

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OF THE CITY OF CHESTERFIELD, MISSOURI TO EXECUTE A MAINTENANCE AGREEMENT PROVIDING FOR THE MAINTENANCE OF AESTHETIC ENHANCEMENTS IN CONJUNCTION WITH THE CONSTRUCTION OF A NEW CHESTERFIELD PARKWAY WEST BRIDGE OVER INTERSTATE 64.

WHEREAS, the City of Chesterfield, Missouri (the "City") desires to incorporate aesthetic enhancements in the construction of a new Chesterfield Parkway West Bridge Over Interstate 64 including, but not limited to concrete stain, form liners for mechanically stabilized earth (MSE) retaining walls and ornamental fencing; and

WHEREAS, The Missouri Department of Transportation is planning replacement of the Chesterfield Parkway West bridge over Interstate 64 and agrees to incorporate specific enhancements into the final design of the bridge, provided that the City of Chesterfield agrees to provide for the future maintenance of these improvements; and

WHEREAS, the City of Chesterfield, Missouri, after careful consideration and deliberation has determined that the City is willing to provide for the regular maintenance and care of said aesthetic enhancements;

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

Section 1. The City Council hereby approves of the Agreement in substantially the form set forth as **Exhibit A**, attached hereto and incorporated by reference.

Section 2. The City is hereby authorized to enter into, and the City Administrator of the City of Chesterfield and the City Clerk are hereby authorized and directed to execute, seal, attest and deliver, for and on behalf of the City, the Agreement, such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and with the provisions of the Agreement.

Section 3. The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of the Ordinance are so essential to and inseparable connected with and dependent upon the void portion that it cannot be presumed that the City has enacted the valid portions without the void 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.

Section 4. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Section 5. This Ordinance shall be in full force and effect from and after its passage and approval.

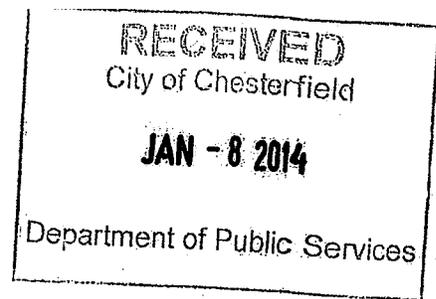
Passed and approved this 4th day of NOVEMBER, 2013.

Bob Nation

Mayor

ATTEST: Vickie Hass
City Clerk

CCO Form: MT02
Approved: 10/96 (DPP)
Revised: 02/10 (ASB)
Modified: 08/13 (BDG)



**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
MAINTENANCE AGREEMENT**

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

WITNESSETH:

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

(1) **PURPOSE:** The purpose of this Agreement is to designate maintenance responsibilities for certain enhancements within Commission – owned right of way.

(2) **LOCATION:** The enhancements which are the subject of this Agreement are located at the I-64 interchange with Chesterfield Parkway West as shown on **EXHIBIT A** attached hereto and made a part of this agreement.

(3) **MAINTENANCE OF ENHANCEMENTS:** The City shall maintain the enhancements that are the subject of this Agreement built under Commission Project Number 6I03056 in an aesthetically pleasing condition that will be safe to the general public. The City shall coordinate any planned maintenance activities that are accomplished pursuant to this Agreement with the Commission's representative and shall give a minimum of 1 week notice prior to any intended maintenance activity. In the event the Commission determines that the City is not properly maintaining the enhancements, the Commission will send a notice to the City describing the nature of the condition that needs to be remediated. If the safety function of the enhancements are in any way deemed to present an unsafe condition to vehicular or pedestrian traffic the City shall make immediate accommodations to address the unsafe condition.

(A) The City shall maintain all ornamental fencing constructed within Commission-owned right of way as shown in EXHIBIT A. The City, at its sole cost and expense, shall pay for all costs to repair, replace or repaint the ornamental fencing to maintain its as-built appearance and structural integrity.

(B) The City shall maintain the form-lined (textured) retaining walls and any concrete stain applied to the retaining walls or concrete barrier as shown in EXHIBIT A. The City, at its sole cost and expense, shall pay for cost of repairing or replacing the form-lining and the concrete stain to match the existing texture and color.

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

(5) **INDEMNIFICATION**:

(A) The City shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

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

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

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(6) **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 representative of the City and the Commission.

(7) **COMMISSION REPRESENTATIVE**: The Commission's district engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement.

(8) **CITY REPRESENTATIVE**: The City's City Administrator is designated as the City representative for the purpose of administering the provisions of this

Agreement. The City representative may designate by written notice other persons having the authority to act on behalf of the City in furtherance of the performance of this Agreement.

(9) **NOTICES:** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

(A) To the City: City of Chesterfield
Attn: City Administrator
690 Chesterfield Parkway West

Chesterfield, MO 63017

Facsimile No: 636-537-4798

(B) To the Commission:
Greg Horn
MoDOT St Louis District Engineer
1590 Woodlake Drive
Chesterfield, MO 63017

Facsimile No: (573)522-6475

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

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

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

(12) **AUTHORITY TO EXECUTE:** The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(13) **CONTINUING DURATION:** The term of this Agreement will be of a continuing duration until terminated pursuant to the terms of this Agreement or by mutual consent of the parties.

(14) **NO ADVERSE INFERENCE:** This Agreement shall not be construed more strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement.

Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

(15) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

(16) NO INTEREST: By contributing to the cost of the maintenance of this roadway, the City gains no property interest in the enhancements or roadway whatsoever. The Commission shall not be obligated to keep the constructed enhancements or roadway in place if the Commission, in its sole discretion, determines removal or modification of the roadway is in the best interests of the state highway system or the Commission.

(17) NON-LIABILITY OF COMMISSION PERSONNEL: Neither the commissioners, nor any other officer, official, employee, or agent of the Commission or Missouri Department of Transportation shall be *personally* responsible for any liability arising under or growing out of this Agreement.

(18) NOT A JOINT VENTURE: Nothing contained in this Agreement shall be deemed to constitute the Commission and City as partners in a partnership or joint venture for any purpose whatsoever.

(19) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(20) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the City.

(21) SUCCESSORS AND ASSIGNS: The provisions of this Agreement shall apply to and be binding upon the parties executing this Agreement, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including officers, employees, agents, servants, corporations, and any persons acting under, through, or for the parties agreeing hereto.

(22) 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.

(23) FHWA APPROVAL: This agreement is entered into subject to the approval of the Federal Highway Administration.

[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 28th day of December, 2013.

Executed by the Commission this 12 day of December 2013.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF CHESTERFIELD

Robert Bockw

By Michael Stofany

Title Chief Financial Officer

Title City Administrator

ATTEST:

[Signature]

Secretary to the Commission

ATTEST:

By Vickie Haas

Title City Clerk

Approved as to Form:

[Signature]

Commission Counsel

Approved as to Form:

By [Signature]

Title City Attorney

City Ordinance: 2767

ACKNOWLEDGMENT BY CITY

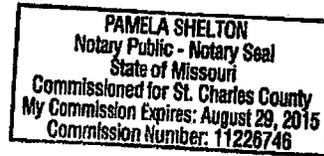
STATE OF Missouri)
COUNTY OF St. Louis)

ss

On this 20th day of November 2013, before me appeared Michael Herring personally known to me, who being by me duly sworn, did say that he/she is the City Administrator of the City of Chesterfield and that the foregoing instrument was signed and sealed on behalf of the City of _____ and that he/she acknowledged said instrument to be the free act and deed of the City of Chesterfield and that it was executed for the consideration stated therein and no other.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

Pamela Shelton
Notary Public



My Commission Expires: 8/29/15

