING THE MAPLEWOOD CODE OF ORDINANCES, CHAPTER 50 – TRAFFIC AND VEHICLES, ARTICLE II. – LICENSING, DIVISION I. – GENERALLY, SECTION 50-23 – STATE REGISTRATION AND LICENSE REQUIRED, TO ADDRESS BOTH OPERATION AND PARKING OF MOTOR VEHICLES AND TRAILERS**

**First Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Discussion:** Police Chief Matt Nighbor explained that the City does not have an ordinance addressing vehicles parked with expired registration. The City frequently receives complaints from residents about abandoned vehicles. Under the existing ordinance, a reported vehicle is monitored for seven days. If the vehicle is moved an inch during that period, the seven-day monitoring period resets. The Police Department would like to locate vehicle owners to address the parking violations. However, if vehicles are not properly registered, it becomes difficult to identify and contact the owners. Implementing an ordinance to address this issue would help ensure that parking spaces remain available for other residents and visitors to the City.

Council Member Garcia inquired about vehicles parked on private property to which Chief Nighbor clarified that officers will not enter private property to enforce parking violations.

**Second Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Outcome:** The Bill was approved by the voice vote of 4/5 members of the Council. The third and final reading will take place during the next Council Meeting.

- f. **Bill 6274 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI AMENDING THE MAPLEWOOD CODE OF ORDINANCES, CHAPTER 6 – ADVERTISING, ARTICLE II. – SIGNS, DIVISION 1. – GENERALLY AND DIVISION 3. – PERMITTED TEMPORARY SIGNS, TO REVISE REGULATIONS FOR ELECTION SIGNS**

**First Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Discussion:** No discussion

**Second Reading:**

**Motion to approve:** Council Member Faulkingham

**Seconded by:** Council Member Homa

**Outcome:** The Bill was unanimously approved by voice vote of the Council. The third and final reading will take place during the next Council Meeting.

#### **14. Council and Staff Reports:**

- a. **Mayor’s Report:** No report
- b. **Ward 1 Report:** No report
- c. **Ward 2 Report:** No report
- d. **Ward 3 Report:** No report
- e. **City Attorney’s Report:** No report

**f. City Manager’s Report:**

- City Manager Withycombe reported that citations were issued to several delinquent businesses due to unpaid business licenses and/or Special Business District fees for the current fiscal year. The City aims to work closely with these businesses to help bring them into compliance. Council Member Homa inquired about the amount of staff time required to create these notifications. Withycombe responded that the process demands a substantial amount of time and resources, and in some cases, enforcement costs exceed the amount being collected. To streamline this process, the City is considering a self-service portal for business owners, making it easier for them to manage their licenses and payments. However, the “No Tax Due” letter from the State remains the biggest barrier to compliance.
- Additionally, the City is actively monitoring the 103rd Legislative Session in Missouri for any proposed measures that could impact operations. Withycombe will be meeting with Maplewood’s state senator and representative during the Missouri Municipal League Conference on February 18 to discuss relevant issues.

**15. Public Comment:** None

**16. Adjournment:**

With no further business to address, the meeting was adjourned at 7:48 p.m.

Approved this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

**RESOLUTION**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, HONORING AND COMMENDING FIRE CHIEF PETER C. MARSAC FOR 25 YEARS OF SERVICE WITH THE CITY OF MAPLEWOOD

WHEREAS, Peter C. Marsac began his career with the City of Maplewood as a Firefighter/Paramedic on March 6, 2000; and

WHEREAS, through excellence in service and demonstrated leadership abilities, he has risen through the ranks of the department; and

WHEREAS, his commitment to innovation and exceptional dedication to community safety led to his appointment as Fire Chief; and

WHEREAS, throughout his 25 years of service, he has shown unwavering commitment to the safety and wellbeing of our community; and

WHEREAS, Chief Marsac has garnered the admiration and respect of his colleagues and staff; and

WHEREAS, the City of Maplewood has greatly benefited from his vision and leadership.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AS FOLLOWS: Peter C. Marsac is hereby honored and commended on his attainment of 25 years of service with the City of Maplewood; and

BE IT FURTHER RESOLVED that the City Council thanks Peter C. Marsac for his 25 years of distinguished service to the community and offers best wishes for continued success in the future years with the City of Maplewood.

Passed this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

Approved this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

**RESOLUTION**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, HONORING AND COMMENDING BATTALION CHIEF RODERICK J. LATORRE FOR 25 YEARS OF SERVICE WITH THE CITY OF MAPLEWOOD

WHEREAS, Roderick J. Latorre began his career with the City of Maplewood as a Firefighter/EMT on March 6, 2000; and

WHEREAS, through dedication, exemplary service, and demonstrated leadership, he has risen through the ranks to serve as Battalion Chief; and

WHEREAS, during his 25 years as a city employee, he has demonstrated unwavering devotion to duty and outstanding commitment to public safety; and

WHEREAS, Battalion Chief Latorre has earned the respect and admiration of those with whom he has served; and

WHEREAS, our entire community has benefitted from the loyal services rendered by Roderick J. Latorre as a City of Maplewood employee.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AS FOLLOWS: Roderick J. Latorre is hereby honored and commended on his attainment of 25 years of service with the City of Maplewood; and

BE IT FURTHER RESOLVED that the City Council thanks Roderick J. Latorre for his 25 years of distinguished service to the community and offers best wishes for continued success in the future years with the City of Maplewood.

Passed this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

Approved this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk



*Election Day*  
**IS TUESDAY**  
**APRIL 8**  
Last day to register to vote is March 12

**Let's Continue  
to Provide a  
Great Education  
for our Students.**



More questions about  
Props B & E?  
Please scan the code  
above to contact MRH  
administration.

## **Propositions B & E: Salaries, Facilities, Safety**

**T**hanks to action by the Maplewood Richmond Heights School District Board of Education, voters have an opportunity to take a significant step toward supporting the future needs of our District. The Board of Education has placed two funding measures on the upcoming April 8 election ballot, aimed at enhancing our facilities and grounds and providing well-deserved wage and salary increases for staff. A proposed reduction in the current debt service levy would offset an increase in the operating levy, resulting in:

### **NO NET INCREASE FOR TAXPAYERS**

#### **Why Two Ballot Questions?**

Because of rules restricting the use of funds from levies and bond sales, the District must have two questions on the ballot.

#### **Prop B Is for Building**

Prop B is a Bond issue, which must be approved by at least 4/7ths (57%) of the vote. It will pay for capitol construction projects to build, renovate, repair or modernize school buildings and facilities.

#### **Prop E Is for Education**

Prop E is a Levy, which requires a simple majority for passage (50% + one vote). It will pay for educational programs and daily operations of schools including staff pay, supplies, utilities and insurance.



**ACADEMIC PROGRAMMING**



**EMPLOYEE PAY TO RETAIN GREAT STAFF**



**IMPROVED SCHOOL SAFETY & SECURITY**



**IMPROVE & MAINTAIN INFRASTRUCTURE**



## What is the purpose of each ballot issue?

### Prop B Is for Building

Proposition B is a zero-tax levy bond sale proposal. Thanks to sound financial management by the MRH Board of Education and Administration, the District has paid off a large portion of debt incurred from past construction projects and is in a position to seek approval for an additional \$15 million to enhance facilities and safety.

Projects include but are not limited to:

**INFRASTRUCTURE:** new HS/MS track & field, roof repairs, fire doors, HVAC upgrades, furniture, tuckpointing, exterior fencing, ECC/ELEM kitchen renovations, maintenance equipment, more

**SAFETY:** more secure doors and locks, cameras, signage

**ACADEMIC PROGRAMMING:** ELEM Seed-to-Table classroom, updated ECC library, HS theatre flooring, lighting and curtains

### Prop E Is for Education

Proposition E is a proposed zero-tax increase levy transfer which will generate \$2.2 million to improve employee compensation.

If approved, Proposition E would allow the District to reduce its current debt service levy by 50 cents while increasing the operating levy by the same amount, resulting in **NO NET INCREASE** for taxpayers. The operating levy is the one which provides for employee pay and benefits. The proposed transfer would allow MRH to attract, keep and support outstanding workers. This funding measure would have no impact on the District's ability to pay down its debt.

### What happens if either of these measures falls?

Should Proposition B fail, there will be no new track and field. Much-needed infrastructure maintenance, which has already been delayed, will be canceled or postponed. Should Proposition E fail, the District faces the potential loss of talented educators and support staff; larger class sizes; programmatic cuts including support for each school's Metaphor (learning model), Seed To Table, and academic enrichment; reduced stipends for extra-duty positions; and reduced professional development opportunities.



Maplewood Richmond Heights  
School District

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, GRANTING A CONDITIONAL USE PERMIT TO KEYONNIA FOOTE OF STORYBOOK LEARNING CENTER TO OPERATE A DAYCARE FACILITY IN THE AB ARTERIAL BUSINESS DISTRICT AT 2425 S. BIG BEND BOULEVARD

WHEREAS, Keyonna Foote of Storybook Learning Center has applied to the City Council of the City of Maplewood, Missouri, for a Conditional Use Permit as provided in Section 56-877 of the Maplewood Code of Ordinances, to provide a daycare center at 2425 S. Big Bend Boulevard; and

WHEREAS, the Plan and Zoning Commission recommended approval of this proposed Conditional Use Permit at their January 21, 2025, meeting by a vote of 5 ayes, 0 nays; and

WHEREAS, the City Council held a public hearing on this conditional use permit at their January 28, 2025 Council meeting.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AS FOLLOWS:

Section I. Keyonna Foote of Storybook Learning Center is hereby granted a Conditional Use Permit to operate a daycare center at 2425 S. Big Bend Blvd.

Section II. The Conditional Use Permit is granted subject to all rules and regulations and to conditions set forth for the property described in Section I. as follows:

- (A) Permitted Use: A daycare center with the following stipulations:
  - 1) Evidence of approval for a daycare center operation from the State of Missouri Fire Marshall’s Office must be provided to the City of Maplewood in conjunction with the annual renewal of the petitioner’s business license.
  - 2) The number of children permitted on-site shall be subject to the review and approval of the State of Missouri and the City of Maplewood Fire Marshall’s Office.
  - 3) Children must be dropped off and/or picked up utilizing the westernmost parking spaces immediately adjacent to the building entrance.
  - 4) Children being dropped off and/or picked up from the daycare center must be accompanied by an adult at all times.
  - 5) Children must remain indoors between 8:00 a.m. and 5:00 p.m.
  
- (B) Architectural Standards/Sign Requirements: Any exterior changes to the building and/or signage must be approved by the Design and Review Board prior to the issuance of a building permit. All non-conforming signage must be removed prior to the issuance of an occupancy permit/business license.

(C) Exterior Storage of Materials: No outside storage of materials will be permitted.

Section III. This ordinance shall be in full force and effect fifteen (15) days after its passage and approval.

Passed this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

Approved this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

## **FINDINGS OF FACT**

The Mayor and City Council make the following findings of fact for the petition for a Conditional Use Permit for a daycare facility at 2425 S. Big Bend Boulevard:

- a. The proposed use complies with all applicable provisions of the Zoning Code.
- b. The proposed use will contribute to and promote the community welfare and convenience.
- c. The proposed use will not cause substantial injury to the value of neighboring property.
- d. The proposed use does comply with the overall neighborhood development plan and existing zoning provisions.
- e. The proposed use will provide, if applicable, off-street parking and loading areas in accordance with the standards of the Zoning Code.
- f. The proposed use will not substantially increase traffic hazards.
- g. The proposed use will not substantially increase fire hazards.
- h. The proposed use will not overtax public utilities.
- i. The proposed use will not place an undue burden on municipal services.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, GRANTING A CONDITIONAL USE PERMIT TO LUCAS FARRELL OF STL BUCKET LIST TO OPERATE AN OFFICE USE IN THE SR SINGLE FAMILY RESIDENTIAL DISTRICT AT 7302 PICADILLY AVENUE

WHEREAS, Lucas Farrell of STL Bucket List has applied to the City Council of the City of Maplewood, Missouri, for a Conditional Use Permit as provided in Section 56-1063 (I) and Section 56-877 of the Maplewood Code of Ordinances to operate an office at 7302 Picadilly Avenue; and

WHEREAS, the Plan and Zoning Commission recommended approval of this proposed Conditional Use Permit at their January 21, 2025, meeting by a vote of 5 ayes, 0 nays; and

WHEREAS, the City Council held a public hearing on this conditional use permit petition at their January 28, 2025 Council meeting.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AS FOLLOWS:

Section I. Lucas Farrell of STL Bucket List is hereby granted a Conditional Use Permit to operate an office at 7302 Picadilly Avenue.

Section II. The Conditional Use Permit is granted subject to all rules and regulations and conditions set forth for the property described in Section I as follows:

- (A) Permitted Use: Business and Professional Office.
- (B) Architectural Standards/Sign Requirements: Any exterior changes or additions to the building or structures and/or signage must be approved by the Design and Review Board prior to the issuance of a building permit.
- (C) Exterior Storage of Materials: No unenclosed outside storage of materials will be permitted.

Section III. This ordinance shall be in full force and effect fifteen (15) days after its passage and approval.

Passed this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

Approved this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

## **FINDINGS OF FACT**

The Mayor and City Council make the following findings of fact for the petition for a Conditional Use Permit to allow an office use at 7302 Picadilly Avenue:

- a. The proposed use complies with all applicable provisions of the Zoning Code.
- b. The proposed use will contribute to and promote the community welfare and convenience.
- c. The proposed use will not cause substantial injury to the value of neighboring property.
- d. The proposed use does comply with the overall neighborhood development plan and existing zoning provisions.
- e. The proposed use will provide, if applicable, off-street parking and loading areas in accordance with the standards of the Zoning Code.
- f. The proposed use will not substantially increase traffic hazards.
- g. The proposed use will not substantially increase fire hazards.
- h. The proposed use will not overtax public utilities.
- i. The proposed use will not place an undue burden on municipal services.
- j. The proposed use is consistent with the design, construction and original intended use of the structure.
- k. The proposed use serves a community need, and no detrimental effect will be made upon the character of the zoning district in which the conditional use is proposed.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, GRANTING A CONDITIONAL USE PERMIT TO BRUCE SCHWERDT OF RESET VINTAGE APPAREL TO OPERATE A VINTAGE AND COLLECTIBLE CLOTHING AND ACCESSORIES STORE AT 2718 SUTTON BOULEVARD

WHEREAS, Bruce Schwerdt applied to the City Council of the City of Maplewood, Missouri, for a Conditional Use Permit as provided in Section 56-877 of the Maplewood Code of Ordinances, to operate a vintage and collectible clothing and accessories store at 2718 Sutton Boulevard; and

WHEREAS, antiques and collectibles sold must meet the definitions in Sec. 56-3. Definitions of the City Code; and

WHEREAS, the Plan and Zoning Commission recommended approval of this proposed Conditional Use Permit at their January 21, 2025, meeting by a vote of 5 ayes, 0 nays; and

WHEREAS, the City Council held a public hearing on this conditional use permit at their January 28, 2025 Council meeting.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AS FOLLOWS:

Section I. Bruce Schwerdt of Reset Vintage Apparel is hereby granted a Conditional Use Permit to operate a vintage and collectible clothing and accessories store at 2718 Sutton Boulevard.

Section II. The Conditional Use Permit is granted subject to all rules and regulations and to conditions set forth for the property described in Section I. as follows:

- (A) Permitted Use: An antique, vintage and collectible clothing and accessories store as defined in Sec. 56-3. Definitions of the City Code. Items sold must be new or be considered antiques, vintage items or collectibles.
- (B) Architectural Standards/Sign Requirements: Any exterior changes to the building and/or signage must be approved by the Design and Review Board prior to the issuance of a building permit. All non-conforming signage must be removed prior to the issuance of an occupancy permit/business license.
- (C) Exterior Storage of Materials: No outside storage of materials will be permitted.

Section III. The permittee shall, within 30 days, give written acceptance to the terms of this ordinance to the City Council.

Section IV. This ordinance shall be in full force and effect fifteen (15) days after its passage and approval.

Passed this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

Approved this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

## **FINDINGS OF FACT**

The Mayor and City Council make the following findings of fact for the petition for a Conditional Use Permit to operate a vintage and collectible retail store at 2718 Sutton Boulevard:

- a. The proposed use complies with all applicable provisions of the Zoning Code.
- b. The proposed use will contribute to and promote the community welfare and convenience.
- c. The proposed use will not cause substantial injury to the value of neighboring property.
- d. The proposed use does comply with the overall neighborhood development plan and existing zoning provisions.
- e. The proposed use will provide, if applicable, off-street parking and loading areas in accordance with the standards of the Zoning Code.
- f. The proposed use will not substantially increase traffic hazards.
- g. The proposed use will not substantially increase fire hazards.
- h. The proposed use will not overtax public utilities.
- i. The proposed use will not place an undue burden on municipal services.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AMENDING THE MAPLEWOOD CODE OF ORDINANCES, CHAPTER 34 – OFFENSES, ARTICLE I – IN GENERAL, SECTIONS 34-14 – SALE OF TOBACCO TO A MINOR; POSSESSION OF TOBACCO BY A MINOR, AND SECTION 34-15 – ELECTRONIC CIGARETTES/VAPORIZING PRODUCTS, TO CHANGE THE AGE OF MINOR TO PERSONS UNDER THE AGE OF TWENTY-ONE

WHEREAS, the City of Maplewood desires the city’s laws comply with those adopted by St. Louis County.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AS FOLLOWS:

Section I. Chapter 34, Article I, Sections 34-14 and 34-15 of the Maplewood Code of Ordinances are hereby amended as follows:

Sec. 34-14. Sale of tobacco to a minor; possession of tobacco by a minor.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Minor* means a person under the age of ~~18~~ **twenty-one (21)** years.

(b) *Prohibition of the sale of tobacco to a minor.*

- (1) No person shall sell or distribute any tobacco product or rolling papers to any ~~minor~~ **person under twenty-one (21) years of age**. This subsection shall not apply to the distribution by family members on property that is not open to the public.
- (2) A person selling tobacco products or rolling papers or distributing tobacco product samples shall require proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of ~~18~~ **twenty-one (21)** years. Reasonable reliance on proof of age or on the appearance of the purchaser or recipient shall be a defense to any action for a violation of this section. No person shall be liable for more than one violation of this section on any single day.
- (3) The owner of an establishment at which tobacco products or rolling papers are sold at retail or through vending machines shall prominently display in a conspicuous place at every display from which tobacco products are sold and on every vending machine where tobacco products are purchased a sign that shall:
  - a. Contain in red lettering at least one-half inch high on a white background the following: “It is a violation of state law for cigarettes or other tobacco products to be sold to any person under the age of ~~18~~ **twenty-one (21)** years”; and

b. Include a depiction of a pack of cigarettes at least two inches high defaced by a red diagonal diameter of a surrounding red circle, and the words “~~Under 18 years~~” “**Under 21.**”

(4) If a sale is made by an employee of the owner of an establishment in violation of this section, then the employee shall be guilty of an offense established herein. If a vending machine is in violation of this section, then the owner of the establishment shall be guilty of an offense established herein. If a sample is distributed by an employee of a company conducting the sampling, then such employee shall be guilty of an offense established herein.

*(c) Prohibition of the purchase or possession of tobacco by a minor.*

(1) It shall be unlawful for any ~~minor~~ **person under twenty-one (21) years of age** to purchase, attempt to purchase or to possess any tobacco products or rolling papers.

(2) It shall be unlawful for a ~~minor~~ **any person under twenty-one (21) years of age** to misrepresent that he has attained the age of ~~18~~ **twenty-one (21)** years for the purpose of purchasing or receiving tobacco product or rolling papers.

Sec. 34-15. Electronic cigarettes/vaporizing products.

*(b) Distribution of vaporizing products to or possession by persons ~~under 18~~ **under twenty-one (21) years of age prohibited:***

(1) A person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person’s establishment, may not sell, offer for sale, give, or furnish any vaporizing products or any component to a person ~~under 18~~ **under twenty-one (21)** years of age.

(2) Before selling, offering for sale, giving, or furnishing any vaporizing product, or any cartridge or component of any vaporizing product, to another person, the person selling, offering for sale, giving, or furnishing the vaporizing product shall verify that the person is at least ~~18~~ **twenty-one (21)** years of age by:

a. Examining from any person that appears to be under ~~27~~ **thirty (30)** years of age a government-issued photographic identification that establishes the person is at least ~~18~~ **twenty-one (21)** years of age or

b. For sales made through the internet or other remote sales methods, performing an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the person during the ordering process that establishes the person is ~~18~~ **twenty-one (21)** years of age or older.

(3) No ~~minor under 18~~ **person under twenty-one (21)** years of age shall possess any vaporizing product, buy any vaporizing product, or, in the furtherance or facilitation

of obtaining any vaporizing product shall display or use a false or forged identification card or transfer, alter, or deface an identification card.

- (4) It is not a violation of this Act for a person ~~under 18~~ **under twenty-one (21)** years of age to purchase or possess a vaporizing product if the person under the age of ~~18~~ **twenty-one (21)** purchases or is given the vaporizing product from a retail seller of vaporizing products or an employee of the retail seller pursuant to a plan or action to investigate, patrol, or otherwise conduct a “sting operation” or enforcement action against a retail seller of any vaporizing product or a person employed by the retail seller of vaporizing products or on any premises authorized to sell vaporizing products to determine if vaporizing products are being sold or given to persons ~~under 18~~ **under twenty-one (21)** years of age if the “sting operation” or enforcement action is approved by the department of state police, the county sheriff, a municipal police department, the department of public health, or a local health department.

Section II. This ordinance shall be in full force and effect fifteen (15) days after passage and approval.

Passed this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

Approved this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AMENDING THE MAPLEWOOD CODE OF ORDINANCES, CHAPTER 50 – TRAFFIC AND VEHICLES, ARTICLE II. – LICENSING, DIVISION 1. – GENERALLY, SECTION 50-23 – STATE REGISTRATION AND LICENSE REQUIRED, TO ADDRESS BOTH OPERATION AND PARKING OF MOTOR VEHICLES, RECREATIONAL VEHICLES, AND TRAILERS

WHEREAS, the City of Maplewood desires to clarify its requirements regarding the operation and parking of motor vehicles, recreational vehicles, and trailers within the City; and

WHEREAS, the City Council finds it necessary to expand the current ordinance to specifically address both the operation and parking of motor vehicles, recreational vehicles, and trailers to ensure clear enforcement of registration requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AS FOLLOWS:

Section I. Chapter 50, Article II, Division 1, Section 50-23 State Registration and License Required of the Maplewood Code of Ordinances is hereby amended as follows:

Sec. 50-23. - State registration and license required.

~~All motor vehicles being operated by any person within the city shall be validly registered, licensed and display current license plates issued by the state or any other appropriate state authority. All license plates shall be kept reasonably clean, unobstructed and securely fastened so as not to swing.~~

- (a) No person shall operate any motor vehicle, recreational vehicle, or trailer within the city unless such motor vehicle, recreational vehicle, or trailer has properly displayed a valid license plate or plates or temporary permit issued to the lawful owner of the vehicle by the state, except that any person who is a non-resident of the state may operate any motor vehicle within the city, provided the motor vehicle, recreational vehicle, or trailer has been duly registered for the current year in the state, country, or other place of which the owner is a resident. All license plates shall be kept reasonably clean, unobstructed. and securely fastened.
- (b) No person shall park any motor vehicle, recreational vehicle, or trailer within the city unless such motor vehicle, recreational vehicle, or trailer has properly displayed a valid license plate or plates or temporary permit issued to the lawful owner of the vehicle by the state, except that any person who is a non-resident of the state may park any motor vehicle, recreational vehicle, or trailer within the city in accordance with Chapter 50, Article V of the Code, provided the motor vehicle, recreational vehicle, or trailer has been duly registered for the current year in the state, country, or other place of which the owner is a resident.

(c) At all times such motor vehicle, recreational vehicle, or trailer is being operated or parked upon the streets within the city, the valid license plate or plates or temporary permit shall be properly displayed on such vehicle or trailer.

Section II. This ordinance shall be in full force and effect fifteen (15) days after passage and approval.

Passed this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

Approved this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AMENDING THE MAPLEWOOD CODE OF ORDINANCES, CHAPTER 6 – ADVERTISING, ARTICLE II. – SIGNS, DIVISION 1. – GENERALLY AND DIVISION 3. – PERMITTED TEMPORARY SIGNS, TO REVISE REGULATIONS FOR ELECTION SIGNS

WHEREAS, Chapter 6 of the city’s Code of Ordinances currently addresses election signs under multiple provisions creating confusion about display periods and requirements; and

WHEREAS, the City Council finds it would be in the best interests of the city to establish clear and consistent regulations for election signs.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AS FOLLOWS:

Section I. Chapter 6, Article II, Division 1, Section 6-29 Definitions, and Division 3, Section 6-72 Regulations of the Maplewood Code of Ordinances are hereby amended as follows:

Sec. 6-29. Definitions.

*Temporary sign* means a display sign, banner or other advertising device constructed of cloth, canvas, fabric, plastic, or other light temporary material with or without a structural frame, intended for display ~~for a period not to exceed 30 day, including decorative displays for holidays or public demonstrations.~~ **Unless otherwise specified in this article, temporary signs shall not be displayed for more than 30 days.**

Sec. 6-31. Permits.

(c) *Exempt signs.* The following signs are exempt from permit fees:

**(6) Temporary election signs complying with the requirements of Sec. 6-72(8).**

Sec. 6-72. Regulations.

**(8) Election signs. Ground signs may be erected on private property during election season, subject to the following requirements:**

- a. **Signs shall be erected no more than sixty (60) days prior to an election and must be removed within five (5) days after the election.**
- b. **Signs shall not exceed six (6) square feet in residential districts and sixteen (16) square feet in commercial districts.**
- c. **Signs shall not be erected in the public right-of-way.**
- d. **No permit shall be required for election signs meeting these requirements.**

Section II. This ordinance shall be in full force and effect immediately after passage and approval.

Passed this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

Approved this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

# Memorandum



**To:** Mayor and City Council  
**From:** Tiffany Hyde, Resource Development and Public Engagement Manager  
**Date:** January 31, 2025  
**Re:** **Deer Creek South Pavilion Roof Replacement**

---

The Deer Creek Park South Pavilion roof has exceeded its service life and requires replacement, with multiple patches needed in recent years. The City advertised this project in the *St. Louis Countian* on January 14, 2025.

Following the public bid opening on January 31, 2025, five contractors submitted bids:

- BP Roofing: \$11,580
- Geissler Roofing Company Inc.: \$20,857
- Martin Roofing: \$17,964
- Patriot Industries: \$18,250
- Rody Exterior LLC: \$13,400

BP Roofing successfully completed the Deer Creek North Pavilion roof replacement in 2023. Based on their competitive bid and satisfactory previous work history with the City, staff recommends awarding this project to BP Roofing in the amount of \$11,580.

The project will be funded through the Parks Capital budget, where \$15,000 was budgeted for the project. A resolution requesting City Council approval of the BP Roofing bid is attached for your consideration.

For questions or concerns regarding this matter, please contact me at 314-646-3640.

**RESOLUTION**

**R25-4**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FROM BP ROOFING FOR THE 2025 DEER CREEK SOUTH PAVILION ROOF PROJECT IN THE AMOUNT OF ELEVEN THOUSAND FIVE HUNDRED EIGHTY DOLLARS (\$11,580)

WHEREAS, the roof on the South Pavilion in Deer Creek Park has exceeded its service life; and

WHEREAS, the City prepared a Request for Bid for the replacement of the South pavilion roof in Deer Creek Park; and

WHEREAS, the project was advertised in the St. Louis Countian on January 14, 2025; and  
WHEREAS, bids were publicly opened on January 31, 2025, and five (5) responsive bids were received; and

WHEREAS, BP Roofing submitted the lowest bid of eleven thousand five hundred eighty dollars (\$11,580); and

WHEREAS, BP Roofing successfully completed the Deer Creek North Pavilion roof replacement in 2023; and

WHEREAS, timely replacement of the roof is necessary to minimize disruption to public use.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AS FOLLOWS:

The City Manager is hereby authorized to accept the bid of BP Roofing in the amount of eleven thousand five hundred eighty dollars (\$11,580) for the 2025 Deer Creek South Pavilion Roof Replacement project.

Passed this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

Approved this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

# Memorandum



**To:** Mayor and City Council  
**From:** Anthony Traxler, Assistant City Manager/ Director of Public Works  
**Date:** February 5, 2025  
**Re:** Approval of a Cost Share Agreement for Construction of the Great Rivers Greenway Trail – Greenwood Boulevard from Sussex Avenue to Canterbury Avenue

---

The attached proposed ordinance authorizes a Cost Share Agreement for construction of the Great Rivers Greenway (GRG) trail along Greenwood Boulevard from Sussex Avenue to Canterbury Avenue. The City and GRG previously agreed to combine GRG’s trail project with Maplewood’s street reconstruction project so the two projects can be built simultaneously. Federal funding from the City’s Surface Transportation (STP) grant and GRG’s Congestion Mitigation & Air Quality (CMAQ) grant will be combined to help pay for this for this project.

Maplewood will assume responsibility for project oversight and payments. Because of this, Maplewood will receive GRG’s CMAQ Grant funds and GRG’s contributed funds of \$536,711 which this agreement formalizes. Construction of the new trail, along with the Greenwood Boulevard roadway reconstruction project, is anticipated to start in late summer 2025.

For questions regarding this matter, please contact me at 314-646-3635.

**COST SHARE AGREEMENT FOR THE  
DEER CREEK GREENWAY**

**THIS COST SHARE AGREEMENT** (the “**AGREEMENT**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024 by and between the **METROPOLITAN PARK AND RECREATION DISTRICT, d/b/a THE GREAT RIVERS GREENWAY DISTRICT** (hereinafter “**DISTRICT**”) and **CITY OF MAPLEWOOD, MISSOURI** (hereinafter the “**CITY**”).

**WHEREAS**, the **DISTRICT** is engaged in developing and constructing a series of parks, trails and greenways in the City of St. Louis, St. Louis County and St. Charles County, Missouri; and

**WHEREAS**, Sections 70.210 and 70.220 RSMo., as amended, authorize municipalities and political subdivisions to contract and cooperate with other municipalities and political subdivisions for the planning, development, construction, acquisition or operation of any public improvement or facility; and

**WHEREAS**, Section 67.1742(2) RSMo. provides that a metropolitan park and recreation district shall have the power to “Contract with public and private entities or individuals both within and without the state ... in furtherance of any of the purposes of the district;” and

**WHEREAS**, the **DISTRICT** intends to design, develop, and construct a trail, trail facilities, and associated improvements along the Deer Creek Greenway as generally depicted on Exhibit A attached hereto (the “**TRAIL**”);

**WHEREAS**, the **DISTRICT** was awarded federal grant funds (the “**DISTRICT GRANT FUNDS**”) under the Congestion Mitigation and Air Quality (“**CMAQ**”) project program administered by the East-West Gateway Council of Governments (“**EWG**”) for development of the **TRAIL**, identified as Federal Project Number CMAQ-9901(670) and as more particularly described in that certain Congestion Mitigation and Air Quality Agreement executed on January 29, 2024 between the Missouri Highways and Transportation Commission (“**MHTC**”) and **DISTRICT** (the “**GRG GRANT AGREEMENT**”) attached hereto as Exhibit B; and

WHEREAS, the **CITY** was awarded federal grant funds (the “**STP GRANT FUNDS**”) under the Surface Transportation Program administered by **EWG**, which award has been identified as Federal Project Number STP/CMAQ-9901(667), pursuant that certain STP Program Agreement dated November 2, 2022 between **MHTC** and the **CITY** (“**STP AGREEMENT**”) for the reconstruction of Greenwood Boulevard by the **CITY** (the “**CITY PROJECT**”);

**WHEREAS**, the **DISTRICT** and the **CITY** have mutual interests in the design, development, and construction of the **TRAIL** and have agreed that the **CITY** shall diligently pursue the design, construction and maintenance of that portion of the **TRAIL** located on Greenwood Boulevard as part of the **CITY PROJECT**; and

**WHEREAS**, the **CITY** was awarded additional **CMAQ** project program funding administered by **EWG** (together with the **STP GRANT FUNDS**, the “**CITY GRANT FUNDS**”) to construct the **TRAIL** on Greenwood Boulevard, as more particularly described in that certain STP Program Supplemental Agreement dated April 3, 2024 between **MHTC** and the **CITY** (together with the **STP AGREEMENT**, the “**CITY GRANT AGREEMENT**”), attached hereto as Exhibit C; and

WHEREAS, the **CITY GRANT AGREEMENT** provides for a portion of the **DISTRICT GRANT FUNDS** to be applied towards the costs of the **CITY** in constructing that portion of the **TRAIL** along Greenwood Boulevard (the “**DISTRICT CONTRIBUTION**”); and

**WHEREAS**, Ordinance Number \_\_\_\_\_ authorizes the **CITY** to enter into this **AGREEMENT** with the **DISTRICT**; and

**NOW, THEREFORE**, in consideration of the foregoing and the following mutual covenants, terms and conditions, the **DISTRICT** and the **CITY** agree as follows:

1. **Representations of the DISTRICT.** The **DISTRICT** represents, warrants and covenants to the **CITY** as follows:

- a. The **DISTRICT** is a political subdivision duly created and existing under and pursuant to the laws of the State of Missouri.
- b. The **DISTRICT** has full power and authority to enter into this **AGREEMENT** and to carry out its obligations hereunder, and by proper action has duly authorized the execution and delivery of this **AGREEMENT** by its duly authorized officers.
- c. Neither the execution and delivery of this **AGREEMENT**, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the **DISTRICT** is now a party or by which the **DISTRICT** is bound.

2. **Representations of the CITY.** The **CITY** represents, warrants and covenants to the **DISTRICT** as follows:

- a. The **CITY** is a constitutionally-created city of the State of Missouri.
- b. The **CITY** has power to enter into this **AGREEMENT** and by proper action has duly authorized the execution and delivery of this **AGREEMENT** by its duly authorized officers.
- c. The execution and delivery of this **AGREEMENT** will not conflict with or constitute a breach of or default under the laws applicable to the **CITY**, its ordinances or any bond, debenture, note or other evidence of indebtedness of the **CITY** or any contract, agreement or lease to which the **CITY** is a party or by which it is bound.

3. **CITY Obligations.**

- a. The **CITY** agrees to diligently pursue the construction of the **TRAIL** in accordance with the **DESIGN DOCUMENTS** and **CONSTRUCTION DOCUMENTS** (both defined hereinafter).
- b. The **CITY** shall cooperate with the **DISTRICT** to apply the **DISTRICT CONTRIBUTION** towards the construction of the **TRAIL**.

c. The **CITY** shall be responsible for the balance of costs required for the construction of the **TRAIL** which are not funded by the **DISTRICT CONTRIBUTION** and the **CITY GRANT FUNDS**.

4. **DISTRICT Obligations.**

a. The **DISTRICT** shall cooperate with the **CITY** to apply the **DISTRICT CONTRIBUTION** towards the construction of the **TRAIL**.

b. In no event shall the **DISTRICT CONTRIBUTION** exceed Five Hundred Thirty-Six Thousand and Seven Hundred Eleven Dollars (\$536,711.00) without formal amendment to this Agreement.

5. **Design of TRAIL.**

a. For purposes of **SECTION 5** through **SECTION 6** of this **AGREEMENT**, the “**DISTRICT’S DESIGNATED REPRESENTATIVE**” is:

Angelica Gutierrez  
Senior Project Manager  
The Great Rivers Greenway District  
3745 Foundry Way, Ste. 253  
St. Louis, MO 63110  
Telephone: 314-932-4907  
Email: agutierrez@grgstl.org

and the “**CITY’S DESIGNATED REPRESENTATIVE**” is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

b. The **DISTRICT** has engaged M3 Engineering Group, P.C. (“**M3**”) for the preparation of documents (the “**DESIGN DOCUMENTS**”) for the development of the **TRAIL**.

c. While the **DISTRICT** is working with **M3** in the development of the **DESIGN**

**DOCUMENTS**, the **DISTRICT** and the **CITY** shall cooperate through an informal meeting or meetings so that the **CITY'S DESIGNATED REPRESENTATIVE**, and the **DISTRICT'S DESIGNATED REPRESENTATIVE** and/or the **DISTRICT'S DESIGNATED REPRESENTATIVE'S** designees may review the **DESIGN DOCUMENTS** and discuss initial reactions and/or comments thereto with the **DISTRICT** in an effort to address issues so that the formal review process is expedited to the greatest extent possible. Thereafter, the **DISTRICT** may, but shall not be obligated to, cause **M3** to revise the **DESIGN DOCUMENTS** before the **DISTRICT** submits the **DESIGN DOCUMENTS** to the **CITY** for formal approval pursuant to **SECTION 5(d)** below.

After the informal preliminary review contemplated in this **SECTION 5(c)** and upon the **DISTRICT'S** approval of any revisions to the **DESIGN DOCUMENTS**, the **DISTRICT** shall submit an electronically complete set of the **DESIGN DOCUMENTS** to the **CITY** for review and approval as provided in this **SECTION 5(d)**. The **DISTRICT** shall deliver the **DESIGN DOCUMENTS** to the **CITY'S DESIGNATED REPRESENTATIVE**. Within fifteen (15) days after their receipt of the **DESIGN DOCUMENTS**, the **CITY'S DESIGNATED REPRESENTATIVE** shall notify the **DISTRICT** in writing as to whether or not the **CITY** has approved the **DESIGN DOCUMENTS**. If the **CITY** has not approved the **DESIGN DOCUMENTS**, then its written notification to the **DISTRICT** shall specify the reasons therefor, in which event the **DISTRICT** may, but shall not be obligated to, revise the **DESIGN DOCUMENTS** and re-submit the same to the **CITY** for review and approval. If the **DISTRICT** re-submits the **DESIGN DOCUMENTS** to the **CITY** as provided in the immediately preceding sentence, then within ten (10) days after its receipt of the re-submitted **DESIGN DOCUMENTS**, the **CITY** shall notify the **DISTRICT** in writing as to whether

or not it has approved the re- submitted **DESIGN DOCUMENTS**. If the **CITY** has not approved the re-submitted **DESIGN DOCUMENTS**, then its written notification to the **DISTRICT** shall specify the reasons therefor. The foregoing procedure shall be repeated until either the **CITY** or the **DISTRICT** ceases its efforts to obtain approval of the **DESIGN DOCUMENTS** or until the **DESIGN DOCUMENTS** have been finally approved.

- d. Notwithstanding the ten- and fifteen-day periods of time referenced in the foregoing provisions, the **DISTRICT** and the **CITY** shall use their best efforts to expedite their review and approval processes.

6. **Construction of TRAIL.**

- a. The **CITY** shall construct the **TRAIL** in accordance with the **DESIGN DOCUMENTS**, as prepared in accordance with **SECTION 5**, and in accordance with the **CONSTRUCTION DOCUMENTS**, as developed in accordance with this **SECTION 6**.
- b. The **CITY** shall follow any and all applicable rules, laws and regulations, including but not limited to those mandated by the **CITY GRANT AGREEMENT**, in connection with the award of **CITY GRANT FUNDS**. The **DISTRICT** shall cooperate with the **CITY** to provide all documents necessary for the proper and timely submittals to the Missouri Department of Transportation ("**MoDOT**") to comply with the **CITY GRANT AGREEMENT** and ensure that the **CITY GRANT FUNDS** received and applied towards the completion of the **TRAIL**.
- c. The **DISTRICT** shall follow any and all applicable rules, laws and regulations, including but not limited to those mandated by the **DISTRICT GRANT AGREEMENT**, in connection with the award of **DISTRICT CONTRIBUTION**. The **CITY** shall cooperate with the **DISTRICT** to provide all documents necessary for the

proper and timely submittals to **MoDOT** to comply with the **DISTRICT GRANT AGREEMENT** and ensure that the **DISTRICT CONTRIBUTION** is received and applied towards the completion of the **TRAIL** by the **CITY**.

- d. The **CITY** and the **DISTRICT** shall request reimbursements to **MoDOT** and to the other party in accordance with this **AGREEMENT**, as construction of the **TRAIL** progresses and until construction completion and close out of the project. The parties agree to cooperate to achieve the completion of the **TRAIL** and the disbursement of the **DISTRICT CONTRIBUTION**, subject to the terms and conditions set forth under this **AGREEMENT**.
- e. Upon the **DISTRICT'S** completion of the design of the **TRAIL**, the parties agree that the **DISTRICT** will prepare plans and specifications for the construction of the **TRAIL** (the "**CONSTRUCTION DOCUMENTS**").
- f. Upon completion of the **CONSTRUCTION DOCUMENTS**, the **DISTRICT** shall submit an electronically complete set of the same to the **CITY'S DESIGNATED REPRESENTATIVE** for review and approval of the same by the **CITY** as provided in this **SECTION 6(f)**. Within fifteen (15) days after receipt of the **CONSTRUCTION DOCUMENTS**, the **CITY'S DESIGNATED REPRESENTATIVE** shall notify the **DISTRICT** in writing as to whether or not the **CITY** has approved the **CONSTRUCTION DOCUMENTS**. If the **CITY** does not approve the **CONSTRUCTION DOCUMENTS**, then its written notification to the **DISTRICT** shall specify the reasons therefor, in which event the **DISTRICT** shall revise the **CONSTRUCTION DOCUMENTS** and re-submit the same to the **CITY** for review and approval. If the **DISTRICT** re-submits the **CONSTRUCTION DOCUMENTS** to the **CITY** as provided in the immediately preceding sentence, then within ten (10) days after its receipt of the re-submitted **CONSTRUCTION DOCUMENTS**, the **CITY** shall notify the **DISTRICT** in writing as to whether or not it has approved the re-

submitted **CONSTRUCTION DOCUMENTS**. If the **CITY** has not approved the re-submitted **CONSTRUCTION DOCUMENTS**, then its written notification to the **DISTRICT** shall specify the reasons therefor. The foregoing procedure shall be repeated until either the **DISTRICT** or the **CITY** ceases its efforts to obtain approval of the **CONSTRUCTION DOCUMENTS** have been finally approved by the **CITY**.

- g. If, after the **CITY'S** approval of the **CONSTRUCTION DOCUMENTS** as provided above and prior to the commencement of construction, the **DISTRICT** desires to make a material change to the **CONSTRUCTION DOCUMENTS**, then such change shall be subject to the approval of the **CITY** as required above. As used in this **SECTION 6(g)**, a "material change" means a change that would affect the types or location of the **TRAIL** along Greenwood Boulevard.
- h. The **DISTRICT** shall provide to the **CITY** any required conditions to be included by the **CONSTRUCTION MANAGER** (defined below) in the front end documents issued for bidding for the **TRAIL** (the "**CONDITIONS**"). **CITY** shall procure and deliver to **DISTRICT** bids based on the **CONSTRUCTION DOCUMENTS**, including the **CONDITIONS**, from all contractors and subcontractors for the construction of the **TRAIL** for the **DISTRICT's** review and approval prior to the commencement of construction of the **TRAIL** by **CITY**. **DISTRICT** will review the bids and deliver to **CITY** written notice either approving or disapproving the bids (any approved bids selected by **DISTRICT**, the "**APPROVED BIDS**") within five (5) days following the date upon which **CITY** delivered the bids to **DISTRICT**, which approval cannot be unreasonably withheld, conditioned, or delayed. If **DISTRICT** disapproves of the submitted bids, then **DISTRICT** shall notify **CITY** thereof specifying in reasonable detail the reasons for such disapproval, in which case **CITY** shall deliver updated bids in accordance with **DISTRICT's** objections and submit to **DISTRICT** for its review and approval.

**DISTRICT** shall notify **CITY** in writing whether it approves of the resubmitted bids within three (3) business days after its receipt thereof. This process shall be repeated until the bids have finally been approved by **CITY** and **DISTRICT**. It shall be reasonable for **DISTRICT** to withhold its consent to any proposed bids if (i) the proposed bids do not conform to the **DISTRICT's CONDITIONS** or (ii) the **TRAIL** costs exceed the sum of the **DISTRICT CONTRIBUTION** and the **CITY GRANT FUNDS**. The foregoing shall not exclude any other reasonable basis for **DISTRICT** to withhold its consent.

- i. **CITY** will submit to **DISTRICT** the projected costs of construction of the **TRAIL** based on the **APPROVED BIDS** and the **CONSTRUCTION DOCUMENTS** (the "**COST PROPOSAL**"). **DISTRICT** will either approve or disapprove the **COST PROPOSAL** or disapprove specific items and submit to **CITY** revisions to the **CONSTRUCTION DOCUMENTS** to reflect deletions of and/or substitutions for such disapproved items. Upon **DISTRICT's** approval of the **COST PROPOSAL** (the "**APPROVED COSTS**"), **CITY** shall have the right to commence the construction of the **TRAIL** pursuant to the terms of this **AGREEMENT**. Subject to appropriation by the **DISTRICT's** Board of Directors, the **DISTRICT** shall reimburse the **CITY** for the **APPROVED COSTS** in accordance with the following terms and conditions, in a total amount not to exceed the **DISTRICT CONTRIBUTION**:

- i. **DISTRICT** shall reimburse and pay the **CITY** the actual costs incurred or paid by or on behalf of the **CITY** for work in furtherance of construction of the **TRAIL**, provided that all costs and expenses incurred or paid by or on behalf of the **CITY** for which the **CITY** seeks payment from **DISTRICT** (i) must be directly applicable to the preconstruction or construction of the **TRAIL** and (ii) must be **APPROVED COSTS**.

- ii. The **CITY** shall present written invoices, construction pay applications, and other reasonable written supporting materials to **DISTRICT** of all costs incurred or paid by the **CITY**. The request shall include a certification from the **CONSTRUCTION MANAGER** and **CITY**, that costs submitted:  
(1) have not previously been submitted to **DISTRICT**, (2) have actually been incurred or paid by or on behalf of the **CITY**, and (3) are related to the construction of the **TRAIL** and are **APPROVED COSTS**.
- iii. Upon receipt of the certification and accompanying invoices and/or other supporting materials, **DISTRICT** shall review the certification and materials and determine within fifteen (15) days of receipt of said certification if the submitted costs are eligible **APPROVED COSTS**. If **DISTRICT** determines that any costs identified as **APPROVED COSTS** by the **CITY** are not **APPROVED COSTS** as contemplated hereunder, **DISTRICT** shall notify the **CITY** in writing within five (5) days after reviewing the certification and invoice, identifying the ineligible costs and the basis for determining the costs to be ineligible, whereupon the **CITY** shall have the right to provide additional or supplemental information regarding the submitted **APPROVED COSTS** along with a supplemental certificate for payment. If **DISTRICT** fails to approve or disapprove of any submitted certificate for payment within fifteen (15) days after receipt thereof, the certificate for payment shall be deemed approved; provided, however, in no event shall the **CITY** submit a request for payment to **DISTRICT** more frequently than once per thirty day period. Once the **APPROVED COSTS** have been approved by **DISTRICT** as set forth in this **Section 6(i)**, **DISTRICT** shall pay the **CITY** within thirty (30) days after such costs have been approved.

- iv. Notwithstanding anything contained in this **AGREEMENT** to the contrary, it is expressly understood and agreed by the parties that under no circumstances, and in no event, shall **DISTRICT** be required to contribute more than the **DISTRICT CONTRIBUTION**.
- v. In the event the costs for construction of the **TRAIL** exceed the sum of the **CITY GRANT FUNDS** and the **DISTRICT CONTRIBUTION**, the **DISTRICT** agrees to consider in good faith any requests from the **CITY** for additional funding in an amount not to exceed 10% of the **DISTRICT CONTRIBUTION**.
- j. **DISTRICT** has engaged TranSystems Corporation (the "**CONSTRUCTION MANAGER**") to implement construction or separate construction contract(s) with the successful bidder(s), all of which shall be in a form acceptable to the **CITY** (other than provisions required to be included in said contracts pursuant to the terms of this **AGREEMENT**) for the construction of the **TRAIL**.
- k. The **CONSTRUCTION MANAGER** shall facilitate and oversee the construction of the **TRAIL** according to the **APPROVED BIDS**.
- l. The **CITY** shall, in its construction contracts, require each contractor to agree that no labor performed or materials furnished and incorporated in the **TRAIL** shall be the basis for filing a lien against the **DISTRICT** or the **CITY**. The **CITY** shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien charge, encumbrance or claim on or with respect to the **TRAIL** or any part thereof other than as provided herein. The **DISTRICT** shall not, in any event, be responsible for any expense incurred by the **CITY** in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.
- m. If any change order would increase the cost of the **TRAIL** beyond the **APPROVED**

**COSTS**, then such change order shall be subject to the prior approval of the **DISTRICT** and the **CITY**, and the **DISTRICT** and the **CITY** shall endeavor to determine ways to reduce the project costs to cover the change. If the parties determine after their analysis that the cost of a change order makes the completion of the **TRAIL** financially infeasible, they shall jointly devise a plan to mitigate the impact of the termination or abandonment of the **TRAIL** to the same condition as such area existed prior to the commencement of construction.

- n. The **CITY** shall retain at its offices copies of all **TRAIL** invoices, lien waivers and payment records showing the amounts paid and retainage, which shall be available during normal business hours.
- o. Prior to the commencement of construction, the **CITY** shall notify the **DISTRICT** of the dates of commencement and anticipated completion of construction on the **TRAIL**. The **DISTRICT'S DESIGNATED REPRESENTATIVE**, in conjunction with the **CITY'S DESIGNATED REPRESENTATIVE**, shall determine an inspection schedule and perform inspections at appropriate times during construction solely for the purpose of confirming that the **TRAIL** are being completed in accordance with the **CONSTRUCTION DOCUMENTS** and applicable laws.
- p. Upon completion of the **TRAIL** and prior to final payments and release of retainage, the **CITY** shall notify the **DISTRICT** which shall inspect the **TRAIL**. If the **TRAIL** has been completed according to the **CONSTRUCTION DOCUMENTS**, the **CITY** shall then make the final payment to the contractors and suppliers and shall thereafter deliver copies of the "as built" drawings and warranties to the **DISTRICT**.
- q. **DISTRICT'S** wayfinding signage and environmental graphics shall be included in construction of the **TRAIL** at the sole cost and expense of **DISTRICT**. **DISTRICT** and the **CITY** shall mutually review and approve such signage and environmental

graphics and shall incorporate the same into the construction plans and specifications for the **TRAIL**.

7. **Insurance.**

a. The parties will maintain Workers' Compensation and appropriate employer's liability insurance covering any of its own employees engaged in activities relating to the **TRAIL**.

b. The parties will require that any outside contractor, equipment provider or other third party with which it enters into any agreements under this **AGREEMENT**, to provide it with a certificate of insurance demonstrating insurance coverage in connection with the activities to be performed by such contractor in connection with the **TRAIL**, for personal and property liability, medical benefits, as well as general liability insurance.

8. **Operation and Maintenance of the TRAIL.** In consideration of **DISTRICT'S** reimbursement obligations set forth in this **AGREEMENT**, the parties have agreed to enter into a Cooperation Agreement for the Construction, Operation and Maintenance of the Deer Creek Greenway regarding the maintenance and operations of the **TRAIL**, the form of which shall be substantially similar to the form attached hereto as Exhibit D and incorporated herein by reference.

9. **Amendments, Changes and Modifications.** This **AGREEMENT** may be amended, changed, modified, altered or terminated only by written agreement of the **DISTRICT** and the **CITY**.

10. **Notices.** All notices or other communication required or desired to be given hereunder shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid, addressed as follows:

DISTRICT: Metropolitan Park and Recreation District,

d/b/a The Great Rivers Greenway District  
3745 Foundry Way, Suite 253  
St. Louis, MO 63110  
Attention: Susan Trautman, Chief Executive Officer  
Telephone: (314) \_\_\_\_\_

With a Copy to: Husch Blackwell LLP  
8001 Forysth Blvd, Suite 1500  
St. Louis, MO 63105  
Attention: David Richardson  
Telephone: (314) 480-1718

CITY: City of Maplewood  
\_\_\_\_\_  
\_\_\_\_\_, MO \_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_

11. **Ratification.** In all other respects, the terms and provisions of the **AGREEMENT** are ratified and reaffirmed hereby, are incorporated herein by this reference and shall be binding upon the parties to this **AGREEMENT**.
12. **Assignments.** Neither party may mortgage or otherwise assign its right under this **AGREEMENT** without the written consent of the other.
13. **Waiver.** The failure of one party to require performance of any provision of this **AGREEMENT** shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this **AGREEMENT** constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
14. **Controlling Law/Venue.** This **AGREEMENT** shall be interpreted in accordance with the laws of the State of Missouri. Any action brought hereunder shall be brought in the Circuit Court of St. Louis County, Missouri or in the event of Federal jurisdiction, in the United States District Court, Eastern District of Missouri.
15. **Integration.** This **AGREEMENT** represents the entire integrated agreement between the **DISTRICT** and the **CITY**, and supersedes all prior negotiations, representations or agreements, either written or oral.

16. **No Agency.** Nothing in this **AGREEMENT** shall be construed to create an agency relationship between **CITY** and **DISTRICT**. **CITY** has no active, implied, or apparent authority, rights, duties, or powers to act for or on behalf of **DISTRICT** or otherwise bind or commit them to any third party.

[remainder of page left intentionally blank; signature page immediately follows]

**WHEREFORE**, the parties have set their hands the day and date first above written.

**CITY OF OLIVETTE, MISSOURI**

**METROPOLITAN PARK AND  
RECREATION DISTRICT D/B/A THE  
GREAT RIVERS GREENWAY DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Susan Trautman  
Title: CEO

Approved as to Form:

\_\_\_\_\_  
Husch Blackwell LLP

**EXHIBIT A**  
**TRAIL DEPICTION**



**EXHIBIT B**

**GRG GRANT AGREEMENT**

(Immediately Follows)

CO Form: FS15  
Approved: 10/96 (KMH)  
Revised: 03/17 (MWH)  
Modified:

CFDA Number: CFDA #20.205  
CFDA Title: Highway Planning and Construction  
Award name/number: CMAQ-9901(670)  
Award Year: 2025  
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
CONGESTION MITIGATION AND AIR QUALITY AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and Metropolitan Park and Recreation District d/b/a the Great Rivers Greenway District (hereinafter, "Grantee").

WITNESSETH:

WHEREAS, the Fixing America's Surface Transportation Act (FAST), 23 U.S.C. §149 authorizes the funding of projects providing for congestion mitigation and air quality (CMAQ); and

WHEREAS, the Commission is the agency designated to receive and dispense such funds; and

WHEREAS, the Commission has determined that Deer Creek Greenway is consistent with the goals of the CMAQ funding; and

WHEREAS, the Grantee has the resources to develop and provide such services.

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

(1) PURPOSE: The United States Congress has authorized, in 23 U.S.C. §149, funds to be used for activities for CMAQ. The purpose of this Agreement is to grant the use of such funds to construct a shared used path on Deer Creek Greenway on Oxford Boulevard from Big Bend Boulevard to Sussex Avenue to Greenwood Boulevard and on Canterbury Avenue from Greenwood Boulevard to River Des Peres Greenway at Ellendale Avenue.

(2) SCOPE OF WORK: Grantee shall provide planning and implementation of a shared used path in the Deer Creek Greenway area as more fully described in the attached Exhibit A which is incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the Grantee agrees to repay the Commission for any progress payments made to the Grantee for the project and agrees that the Commission may deduct progress payments made to the Grantee from future payments to the Grantee.

(4) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the Grantee shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or 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 MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities 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. The Grantee shall cause insurer to increase the insurance amounts in accordance with those 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.

(5) 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.

(6) COMMISSION REPRESENTATIVE: The Commission's St Louis 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.

(7) NONDISCRIMINATION ASSURANCE: with regard to work under this Agreement, the Grantee agrees as follows:

(A) Civil Rights Statutes: The Grantee shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the Grantee is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The Grantee shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The Grantee shall not discriminate on grounds of the race, color, religion, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors including procurement of materials and leases of equipment. The Grantee shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the Grantee. These apply to all solicitations either by competitive bidding or negotiation made by the Grantee for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the Grantee of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The Grantee shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the Grantee is in

the exclusive possession of another who fails or refuses to furnish this information, the Grantee shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the Grantee fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the Grantee complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The Grantee shall include provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission of the United States Department of Transportation. The Grantee will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the Grantee becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Grantee may request the United States to enter into such litigation to protect the interests of the United States.

(8) DISADVANTAGED BUSINESS ENTERPRISES (DBE): It is the policy of the U.S. Department of Transportation and the Commission that businesses owned by socially and economically disadvantaged individuals (DBE's), as defined in 49 C.F.R. Part 26, have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds.

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

(10) 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.

(11) 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.

(12) 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 this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Grantee.

(13) ACCESS TO RECORDS: The Grantee and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the Grantee receives reimbursement of their final invoice from the Commission.

(14) BUDGET: The Grantee shall incur obligations in connection with the performance of the period only in conformity with the latest budget approved by the Commission as specified in Appendix A - Project Budget. This budget may be revised as necessary; however no budget or revision shall be effective unless approved by the Commission's representative and FHWA.

(15) ELIGIBLE EXPENDITURES: No expenditure or charges shall be eligible for reimbursement that are contrary to the provisions of this Agreement or not required for the carrying out of the project.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the Grantee as follows:

Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by Grantee. Any costs incurred by Grantee prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs. All federally funded projects are required to have a project end date. Any costs incurred after the project end date are not eligible for reimbursement. The federal share for this project will be 80 percent not to exceed \$1,592,948. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of the Grantee. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The Grantee may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. All progress payment requests must be submitted for reimbursement within 90 days of the project completion date for the final phase of work. The Grantee shall repay any progress payments which involve ineligible costs.

(18) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the Grantee has not paid the vendor prior to receiving reimbursement, the Grantee must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(19) PERMITS: The Grantee shall secure any necessary approvals or permits from any federal or state agency as required for the completion of this project.

(20) INSPECTION OF CONTRACTOR'S RECORDS: The Grantee shall assure that its contractors, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with this Agreement. The Grantee shall make such materials available at such contractor's office at all reasonable times during the contract period, and for three (3) years from the date of final payment under the contract, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri. Copies thereof shall be furnished at no charge, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(21) FINAL AUDIT: The Commission will perform a final audit of project costs. The United States Government shall reimburse the Grantee, through the Commission, any monies due. The Grantee shall refund any overpayments as determined by the final audit.

(22) AUDIT REQUIREMENTS: If the Grantee expend(s) seven hundred fifty thousand dollars (\$750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the Grantee expend(s) less than seven hundred fifty thousand dollars (\$750,000) a year, the Grantee may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(23) FHWA APPROVAL: This Agreement is made and entered into subject to the approval of the FHWA.

(24) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the Grantee, and the Grantee may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the

United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the Grantee" is to be substituted. The Grantee agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(25) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The Grantee shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

(26) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, the Grantee shall acquire any additional necessary right of way required for this project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act. However, upon written request by the Grantee and written acceptance by the Commission, the Commission shall acquire right of way for the Grantee. Upon approval of all agreements, plans and specifications by the Commission and by the FHWA, the Commission will file copies of said plans in the office of the County clerk: and proceed to acquire by negotiation and purchase or by condemnation any necessary right of way required for the construction of the improvement contemplated herein. All right of way acquired by negotiation and purchase will be acquired in the name of the Grantee, and the Grantee will pay to grantors thereof the agreed upon purchase prices. All right of way acquired through condemnation proceedings will be acquired in the name of the State of Missouri and subsequently released to the Grantee. The Grantee shall pay into court all awards and final judgments in favor of any such condemnees. The Grantee shall also reimburse the Commission for any expense incurred by the Commission in acquiring said right of way, including but not limited to the costs of surveying, appraisal, negotiation, condemnation, and relocation assistance benefits. Unless otherwise agreed to in writing the Commission shall have the final decision regarding the settlement amount in condemnation.

(27) CONFLICT OF INTEREST: The Grantee shall comply with conflict of interest policies identified in 23 CFR 1.33. A conflict of interest occurs when an entity has a financial or personal interest in a federally funded project.

(28) MANDATORY DISCLOSURES: The Grantee shall comply with 2 CFR 200.113 and disclose, in a timely manner, in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

*Remainder of Page Intentionally Left Blank*

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

Executed by on 2024-01-26 | 7:26 AM PST (DATE).

Executed by the Commission on 2024-01-29 | 9:34 AM CST (DATE).

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

DocuSigned by:  
Eric E. Schreier  
Title Assistant Chief Engineer

METROPOLITAN PARK AND  
RECREATION DISTRICT D/B/A THE  
GREAT RIVERS GREENWAY  
DISTRICT

DocuSigned by:  
Susan Trautman  
By \_\_\_\_\_  
Title CEO

ATTEST:  
DocuSigned by:  
Bonnie Hamlin  
Secretary to the Commission

Approved as to Form:  
DocuSigned by:  
[Signature]  
By \_\_\_\_\_  
Title District Counsel

Approved as to Form:  
DocuSigned by:  
Megan L. Waters Hamblin  
Commission Counsel

Appendix A - Project Budget

Activity	FY	Total Cost	CMAQ Funds requested	GRG share	Sponsor Share %
PE Planning / Environmental Studies	2023	\$ 310,000		\$ 310,000	100.00%
Right-of-Way	2024	\$ 50,000		\$ 50,000	100.00%
Construction Engineering	2025	\$ 251,000		\$ 251,000	100.00%
Construction / Implementation	2025	\$ 3,444,837	\$ 1,592,948	\$ 1,851,889	53.76%
Total Project Cost		\$ 4,055,837	<b>\$ 1,592,948</b>	\$ 2,462,889	60.72%

Exhibit A – Scope of Work

Construct a shared used path on Deer Creek Greenway on Oxford Boulevard from Big Bend Boulevard to Sussex Avenue to Greenwood Boulevard and on Canterbury Avenue from Greenwood Boulevard to River Des Peres Greenway at Ellendale Avenue.



Exhibit B – Project Schedule

Project Description: CMAQ-9901(670) Deer Creek Greenway

<b>PROJECT DEVELOPMENT SCHEDULE</b>			
<i>Note: many stages can occur concurrently.</i>			
<b>Activity Description</b>	<b>Start Date (MM/YYYY)</b>	<b>Finish Date (MM/YYYY)</b>	<b>Time Frame (Months)</b>
Receive notification letter	10/2022	10/2022	1
Execute agreement (project sponsor and DOT)	10/2022	12/2022	3
<b>Engineering services contract submitted and approved*</b>			
Obtain environmental clearances (106, CE-2, etc.)	01/2023	06/2023	6
Public meeting/hearing	05/2023	05/2023	1
Develop and submit preliminary plans	02/2023	06/2023	5
Preliminary plans approved	07/2023	08/2023	2
Develop and submit right-of-way plans	09/2023	12/2023	4
Review and approval of right-of-way plans	12/2023	02/2024	3
<b>Submit and receive approval for notice to proceed for right-of-way acquisition (A-Date)*</b>	02/2024	03/2024	2
Right-of-way acquisition	04/2024	10/2024	7
Utility coordination	08/2023	10/2024	15
Develop and submit P5&E	12/2023	09/2024	10
<b>District approval of P5&amp;E/advertise for bids*</b>	11/2024	02/2025	4
Submit and receive bids for review and approval	03/2025	05/2025	3
Project implementation/construction	05/2025	12/2025	8
* Finish date must match fiscal year for each milestone shown in <b>bold</b> text.			

\*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

\*\*Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and requires request to adjust.

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (Included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

**II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)**

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action.

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(II) The classification is used in the area by the construction industry; and

(III) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(III) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(I) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(II) The classification is used in the area by the construction industry; and

(III) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.26, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

### 3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WH/DOL/legacy/mes/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(I) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(II) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(III) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### 4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeymen under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. **Apprentices and Trainees** (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.** a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

### 3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. in the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and  
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

#### VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

#### VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

**1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 Implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 Implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

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**3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

\*\*\*\*\*

**4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:**

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 Implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 Implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

\*\*\*\*\*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**  
This provision is applicable to all Federal-aid projects funded  
under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**MOTION: CHUCK GROSS**  
**SECOND: PHYLLIS YOUNG**

**RESOLUTION: 2024.09**  
**JANUARY 9, 2024**

**RESOLUTION APPROVING A CONGESTION MITIGATION AND AIR QUALITY PROGRAM AGREEMENT FOR AT LEAST \$1,592,948 WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION IN CONNECTION WITH DEER CREEK GREENWAY AND AUTHORIZING OTHER ACTIONS AS NECESSARY TO EFFECTUATE THE SAME.**

**WHEREAS**, the Metropolitan Park and Recreation District d/b/a The Great Rivers Greenway District (the "District") is a metropolitan park and recreation district authorized under Section 67.1700 to 67.1769 of the Revised Statutes of Missouri, as amended (the "District Act");

**WHEREAS**, pursuant to the Clean Water, Safe Parks, and Community Trails Initiative ("Proposition C"), the qualified voters of St. Louis County, St. Charles County, and St. Louis City approved the creation of the District;

**WHEREAS**, the District was formed to undertake the development, operation and maintenance of a public system of interconnecting trails and parks throughout the areas and counties comprising the District (the "District's Mission");

**WHEREAS**, in furtherance of the District's Mission, and in accordance with the Bylaws of the District, the District adopted "Building the River Ring" as the Regional Plan for the District, and which contains the comprehensive plan of the District, its existing and proposed interconnecting greenway, park and trail projects, and any proposed land acquisitions (the "River Ring Regional Plan");

**WHEREAS**, the Deer Creek Greenway is shown as a regional greenway in the River Ring Regional Plan (the "Deer Creek Greenway");

**WHEREAS**, the District desires to extend and improve the River Ring in furtherance of the River Ring Regional Plan by design and build the Deer Creek Greenway (the "Project");

**WHEREAS**, pursuant to the approval of the Safe and Accessible Arch and Public Parks Initiative ("Proposition P") and Section 67.1712.2 of the District Act, the governing bodies of St. Louis City and St. Louis County imposed a three-sixteenths of one cent sales tax for the purpose of funding the operation and maintenance of the portion of the District located within St. Louis City and St. Louis County;

**WHEREAS**, the 2024 GRG 3/16 Capital Budget was approved by the District pursuant to Resolution 2023.98;

**WHEREAS**, the 2024 GRG 3/16 Capital Budget included line item 196: Deer Creek: Big Bend & Oxford to River des Peres for the Project;

WHEREAS, the District desires to authorize the Chief Executive Officer to (i) negotiate and enter into a Program agreement with Missouri Highways and Transportation Commission; and (ii) take any actions necessary or appropriate to effectuate the same; and

WHEREAS, at a meeting of the Board of Directors of the District (the "Board"), convened at 11:30 am, on January 9th, 2024, at the District Offices at 3745 Foundry Way, St. Louis, Missouri, at which was present a quorum of the Board, the Board took the action further described herein.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN PARK AND RECREATION DISTRICT D/B/A THE GREAT RIVERS GREENWAY DISTRICT AS FOLLOWS:

1. The Board authorizes the Chief Executive Officer to negotiate and enter into a Congestion Mitigation and Air Quality Program Agreement for at least \$1,592,948 for the Project.
2. The Board authorizes the Chief Executive Officer or her designees to take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.
3. All actions heretofore taken by the officers, agents, and employees of the District related to the transactions contemplated by this Resolution are hereby ratified and confirmed.
4. The portions of this Resolution shall be severable. In the event that any portion of this Resolution is found by a court of competent jurisdiction to be invalid, the remaining portions of this Resolution are valid, unless the court finds the valid portions of this Resolution are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Board would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.
5. This Resolution shall be in full force and effect immediately from and after its adoption as provided by law.

ADOPTED this 9th day of January, 2024.

METROPOLITAN PARK AND RECREATION DISTRICT  
D/B/A THE GREAT RIVERS GREENWAY DISTRICT


  
MONICA M. HUDDLESTON , President

ATTEST:

  
GLENN POWERS , Secretary

Vote:  
Aye: 9  
Nay: 0  
Abstain: 0  
Absent: 2  
Not Present: 1



Signer Events	Signature	Timestamp
<p>Pamela J Harlan  Pamela.Harlan@modot.mo.gov  Secretary to the Commission  Missouri Department of Transportation  Security Level: Email, Account Authentication (Optional)</p> <p>Electronic Record and Signature Disclosure:  Accepted: 12/22/2021 11:42:38 AM  ID: 2c664348-0ef1-42bb-97b6-7b0938b1e411</p>	 <p>Signature Adoption: Uploaded Signature Image  Using IP Address: 168.166.80.221</p>	<p>Sent: 1/29/2024 8:45:48 AM  Viewed: 1/29/2024 9:33:55 AM  Signed: 1/29/2024 9:34:03 AM</p>
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Angelica Gutierrez  agutierrez@grgstl.org  Security Level: Email, Account Authentication (Optional), Access Code</p> <p>Electronic Record and Signature Disclosure:  Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; width: fit-content; margin: auto;">COPIED</div>	<p>Sent: 1/24/2024 1:12:23 PM  Viewed: 1/24/2024 1:41:24 PM</p>
<p>Dana Kaiser  Dana.Kaiser@modot.mo.gov  Senior Executive Assistant  Missouri Department of Transportation  Security Level: Email, Account Authentication (Optional)</p> <p>Electronic Record and Signature Disclosure:  Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; width: fit-content; margin: auto;">COPIED</div>	<p>Sent: 1/26/2024 10:54:53 AM</p>
<p>Tara Herx  tara.herx@modot.mo.gov  Senior Executive Assistant  Missouri Department of Transportation  Security Level: Email, Account Authentication (Optional)</p> <p>Electronic Record and Signature Disclosure:  Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; width: fit-content; margin: auto;">COPIED</div>	<p>Sent: 1/26/2024 10:54:54 AM</p>
<p>Jennifer L. Jorgensen  Jennifer.Jorgensen@modot.mo.gov  Asst Secretary to the Commission  MoDOT  Security Level: Email, Account Authentication (Optional)</p> <p>Electronic Record and Signature Disclosure:  Accepted: 6/7/2023 9:45:35 AM  ID: 43e1faf8-03d4-4d0e-95b0-9dcba940a033</p>	<div style="border: 2px solid blue; padding: 5px; width: fit-content; margin: auto;">COPIED</div>	<p>Sent: 1/29/2024 8:45:48 AM</p>

Carbon Copy Events	Status	Timestamp
<p>Lisa Gerling lisa.gerling@modot.mo.gov Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<b>COPIED</b>	Sent: 1/29/2024 8:45:48 AM
<p>Jason Lange jason.lange@ewgateway.org Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<b>COPIED</b>	Sent: 1/29/2024 9:34:05 AM
<p>William Gabler William.Gabler@modot.mo.gov Intermediate Highway Designer Missouri Department of Transportation Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<b>COPIED</b>	Sent: 1/29/2024 9:34:05 AM
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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	1/29/2024 9:33:55 AM
Signing Complete	Security Checked	1/29/2024 9:34:03 AM
Completed	Security Checked	1/29/2024 9:34:05 AM
Payment Events	Status	Timestamps
<b>Electronic Record and Signature Disclosure</b>		

**Missouri Highways and Transportation Commission  
DocuSign, Inc. Express Electronic Signature Agreement**

The Missouri Highways and Transportation Commission (hereinafter, Commission), acting by and through the Missouri Department of Transportation (MoDOT) is willing to provide to the Authorized Representative of the Contractor/Vendor/Consultant (Entity) who is duly authorized to act on behalf of said Entity (hereinafter you or I) and accept from you your electronically affixed authorized signature and seal, as required to validate a binding agreement between the Commission and the Entity, on all Commission/MoDOT documents, including but not limited to disclosures, agreements, contracts, notices, purchase orders, change orders, modifications, amendments, supplements, correspondence, and the like, (hereinafter, Commission Documents) that are processed, generated, and exchanged by and between the Commission and you, acting on behalf of the Entity, electronically through the utilization of the DocuSign, Inc. Express (DocuSign) eSignature Application. In consideration of mutual covenants, you agree as follows:

- 1) You are the person duly authorized and designated by the Entity to receive, access and agree to the terms of this agreement on behalf of the Entity by clicking the Agree button below.
- 2) You have the authority to specifically consent and agree that the Commission, in its discretion, provide all disclosures, agreements, contracts, notices, purchase orders, change orders, modifications, amendments, supplements, correspondence, and all other evidence of the transaction between the Commission and the Entity electronically (hereinafter all such documentation is referred to as electronic record(s)).
- 3) The email address, User ID and password authorized to access the electronic agreement via DocuSign are your own and are not shared with any other person.
- 4) All of the required notices and disclosures will be sent to the email address authorized through DocuSign.
- 5) You are duly authorized to receive electronically through DocuSign, access and act upon all electronic records, to provide all required information and electronically affix your signature and seal, as applicable, on behalf of the Entity named in such Commission Documents via DocuSign.
- 6) The system through which you are accessing DocuSign and its eSignature Application meets the minimum requirements to access DocuSign, view, receive, retrieve, download, print, store, send and transmit all electronic records and any and all other communications sent to you from the Commission through the DocuSign web site.
- 7) All communications in electronic format from the Commission to you through DocuSign are considered in-writing. You have the ability to download and print any documents processed through DocuSign for 30 calendar days after such documents are first sent, as long as you are an authorized user of the DocuSign system. After such time, you may request copies by contacting the Commission through the Secretary to the Commission at [mhtc@modot.mo.gov](mailto:mhtc@modot.mo.gov) or by telephone at 573-751-2824. You shall print or download for your records a copy of any communication that is important to you to retain.
- 8) You have implemented appropriate security measures to ensure that only you have access through DocuSign to receive, access and electronically affix signatures to electronic records, as applicable, Commission/MoDOT sends to you through DocuSign. It is your sole responsibility to ensure your adequate protection, confidentiality and secrecy of the DocuSign Authentication Code, and any other user ID and/or Password combinations that may be required for you to access the DocuSign eSignature services and any disclosure thereof to any other person or

communication thereof through unsecure medium, such as traditional electronic mail, shall be entirely at your risk. You shall be liable for any unauthorized usage of your ID/Password combination and the DocuSign Authentication Code.

9) You agree and authorize the Commission to respond to and act upon any and all transactions initiated and transmitted by you electronically through DocuSign. Any transaction initiated and transmitted by you to the Commission through DocuSign and its eSignature application shall be deemed to have been authorized by you, and the Commission is entitled to assume that the said transactions are so authorized by you and the Commission shall be protected upon acting thereon.

10) You shall be fully liable to the Commission for every transaction entered into using a valid DocuSign Authentication Code sent to you through certified mail, telephone call or Short Message Service (SMS) text, with or without your knowledge. In no event will the Commission be liable to you for any special, direct, indirect, consequential or incidental loss or damages even if you have advised the Commission/MoDOT of such possibility. The Commission shall not be liable for any misuse, if any, of any data placed on the internet by third parties hacking or accessing the application and hosting server without authorization.

11) The Entity shall take responsibility for all the transactions with the Commission conducted electronically through DocuSign and will abide by the record of the transactions generated by DocuSign or by the Commission/MoDOT through DocuSign. Further such record of transactions shall be conclusive proof and binding for all purposes and may be used as conclusive evidence in any proceedings. All records of the Commission and DocuSign, whether in electronic form, magnetic medium, documents or any other form, with respect to electronic transactions sent or received through use of DocuSign shall be conclusive evidence of such transactions and shall be binding on the Entity.

12) The Commission/MoDOT shall not be liable for any loss or damage whatsoever caused, arising directly or indirectly, in connection with the services and /or this Agreement, including without limitation any: (A) Loss of data; and (B) Interruption or stoppages to your access to DocuSign and its eSignature application and/or processing of electronic transactions due to any operational or technical difficulties/reason beyond our control for any other reason. The Commission, along with its members, employees, agents, executors, successors and assigns shall not be liable for any damages or claims or injuries arising out of or in connection with the use of DocuSign and its eSignature application or its non-use including non-availability or failure of performance, loss or corruption of data, loss of or damage to property (including profit and goodwill), work stoppage, computer failure or malfunctioning or interruption of business, error, omission, deletion, defect, delay in operation or transmission, communication line failure or for any failure to act upon electronic transaction for any cause.

13) You shall keep confidential all information, in whatever form, produced, prepared, observed or received by you to the extent that such information is confidential by law or otherwise required by the Commission.

14) This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Missouri. 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.

15) The terms of this agreement and any amendments thereafter shall remain in full force and effect for as long as DocuSign is active, or by thirty (30) days written notification by either party

of their intent to cancel this agreement.

**By checking the I Agree button, I confirm that:**

1. I am the person named in the documents to which I will electronically affix my signature; that I am authorized to sign such documents on behalf of the Entity named in the documents; that I will read and know the contents of such electronically signed documents including all exhibits attached thereto, and that the statements made therein are true, and that I will not omit any information needed to make such documents true; and that I will take appropriate security measures to insure that I have sole access to the documents sent to me by the Commission and MoDOT through the email address provided on DocuSign.

2. I and the Entity shall indemnify and save harmless the Commission, its members, employees, officers, successors, assigns, agents and representatives against any and all claims, losses, damages, costs, liabilities and expense actually incurred, suffered or paid by the Commission, its members, employees, officers, successors, assigns, agents and representatives, directly or indirectly, and also against all demands, actions, suits, proceedings made, filed, instituted against the Commission, its members, employees, officers, successors, agents and representatives in connection with, or arising out of, or relating to the Commission accepting and acting or not accepting and not acting for any reason whatsoever pursuant to, in accordance with or relying upon, data received, through DocuSign and its eSignature application you or any unauthorized use of your ID/Password combination, the DocuSign Authentication Code, or the DocuSign eSignature application.

3. I agree to the DocuSign, Inc. Express (DocuSign) Electronic Signature Agreement terms and conditions outlined above.

**EXHIBIT C**

**CITY GRANT AGREEMENT**

(Immediately Follows)

**BILL NO. 6242**

**ORDINANCE NO. 6037**

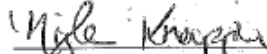
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI AUTHORIZING THE CITY MANAGER TO EXECUTE AN STP-URBAN PROGRAM AGREEMENT BETWEEN THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION AND THE CITY OF MAPLEWOOD FOR PROJECT NUMBER STP/CMAQ-9901 (667) FOR GREENWOOD BOULEVARD

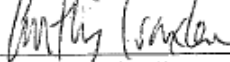
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AS FOLLOWS:

Section I. The City Manager is hereby authorized to execute an STP-Urban Program Agreement between the Missouri Highways and Transportation Commission and the City of Maplewood for project number STP/CMAQ-9901 (667), for Greenwood Boulevard.


Section II. This ordinance shall be in full force and effect fifteen (15) days after its passage and approval.

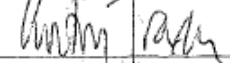
Passed this 27th day of February, 2024

  
\_\_\_\_\_  
Nikolas Knapper, Mayor

Attest:   
\_\_\_\_\_  
Anthony Traxler, Deputy City Clerk

Approved this 27<sup>th</sup> day of February, 2024

  
\_\_\_\_\_  
Nikolas Knapper, Mayor

Attest:   
\_\_\_\_\_  
Anthony Traxler, Deputy City Clerk

CCO Form: FS27  
Approved: 05/02 (BDG)  
Revised: 10/22 (MWH)  
Modified: 11/23 (MWH)

St. Louis County  
City of Maplewood  
Project STP/CMAQ-9901(667)

CFDA Number: CFDA #20.205  
CFDA Title: Highway Planning and Construction  
Award name/number: STP/CMAQ-9901(667)  
Award Year: 2023  
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
STP PROGRAM  
SUPPLEMENTAL AGREEMENT**

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

WITNESSETH:

WHEREAS, on November 2, 2022, the Commission and the City previously entered into a STP Program Agreement as to public improvements designated as STP-9901(667), for the construction of Greenwood Boulevard, (hereinafter, "Original Agreement"); and

WHEREAS, the Commission and the City now desire to revise the Original Agreement.

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

(1) REVISION: The project designation and number "STP-9901(667)" is removed and replaced with "STP/CMAQ-9901(667)" throughout the Agreement for the addition of the CMAQ funds to the project.

(2) REVISION: The second WHEREAS sentence of the Original Agreement is hereby removed and replaced with the following:

WHEREAS, the City desires to construct certain improvements, more specifically described below, using such STP and CMAQ funding; and

(3) REVISION: Paragraph (1) PURPOSE of the Original Agreement is hereby removed and replaced with the following:

(1) PURPOSE: The purpose of this Agreement is to grant the use of STP and CMAQ funds to the City. The improvement contemplated by this Agreement and designated as Project STP/CMAQ-9901(667) involves:

Reconstruct Greenwood Boulevard, upgrade sidewalks and construct Shared Use Path.

The City shall be responsible for all aspects of the construction of the improvement

(4) REVISION: Paragraph (2) LOCATION of the Original Agreement is hereby removed and replaced with the following:

(2) LOCATION: The contemplated improvement designated as Project STP/CMAQ-9901(667) by the Commission is within the city limits of Maplewood, Missouri. The general location of the improvement is shown on an attachment hereto marked "Exhibit A" and incorporated herein by reference. More specific descriptions are as follows:

Greenwood Boulevard from Sussex Avenue to Canterbury Avenue

(5) REVISION: Paragraph (12) REIMBURSEMENT of the Original Agreement is hereby removed and replaced with the following:

(12) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. All federally funded projects are required to have a project end date. Any costs incurred after the project end date are not eligible for reimbursement. The federal share for this project will be 80 percent not to exceed \$2,807,052. The maximum STP funds is \$1,400,000. The maximum CMAQ funds is \$1,407,052. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(B) The total reimbursement otherwise payable to the City under this Agreement is subject to reduction, offset, levy, judgment, collection or withholding, if there is a reduction in the available federal funding, or to satisfy other obligations of the City to the Commission, the State of Missouri, the United States, or another entity acting pursuant to a lawful court order, which City obligations or liability are created by law,

judicial action, or by pledge, contract or other enforceable instrument. Any costs incurred by the City prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs.

(6) REVISION: Paragraph (15) WORK ON STATE RIGHT OF WAY of the Original Agreement is hereby removed and replaced with the following:

(15) WORK ON STATE RIGHT OF WAY: If any contemplated improvements for Project STP/CMAQ-9901(867) will involve work on the state's right of way, the City will provide reproducible final plans to the Commission relating to such work.

(7) REVISION: Paragraph (20) OUTDOOR ADVERTISING of the Original Agreement is hereby removed and replaced with the following:

(20) OUTDOOR ADVERTISING: The City further agrees that the right of way provided for any STP/CMAQ improvement will be held and maintained inviolate for public highway or street purposes, and will enact and enforce any ordinances or regulations necessary to prohibit the presence of billboards or other advertising signs or devices and the vending or sale of merchandise on such right of way, and will remove or cause to be removed from such right of way any sign, private installation of any nature, or any privately owned object or thing which may interfere with the free flow of traffic or impair the full use and safety of the highway or street.

(8) REVISION: EXHIBIT B – PROJECT SCHEDULE of the Original Agreement is hereby removed and replaced with the following:

Exhibit B – Project Schedule

Project Description: STP-9901(667) Greenwood Boulevard

PROJECT DEVELOPMENT SCHEDULE			
STP-9901(667) Greenwood Boulevard			
Activity Description	Start Date (MM/YYYY)	Finish Date (MM/YYYY)	Time Frame (Months)
Receive authorization letter	10/2021	10/2021	1
Execute agreement (project sponsor and DOT)	12/2021	04/2022	5
Engineering services contract submitted and approved*	08/2022	10/2022	3
Obtain environmental clearances (106, CE2, T&E, etc.)	01/2023	03/2023	3
Public meeting/hearing	04/2023	04/2023	1
Develop and submit preliminary plans	11/2022	03/2023	5
Preliminary plans approved	04/2023	05/2023	2
Develop and submit right-of-way plans	05/2023	07/2023	3
Review and approval of right-of-way plans	08/2023	09/2023	2
Submit and receive approval for notice to proceed for right-of-way acquisition (A-Date)*	09/2023	10/2023	2
Right-of-way acquisition	11/2023	05/2024	7
Utility coordination	01/2024	05/2024	18
Develop and submit PS&E	03/2024	08/2024	6
District approval of PS&E/advertise for bids*	09/2024	11/2024	3
Submit and receive bid: for review and approval	12/2024	01/2025	2
Project implementation/construction	03/2025	10/2025	8

\* Finish date must match fiscal year for each milestone shown in bold text.

\*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

\*\*Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and requires request to adjust.

(9) **ADDITION:** Paragraph (33) **ASSIGNMENT** is hereby added and shall state as follows:

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

(10) **ADDITION:** Paragraph (34) **BUDGET** is hereby added and shall state as follows:

(34) **BUDGET:** The City shall incur obligations in connection with the performance of the period only in conformity with the latest budget approved by the Commission as specified in Appendix A - Project Budget. This budget may be revised as necessary; however no budget or revision shall be effective unless approved by the Commission's representative and FHWA.

(11) ADDITION: Paragraph (35) FHWA APPROVAL is hereby added and shall state as follows:

(35) FHWA APPROVAL: This Agreement is made and entered into subject to the approval of the FHWA.

(12) ADDITION: Paragraph (36) CANCELLATION is hereby added and shall state as follows:

(36) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(13) ADDITION: APPENDIX A – PROJECT BUDGET is hereby added and shall state as follows:

Activity	FY	Total Cost	CMAQ Funds requested	STP Funds requested	GRG share	Maplewood share	Sponsor Share %
PE Planning / Environmental Studies	2023						
Right-of-Way	2024						
Construction Engineering	2025						
Construction / Implementation - CMAQ (Greenway Cost)	2025	\$1,943,763	\$1,407,052	\$0.00	\$536,711	\$0.00	27.61%
Construction / Implementation - STP (Roadway Cost)	2025	\$1,756,000	\$0	\$1,403,000	\$0.00	\$356,000	20.00%
Construction / Implementation - Total for Greenwood Segment	2025	\$3,699,763	\$2,807,052		\$896,711		24.42%

(14) ORIGINAL AGREEMENT: Except as otherwise modified, amended, or supplemented by this Supplemental Agreement, the Original Agreement between the parties shall remain in full force and effect and shall extend and apply to this Supplemental Agreement as if fully written in this Supplemental 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 March 13, 2024 (date).

Executed by the Commission this April 3, 2024 (date).

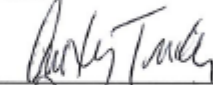
MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

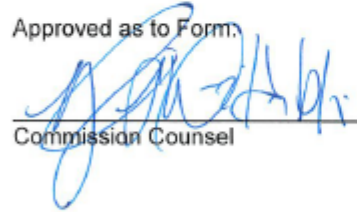
CITY OF MAPLEWOOD

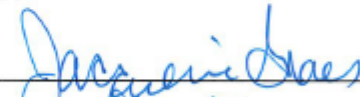
  
Title: Assistant Chief Engineer

By   
Title: City Manager

ATTEST:  
  
Secretary to the Commission

ATTEST:  
By   
Title: Deputy City Clerk

Approved as to Form:  
  
Commission Counsel

Approved as to Form:  
  
Title: City Attorney

Ordinance No.: 6037

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XIII. Use of United States-Flag Vessels:

**ATTACHMENTS**

- A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

**II. NONDISCRIMINATION (23 CFR 230.107(e); 23 CFR Part 230, Subpart A, Appendix A, EO 11246)**

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action.

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1381. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.6, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 (excluding recreational trails projects), the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(i) The classification is used in the area by the construction industry; and

(ii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(ii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its reprourement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3801-3907.

### 3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed, and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgovfiles/WH/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### 4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeymen under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

c. **Apprentices and Trainees** (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV, 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.** a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

### 3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

4. *Subcontracts.* The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. in the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. *Anti-retaliation.* It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and  
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specially Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

#### VIII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.106.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

#### VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT** (42 U.S.C. 7606; 2 CFR 200.86; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

**1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart L, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(8) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

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**3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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**4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:**

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

- (1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;
- (2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and
- (3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

\*\*\*\*\*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 48 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**  
This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(a) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**EXHIBIT D**

**FORM COOPERATION AGREEMENT FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF THE DEER CREEK GREENWAY**

[Immediately Follows]

**COOPERATION AGREEMENT  
FOR THE  
CONSTRUCTION, OPERATION AND MAINTENANCE  
OF THE DEER CREEK GREENWAY: DEER CREEK TO FRANCIS SLAY PARK**

**THIS COOPERATION AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and between the **METROPOLITAN PARK AND RECREATION DISTRICT, d/b/a THE GREAT RIVERS GREENWAY DISTRICT** (hereinafter “**DISTRICT**”) and **CITY OF MAPLEWOOD** (hereinafter the “**CITY**”).

**WHEREAS**, the **DISTRICT** is engaged in developing and constructing a series of parks, trails and greenways in the City of St. Louis, St. Louis County and St. Charles County, Missouri; and

**WHEREAS**, Sections 70.210 and 70.220 RSMo., as amended, authorize municipalities and political subdivisions to contract and cooperate with other municipalities and political subdivisions for the planning, development, construction, acquisition or operation of any public improvement or facility; and

**WHEREAS**, Section 67.1742(2) RSMo. provides that a metropolitan park and recreation district shall have the power to “Contract with public and private entities or individuals both within and without the state ... in furtherance of any of the purposes of the district;” and

**WHEREAS**, Ordinance Number \_\_\_\_\_ authorizes the **CITY** to enter into this **COOPERATION AGREEMENT** with the **DISTRICT**; and (IF NEEDED PER CITY)

**WHEREAS**, the **DISTRICT** and the **CITY** wish to enter into an agreement by which (i) the **DISTRICT** will, at its own expense, construct a trail, trail facilities, and improvements on land owned or under the control of the **DISTRICT** and (ii) the **CITY** shall, at its own expense, construct the trail, trail facilities, and improvements on the land owned or under control of the **CITY**; and,

**WHEREAS**, once such construction is substantially completed, the **CITY** will take ownership of and be responsible for ordinary operations and maintenance of the entire **GREENWAY** (defined hereinafter) during the term of this **COOPERATION AGREEMENT**.

**NOW, THEREFORE**, in consideration of the foregoing and the following mutual covenants, terms and conditions, the **DISTRICT** and the **CITY** agree as follows:

17. **Purpose.** This **COOPERATION AGREEMENT** is entered into by the parties for the construction, operation, maintenance and transfer of ownership of the Deer Creek Greenway: Deer Creek to Francis Slay Park (the "**GREENWAY**"), as more fully described in Exhibit A, attached hereto and incorporated herein.
18. **Representations of the DISTRICT.** The **DISTRICT** represents, warrants and covenants to the **CITY** as follows:
  - a. The **DISTRICT** is a political subdivision duly created and existing under and pursuant to the laws of the State of Missouri.
  - b. The **DISTRICT** has full power and authority to enter into this **COOPERATION AGREEMENT** and to carry out its obligations hereunder, and by proper action has duly authorized the execution and delivery of this **COOPERATION AGREEMENT** by its duly authorized officers.

- c. Neither the execution and delivery of this **COOPERATION AGREEMENT**, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the **DISTRICT** is now a party or by which the **DISTRICT** is bound.

19. **Representations of the CITY.** The **CITY** represents, warrants and covenants to the **DISTRICT** as follows:

- a. The **CITY** is a constitutionally-created City of the State of Missouri.
- b. The **CITY** has power to enter into this **COOPERATION AGREEMENT** and by proper action has duly authorized the execution and delivery of this **COOPERATION AGREEMENT** by its duly authorized officers.
- c. The execution and delivery of this **COOPERATION AGREEMENT** will not conflict with or constitute a breach of or default under the laws applicable to the **CITY**, its ordinances or any bond, debenture, note or other evidence of indebtedness of the **CITY** or any contract, agreement or lease to which the **CITY** is a party or by which it is bound.

20. **JOINT OBLIGATIONS.** The **CITY** and the **DISTRICT** shall work together to provide or facilitate training related to the **GREENWAY** operations and maintenance for designers, staff, partners and volunteers.

21. **DISTRICT OBLIGATIONS.**

- a. The **DISTRICT** agrees to plan, engineer and construct the **GREENWAY**, which is more fully described in Exhibit A. Notwithstanding anything stated herein to the contrary, the **DISTRICT** shall not construct the **GREENWAY** on the **CITY GREENWAY PORTION** (defined hereinafter) being completed

by **CITY**. The **DISTRICT** shall require any contractor or subcontractors hired to construct improvements on the **GREENWAY** to satisfy the requirements of Section 107.170, RSMo. 1986, by furnishing to **CITY** a bond with good and sufficient sureties, in an amount fixed by **CITY**, and such bond shall be conditioned for the payment of any and all materials, equipment and tools used in connection with the construction of such improvements, and all insurance premiums, both for compensation and for all other kinds of insurance on said work, and for all labor performed in such work whether by subcontractor or otherwise. In addition, the **DISTRICT** will adhere to the requirements of Section 290.220 *et seq.* RSMo., concerning the payment of prevailing wage on public works projects. The **CITY** will have the opportunity to participate in the planning, design and construction phases of the **GREENWAY** and shall have the right to approve or reasonably modify the plans prior to commencement of construction.

- b. The **DISTRICT** will maintain Workers' Compensation and appropriate employer's liability insurance covering any of its own employees engaged in activities relating to the **GREENWAY**.
- c. The parties will require that any outside contractor, equipment provider or other third party with which it enters into any agreements under this **COOPERATION AGREEMENT**, to provide it with a certificate of insurance demonstrating insurance coverage in connection with the activities to be performed by such contractor in connection with the **GREENWAY**, for personal and property liability, medical benefits, as well as general liability insurance.

- d. The **DISTRICT** shall provide all signage in the **GREENWAY** area during construction. Any additional future signage within the **GREENWAY** area shall be approved by the **DISTRICT**. The **DISTRICT** will be responsible for ongoing maintenance and replacement of **GREENWAY** branded wayfinding and interpretive signage. All regulatory signage (i.e., stop signs, yield signs, parking signs, etc.) are the responsibility of the **CITY**.
- e. After the **GREENWAY** construction is substantially completed, the **DISTRICT** will notify the **CITY** of the transfer of ownership and their obligation to begin operation and maintenance of the **GREENWAY**. The **DISTRICT** shall issue a Certificate of Substantial Completion, in the form attached hereto as Exhibit B and incorporated herein, to the **CITY**. The form shall be signed by the **DISTRICT** and the **CITY** representative. The Certificate shall represent all signing parties' determination that the **GREENWAY** substantially conforms to the terms of this **COOPERATION AGREEMENT**.
- f. After the **GREENWAY** construction is substantially completed, the **DISTRICT** will notify the **CITY**, in writing, of their obligation to begin operation and maintenance of the **GREENWAY**.

## 22. **CITY OBLIGATIONS.**

- a. The **CITY** agrees to construct that portion of the **GREENWAY** along that certain property owned by the City along Greenwood Boulevard, which is depicted in Exhibit C attached hereto (the "**CITY GREENWAY PORTION**") in accordance with the plans and designs of the **DISTRICT**.

- b. The **CITY** will have the opportunity to participate in the planning and design phases of the **GREENWAY** and shall have the right to approve or reasonably modify the plans prior to commencement of construction.
- c. The parties will require that any outside contractor, equipment provider or other third party with which it enters into any agreements under this **COOPERATION AGREEMENT**, to provide it with a certificate of insurance demonstrating insurance coverage in connection with the activities to be performed by such contractor in connection with the **GREENWAY**, for personal and property liability, medical benefits, as well as general liability insurance.
- d. After the construction of the **CITY GREENWAY PORTION** is substantially completed, the **CITY** will notify the **DISTRICT**. The **CITY** shall issue a Certificate of Substantial Completion, in the form attached hereto as Exhibit B and incorporated herein, to the **DISTRICT**. The form shall be signed by the **DISTRICT** and the **CITY** representative. The Certificate shall represent all signing parties' determination that the **CITY GREENWAY PORTION** substantially conforms to the terms of this **COOPERATION AGREEMENT**.

23. **EASEMENTS.**

- a. The **CITY**, as owner of certain property depicted on Exhibit A (the "**CITY PROPERTY**"), hereby grants to the **DISTRICT**, and its successors and assigns, a perpetual, non-exclusive easement on, over, under, and across, any and all land located within the **CITY PROPERTY** (the "**CITY EASEMENT AREA**"), for the purposes of the planning, engineering, constructing, and altering of the **GREENWAY** as contemplated by this

**COOPERATION AGREEMENT** (the “**CITY EASEMENT**”). The **CITY EASEMENT** shall be in effect and enforceable during the term of this **COOPERATION AGREEMENT**, including any extension hereof. Subject to the terms of this **COOPERATION AGREEMENT**, there is included in this grant of the **CITY EASEMENT** the right of the **DISTRICT**, at any time upon mutual agreement between the **CITY** and the **DISTRICT** and from time to time, to install, place, or construct upon the **CITY EASEMENT AREA** any personal property, asset, or improvement owned by the **DISTRICT** and to be used in connection with the **GREENWAY**.

- b. The **CITY** and the **DISTRICT** acknowledge and agree that the **DISTRICT EASEMENT** shall run with the land and shall be binding upon the **CITY’S** successors and assigns.

24. **CITY OBLIGATIONS; TERM AND RENEWAL.**

- a. After acceptance of the Certificate of Substantial Completion by the **CITY**, the **CITY** will assume ownership and administrative responsibility for operation and maintenance of the **GREENWAY** to allow safe and convenient public access, enjoyment and use (the “**GREENWAY**”).
- b. By executing this **COOPERATION AGREEMENT**, the **CITY** approves the project concept and agrees to accept ownership and maintenance of the **GREENWAY**, as indicated in Exhibit A. Within thirty (30) days after the date of this **COOPERATION AGREEMENT**, the **CITY** will designate, through the Director of Parks and Recreation in writing, an individual with final authority to make all approvals described in this paragraph. After acceptance by the **CITY**, the **CITY** will assume ownership and administrative responsibility for

ordinary operation and maintenance of the **GREENWAY** to allow safe and convenient public access, enjoyment and use.

- c. The **CITY** will have full control regarding hours of usage, closing the **GREENWAY** for maintenance or other activities and use of the **GREENWAY** for special events. If the **CITY** wishes to change any of the operational hours or other guidelines, they must do so in partnership with the **DISTRICT** and give at least thirty (30) days written notice, so the **DISTRICT** can modify messaging appropriately. The **CITY** shall notify the **DISTRICT**, as soon as reasonably possible, when the **GREENWAY** is closed for any reason including maintenance, hazardous conditions or special events.
- d. The **CITY** shall be responsible for routine, non-routine maintenance, inspections (including reporting) and notifications as listed in detail here and outlined in Exhibit E.

- i. Routine Maintenance Activities

- This work consists of basic upkeep of the trail and **GREENWAY** amenities on a regular basis.

- 1. Trail surface: Debris, including rocks, sticks, litter, pet waste, lawn clippings, leaves, etc., shall be kept clear of the pathway as often as necessary to maintain a safe surface for trail users. Following storm events, trails should be inspected within 48 hours to ensure the pathway is clear of obstructions and/or hazards.
      - 2. Vegetation along trails: Low growing vegetation, i.e. turf, shall be trimmed to a height as to ensure the vegetation is not obstructing

the path of the trail. This should be conducted on a weekly or biweekly basis as needed to maintain a 3 foot buffer on either side of the paved pathway. Adjacent trees and brush, both naturally occurring and planted, shall be trimmed to a height of 8' and to a distance of at least 3' on either side of the pathway.

3. Planted vegetation: Landscaping along the **GREENWAY** shall be maintained in good health, free of weeds, dead or diseased vegetation removed and replaced according to the landscape design. If replacement is substantially different from the original design installed by the **DISTRICT**, the **DISTRICT** shall be consulted prior to work being conducted.
4. Greenway amenities: Amenities such as benches, trash cans, signage, bike racks, playgrounds, lighting, bollards, fencing, regulatory signage, etc. shall be maintained in safe, working condition and free of graffiti. Non-capital repairs due to vandalism, accidents and natural wear shall be made as soon as possible. The **DISTRICT** will be made aware of needed repairs, when repairs are completed and if repairs are intended to be deferred to another time. The **CITY** will be responsible for the installation of replacement signage provided by the **DISTRICT** as referenced in this document under Section 5 District Obligations.
5. Retaining Walls: Trim grass/vegetation along wall, keep free of debris and trash, remove and replace damaged components and

graffiti monthly. Annual check for cracks to segmental units and caps and repair as needed.

6. Stabilizing slopes including re-grading erosion rills and gullies, re-planting bare soil areas, repairing any damaged or degraded erosion and sediment control devices which are still in use or necessary to ensure vegetation establishment.

ii. Non-Routine Maintenance Activities

Non-routine maintenance activities include:

1. Capital repair and replacement of **GREENWAY** assets including, but not limited to, trail surface removal and replacement, retaining wall repair or replacement, catastrophic events due to unforeseen circumstances or natural disaster, capital asset repair or replacement. In the case of the greenway trail or greenway assets damaged during catastrophic events, the **DISTRICT** and its Board of Directors shall work with the **CITY** to allocate funds from the **DISTRICT** to make necessary repairs pending Board of Directors approval.

- iii. Inspections: Inspection of the **GREENWAY** by **CITY** staff or firm contracted by the **CITY** shall take place on a regular basis to be able to assign and complete regular and non-regular maintenance activities. A more detailed inspection of stormwater management facilities (including but not limited to swales/channels, drains, turf reinforcement mats, culverts, riprap and vegetated slopes) shall be

inspected by a qualified individual familiar with the operation of said facilities.

- iv. Reporting: To help the **DISTRICT** and its partners build and sustain an effective greenway network, reporting is necessary to track maintenance (routine, non-routine and specialized) to assist in planning, design and development of greenways moving forward. The **CITY** shall keep a record detailing all routine and non-routine maintenance activities completed including frequency, corrective actions taken and those deferred. The stormwater BMP report required by MSD shall be included in this document as a separate section. These should be compiled as an annual report to the **DISTRICT**. The Annual Report template will be made available by the **DISTRICT**. The Annual Report should be submitted electronically to the **DISTRICT** no later than March 31<sup>st</sup> of each year following the previous calendar year ending December 31<sup>st</sup> after substantial completion, i.e. 2024 Annual Report is due March 31, 2025. A copy of the report is included in Exhibit F, however a digital copy will be made available to the **CITY** upon request.

- v. Modifications:

The **CITY** shall notify the **DISTRICT** in writing when there is a desire to add, modify or eliminate amenities or assets included in the **GREENWAY** thirty (30) days prior to said actions being taken. The **CITY** and the **DISTRICT** shall work together to accommodate

reasonable requests and come to a mutually agreed upon course of action.

8. **Publicity.** It is the intent of the parties that the **GREENWAY** shall be and become an integral part of the park system of the **CITY**. As such, the **CITY** will include in any press releases or other publicity about the **GREENWAY**, the words, "This greenway was built in cooperation with the regional parks and trails district, Great Rivers Greenway as part of the overall River Ring system." Events held on this **GREENWAY** should list Great Rivers Greenway as a co-host along with the **CITY**.
9. **Amendments, Changes and Modifications.** This **COOPERATION AGREEMENT** may be amended, changed, modified, altered or terminated only by written agreement of the **DISTRICT** and the **CITY**.
10. **Notices.** All notices or other communication required or desired to be given hereunder shall be deemed duly given when received by email or mailed by first class, registered or certified mail, postage prepaid, addressed as follows:

DISTRICT: Metropolitan Park and Recreation District,  
d/b/a The Great Rivers Greenway District  
3745 Foundry Way, Suite 253  
St. Louis, MO 63112  
Attention: Susan Trautman, Chief Executive Officer  
Telephone: (314) 932-4901

With a Copy to: Husch Blackwell LLP  
8001 Forsyth Boulevard, Suite 1500  
St. Louis, MO 63105  
Attention: David Richardson  
Telephone: (314) 480-1718

CITY: City of Maplewood Department of \_\_\_\_\_  
\_\_\_\_\_  
Maplewood, MO \_\_\_\_\_  
Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

11. **Assignments.** Neither party may mortgage or otherwise assign its right under this **COOPERATION AGREEMENT** without the written consent of the other.
12. **Waiver.** The failure of one party to require performance of any provision of this **COOPERATION AGREEMENT** shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this **COOPERATION AGREEMENT** constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
13. **Controlling Law/Venue.** This **COOPERATION AGREEMENT** shall be interpreted in accordance with the laws of the State of Missouri. Any action brought hereunder shall be brought in the Circuit Court of St. Louis County, Missouri or in the event of Federal jurisdiction, in the United States District Court, Eastern District of Missouri.
14. **Integration.** This **COOPERATION AGREEMENT** represents the entire integrated agreement between the **DISTRICT** and the **CITY**, and supersedes all prior negotiations, representations or agreements, either written or oral.

[Signature page to follow]

WHEREFORE, the parties have set their hands the day and date first above written.

**CITY OF MAPLEWOOD, MISSOURI**

**METROPOLITAN PARK AND RECREATION DISTRICT d/b/a THE GREAT RIVERS GREENWAY DISTRICT**

By: \_\_\_\_\_  
CITY Executive

By: \_\_\_\_\_  
Chief Executive Officer

**ATTEST:**

\_\_\_\_\_  
CITY Clerk

Approved as to Form:  _____ Husch Blackwell LLP
--

**APPROVED:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**GREENWAY**

**EXHIBIT B**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

The undersigned, \_\_\_\_\_, the \_\_\_\_\_ (the “\_\_\_\_\_”), pursuant to that certain Cooperation Agreement dated \_\_\_\_\_, 20\_\_ (the “Agreement”) by and between the District and the City of Maplewood (the “City”), hereby certifies to the \_\_\_\_\_ as follows:

1. That as of \_\_\_\_\_, 20\_\_, the Greenway (the “\_\_\_\_\_”) (as defined in the Agreement in Exhibit A) has been substantially completed in a workmanlike manner and in accordance with the Agreement.
2. Lien waivers for applicable portions of the Work have been obtained.
3. This Certificate of Substantial Completion is accompanied by the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), certifying that the Work has been substantially completed in accordance with the Agreement.
4. This Certificate of Substantial Completion is being issued by the \_\_\_\_\_ to the \_\_\_\_\_ in accordance with the Agreement to evidence the District’s satisfaction of all obligations and covenants with respect to the Work and the development of the Greenway.
5. The \_\_\_\_\_’s acceptance (below) or its failure to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the \_\_\_\_\_ (which written objection, if any, must be delivered to the District prior to the end of such 30-day period) shall evidence the satisfaction of the District’s agreements and covenants to perform the Work.
6. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

[Signature Page Immediately Follows]

**IN WITNESS WHEREOF**, the undersigned has hereunto set his/her hand this \_\_\_ day of \_\_\_\_\_, 20\_\_ .

**METROPOLITAN PARK AND RECREATION DISTRICT  
D/B/A THE GREAT RIVERS GREENWAY DISTRICT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF MAPLEWOOD**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C**  
**CITY GREENWAY PORTION AND CITY EASEMENT AREA**

**EXHIBIT D**  
**STORMWATER BMP**

## EXHIBIT E

<b>Task/Responsibility</b>	<b>Partner</b>
Trail surface cleaning	CITY
Trail surface repair/replacement	CITY
Landscape maintenance and replacement	CITY
Flood cleanup	CITY
Fencing repair/replacement	CITY
Trailhead and trailhead amenities maintenance	CITY
Trailhead and trailhead amenities replacement	CITY
MSD BMP maintenance and reporting	CITY
Turf mowing and care	CITY
Native grass plantings	CITY
Retaining walls maintenance, repair and replacement	CITY
Regulatory signage (i.e. stop signs, yield signs, etc.)	CITY
Greenway wayfinding and interpretive signage (including repair and replacement)	GRG

**CITY – Maplewood City Government**  
**GRG – Great Rivers Greenway District**

## EXHIBIT F



### Annual Greenway Reporting

Reporting to be completed annually. Please submit to Great Rivers Greenway Operations Manager by April of the following calendar year. Reporting is not intended to be cumbersome but act as a record of general activity along the greenway and an opportunity to report ongoing maintenance issues to be addressed by both agencies. Please fill in all yellow boxes, once filled, they will change color to indicate all information has been entered.

Greenway:

Segment:  Miles:

Year:

Agency:

Contact:  Title:

In general, please describe your annual/seasonal maintenance activities on the greenway:

**Routine Maintenance Activities**

On average, how many hours per season do you spend on the following greenway maintenance activities. Enter 0 for those activities not applicable to your greenway or that you were not engaged in. *Example: If you mow along the greenway weekly for four hours each week during spring, summer and fall, enter 0 in Winter and 48 each in Spring, Summer and Fall (4 hrs x 4 weeks x 3 months).*

Activity	Winter	Spring	Summer	Fall	Total
Mowing:	0	0	0	0	0
Tree trimming/brush clearing:	0	0	0	0	0
Trash/litter removal:	0	0	0	0	0
Maint. to site furnishings: (hardscape, lights, trash cans, tables, benches, bike racks, signs, etc.)	0	0	0	0	0
Landscape maintenance:	0	0	0	0	0
Facilities: (shelters, restrooms, parking lots, etc.)	0	0	0	0	0
Trail surface cleaning:	0	0	0	0	0
Erosion control: (regrading, installing erosion blankets, sediment logs, etc.)	0	0	0	0	0
Graffiti/vandalism remediation:	0	0	0	0	0
Stormwater BMP maintenance: (raingardens, detention/retention basins, inlets, etc.)	0	0	0	0	0
Natural area management: (prairie mgmt, invasive plant mgmt, honeysuckle control, etc.)	0	0	0	0	0
Other: _____	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Non-routine Maintenance Activities**

Describe any non-routine maintenance activities conducted on the greenway during the last calendar year including capital repair and replacement and damage caused by natural disasters. Please include costs associated with these activities and their sources (general revenue, grant, etc.)



Please list and/or describe any modifications made to the greenway in the last calendar year. Include amenities, construction, re-routing, closures, etc. and if GRG was notified.



**General Comments:**

Please include any additional comments or remarks you wish to share with Great Rivers Greenway.



**Programming:**

Please list and/or describe any programming or special events that were held on the Greenway.



AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AUTHORIZING THE CITY MANAGER TO EXECUTE A COST SHARE AGREEMENT WITH GREAT RIVERS GREENWAY FOR CONSTRUCTION OF THE DEER CREEK GREENWAY TRAIL FROM SUSSEX AVENUE TO CANTERBURY AVENUE

WHEREAS, Great Rivers Greenway (GRG) and the City have agreed to combine the Deer Creek Greenway trail project with the City’s Greenwood Boulevard street reconstruction project; and

WHEREAS, the City will receive federal funding through its Surface Transportation Program grant, GRG’s Congestion Mitigation & Air Quality grant, and contributed funds from GRG in the amount of \$536,711; and

WHEREAS, the City will manage project oversight and payment administration; and

WHEREAS, construction is anticipated to begin in late summer 2025.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MISSOURI, AS FOLLOWS:

Section I. The City Manager is hereby authorized to execute a Cost Share Agreement with Great Rivers Greenway for construction of the Deer Creek Greenway trail within Maplewood city limits from Sussex Avenue to Canterbury Avenue.

Section II. This ordinance shall be in full force and effect fifteen (15) days after its passage and approval.

Passed this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

Approved this 11th day of February, 2025

\_\_\_\_\_  
Barry Greenberg, Mayor

Attest:

\_\_\_\_\_  
Tanya Bohlken, Deputy City Clerk

# Memorandum



**To:** Mayor and City Council  
**From:** Amber Withycombe, City Manager  
**Date:** February 7, 2025  
**Re:** City Manager's Report

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## **Missouri PACE Program**

Following Trey Maxwell's informative presentation about the Show Me PACE Clean Energy District program at the January 28th Council meeting, I am providing additional information about the steps needed to participate in this economic development and clean energy financing initiative.

To join the Show Me PACE Clean Energy District, the Council would need to pass an ordinance authorizing participation in the district. The program, as Trey outlined, provides Property Assessed Clean Energy financing for commercial, industrial, agricultural, non-profit, and public properties to fund energy improvements with no taxpayer money involved.

Key features include:

- 100% private funding through approved PACE lenders
- Up to 20-year financing terms that stay with the property
- Eligible improvements include lighting, windows, roofing, HVAC, and solar installations
- All projects must demonstrate net economic benefit exceeding costs
- Strong consumer protections including mortgage holder consent requirements

Over 80 Missouri municipalities currently participate in the program, including Clayton, Webster Groves, University City, and Richmond Heights. Show Me PACE handles all assessment collection through third-party servicers, requiring no municipal staff time for administration.

Additional program information is attached for your review, as well as a sample ordinance from Clayton.

# SHOW ME PACE

Clean Energy District



238 East High St., 3rd floor  
Jefferson City, MO 65101

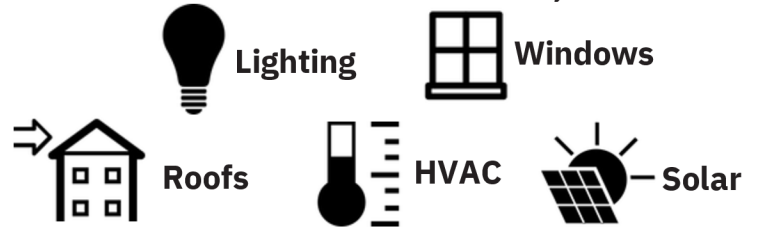
573-616-1046, PACE@moenergy.org  
[www.ShowMePACE.com](http://www.ShowMePACE.com)

**PACE = Property Assessed Clean Energy**  
**Economic development through open-market financing for energy efficiency and renewable energy projects**  
*PACE financing is all private funds - no taxpayer money used*

**PACE financing is available for:**  
**commercial, industrial, agricultural, non-profit, and public properties**  
*PACE increases cash flow and property value*

## Eligible projects

*Custom measures considered on a case-by-case basis*



## KEY REQUIREMENT:

**Net economic benefit over term must exceed cost of the project**

## Role of local government

Property Assessed Clean Energy was established by Missouri state statute in 2010. The statute requires a municipality to pass an ordinance to allow Show Me PACE Clean Energy District\* to operate in that jurisdiction. This provides Show Me PACE the authority to place an assessment on the property when the property owner uses PACE financing. Municipalities may belong to more than one clean energy district.

**Municipalities participate in PACE to promote economic development, create jobs and save energy in their community.** To avoid placing a burden on county collectors, Show Me PACE uses third-party collection of the annual assessment for commercial projects.



Each participating municipality has the option to appoint a representative to serve on the Show Me PACE Advisory Board which meets annually.

\*Show Me PACE Clean Energy District is a political subdivision

## Financing provided by Show Me PACE funding partners:



Can pay for 100% of a project's costs  
 Maybe considered "off-book" on a firm's balance sheet

- Is repaid with an annual assessment up to 20 years
- Is all private capital - no taxpayer funds
- Is on-demand cash
- Can stay with the building upon sale
- Has a fixed interest rate

## To qualify, PACE projects must:

- Be permanently affixed to the property
- Reduce energy consumption or create renewable energy on property
- Save more money than the cost of project
- Be located in a participating municipality
- Be owned by a business with no property defaults or bankruptcy in the last 5 years.

# Show Me PACE Consumer Protections

*Show Me PACE has implemented the industry's strongest consumer protections*

## Commercial PACE consumer protection requirements

- 1) Consent of the primary mortgage holder
- 2) The Loan-to-Value ratio must be less than 90% and the PACE Loan-to-Value ratio must be less than 25% or require the approval of the Show Me PACE Clean Energy Development Board.

## What makes Show Me PACE unique?

- |                                 |                       |
|---------------------------------|-----------------------|
| strong consumer protections     | open market program   |
| administered by nonprofit       | low fees              |
| 3rd-party assessment collection | transparent operation |

*For small to mid-sized businesses with projects between \$800,000 and \$100,000, ask about **PACE Express!***

### Show Me PACE Lenders



### For more information:

visit [www.showmepace.com](http://www.showmepace.com) or contact Program Manager at [PACE@moenergy.org](mailto:PACE@moenergy.org), 573-616-1046



is administered by the Missouri Energy Initiative, a nonpartisan, nonprofit association of public and private sector energy entities working to meet Missouri's energy needs through support and facilitation of energy economic development, education, research and pragmatic policies.



**BILL NO. 6812**

**ORDINANCE NO. 6672**

**THE CITY OF CLAYTON, MISSOURI, PROPERTY ASSESSED CLEAN ENERGY ORDINANCE AUTHORIZING THE CITY TO JOIN THE *SHOW ME PACE CLEAN ENERGY DISTRICT*, THE *MISSOURI CLEAN ENERGY DISTRICT*, AND THE *MISSOURI ENERGY SAVINGS PROGRAM* PURSUANT TO THE MISSOURI "PROPERTY ASSESSED CLEAN ENERGY ACT"; STATING THE TERMS UNDER WHICH THE CITY WILL CONDUCT ACTIVITIES AS A MEMBER OF SUCH DISTRICTS, AND APPROVING RELATED COOPERATIVE AGREEMENTS AND BYLAWS**

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**WHEREAS**, the General Assembly of the State of Missouri has adopted the Property Assessment Clean Energy Act, Sections 67.2800 to 67.2835, RSMo. (the "PACE Act"); and

**WHEREAS**, it is in the best interests of the health, safety, and welfare of the City of Clayton, Missouri, and its businesses and residents to encourage the development, production, and efficient use of clean energy and renewable energy, as well as the installation of energy efficiency improvements on eligible publicly and privately owned real property; and

**WHEREAS**, the primary intent of funding energy efficiency and renewable energy improvements pursuant to the PACE Act is to promote the public purposes described above; and

**WHEREAS**, Section §67.2810.1, RSMo authorizes one or more Municipalities (as defined in Section §67.2800.7, RSMo) to establish a Clean Energy Development Board to initiate and administer a Property Assessed Clean Energy ("PACE") Program so that owners of qualifying property can access funding for energy efficiency improvements or renewable energy improvements to such properties located in such Municipalities; and

**WHEREAS**, on June 15, 2015, a clean energy development board named *Show Me PACE* was created with the intention that all Municipalities within the State of Missouri would be eligible to join and participate by approving an appropriate ordinance or resolution; and

**WHEREAS**, on January 3, 2011, a clean energy development board now named the *Missouri Clean Energy District* was created with the intention that all Municipalities within the State of Missouri would be eligible to join and participate by approving an appropriate ordinance or resolution; and

**WHEREAS**, on August 19, 2015, a clean energy development board now named the St. Louis County Clean Energy Development Board was created and now operates the *Missouri Energy Savings Program* with the intention that all Municipalities within the St. Louis County would be eligible to join and participate by approving an appropriate ordinance or resolution; and

**WHEREAS**, it is in the best interests of the City of Clayton, Missouri, and its businesses and residents to join and participate in the three PACE programs aforesaid;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:**

**SECTION 1:** The City of Clayton hereby approves and authorizes joining and participating in *Show Me PACE*, the *Missouri Clean Energy District*, and the *Missouri Energy Savings Program* based on the following:

A. Title and Definitions.

1. *Title.* This Ordinance shall be known and may be cited as "The City of Clayton, Missouri, Property Assessed Clean Energy Ordinance."
2. *Definitions.* Except as specifically defined below, words and phrases used in this Ordinance shall have their customary meanings. Words and phrases defined in Section 67.2800.2 of the Missouri Revised Statutes, as amended, shall have their defined meanings when used in this Ordinance. As used in this Ordinance, the following words and phrases shall have the meanings indicated.
  - a. "Show Me PACE" means the Show Me PACE District.
  - b. "MCED" means the Missouri Clean Energy District.
  - c. "MO ESP" means the Missouri Energy Savings Program.
  - d. "Districts" means collectively the Show Me PACE, the Missouri Clean Energy District and the Missouri Energy Savings Program; and each being a "District."
  - e. "PACE Assessment" means a special assessment made against qualifying property in consideration of PACE Funding.

f. "PACE Funding" means funds provided to the owner(s) of Qualifying Property by the District for an energy efficiency or renewable energy improvement.

g. "Qualifying Property" means real property located in the City of Clayton, Missouri that satisfies the criteria set forth in the PACE Act.

B. Program Administration. Eligible Clayton Property owners may independently select either Show Me PACE, MCEd or MO ESP to serve as program administrator on a project by project basis. Each District shall independently administer the functions of a PACE program for its projects within the City by:

1. providing property owners with an application to apply for PACE Funding;
2. developing standards for the approval of projects submitted by Qualifying Property owners;
3. reviewing applications and selecting qualified projects;
4. entering into Assessment Contracts with Qualifying Property owners;
5. providing a copy of each executed Notice of Assessment to the County Assessor and causing a copy of each such Notice of Assessment to be recorded in the real estate records of the Recorder of Deeds for the County;
6. authorizing and disbursing PACE Funding to the Qualifying Property owners;
7. receiving the PACE Assessment from the County Collector;
8. recording any lien, if needed, due to nonpayment of a PACE Assessment; and
9. exercising all powers granted by Section 67.2810.2 of the Missouri Revised Statutes, as amended, including, but not limited to, the power to levy and collect the PACE Assessment pursuant to an Assessment Contract with a Qualifying Property owner.

C. Liability of City Officials; Liability of City. Notwithstanding any other provision of law to the contrary, the City and its employees, officers and elected and appointed officials, shall not be liable in either their personal or official capacity to any person for claims, of

whatever kind or nature, under or related to the City's participation in any PACE program, including, without limitation, claims for or related to uncollected PACE Assessments. The City of Clayton, Missouri, has no liability to a property owner for or related to energy savings improvements funded under a PACE Program. Each District shall for all purposes be considered an independent entity and shall not be considered a political subdivision of the City of Clayton, Missouri.

- D. Existing Laws Not Superseded. Any project or improvement at any Qualifying Property which is funded in whole or in part of PACE Funding shall be subject to all laws, ordinances, rules and regulations in effect at that time.
- E. City as a Non-Party. The City of Clayton, Missouri, shall not be a party to any PACE Funding agreement, loan, or other commitment, however denominated, executed between any District and the owner(s) (or their representatives, together with any successors and assigns) of any Qualifying Property.

**SECTION 2:** The City of Clayton, Missouri, declares its intent that the provisions of this Ordinance shall be in conformity with federal and state laws. The City enacts this Ordinance pursuant to Sections 67.2800 to 67.2835 of the Missouri Revised Statutes, as amended. The City of Clayton, Missouri, reserves the right and authority to withdraw from ongoing participation in any District upon written notice, subject to the continuation of any outstanding Assessment Contracts until expiration or termination thereof.

**SECTION 3:** The City of Clayton, Missouri, does hereby request that it be approved by the Board of Directors of each District as a duly authorized participant in the Districts, subject to the terms and conditions hereof.

**SECTION 4:** The election of the City of Clayton, Missouri, to join the Districts shall in no way constitute an obligation of the City necessitating any corresponding appropriation.

**SECTION 5:** The City Clerk is hereby authorized to deliver a duly executed copy of this Ordinance to the Board of Directors of each of the Districts or its designee, together with the jurisdictional and geographic boundaries of the City for inclusion in the jurisdictional and geographic boundaries of the Districts.

**SECTION 6:** The Board of Aldermen further approves and authorizes execution on behalf of the City of any cooperative agreements and/or governance documents involving the City and the Districts necessary, desirable, convenient or proper to effectuate the City's participation in the Districts' respective programs as intended by this Ordinance.

**SECTION 7:** This Ordinance shall be in full force and effect from and after the date of its passage.

**PASSED this 8th day of December 2020, by the Board of Aldermen of Clayton, Missouri.**

---

Michelle Harris  
Mayor

ATTEST:

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June Frazier  
City Clerk