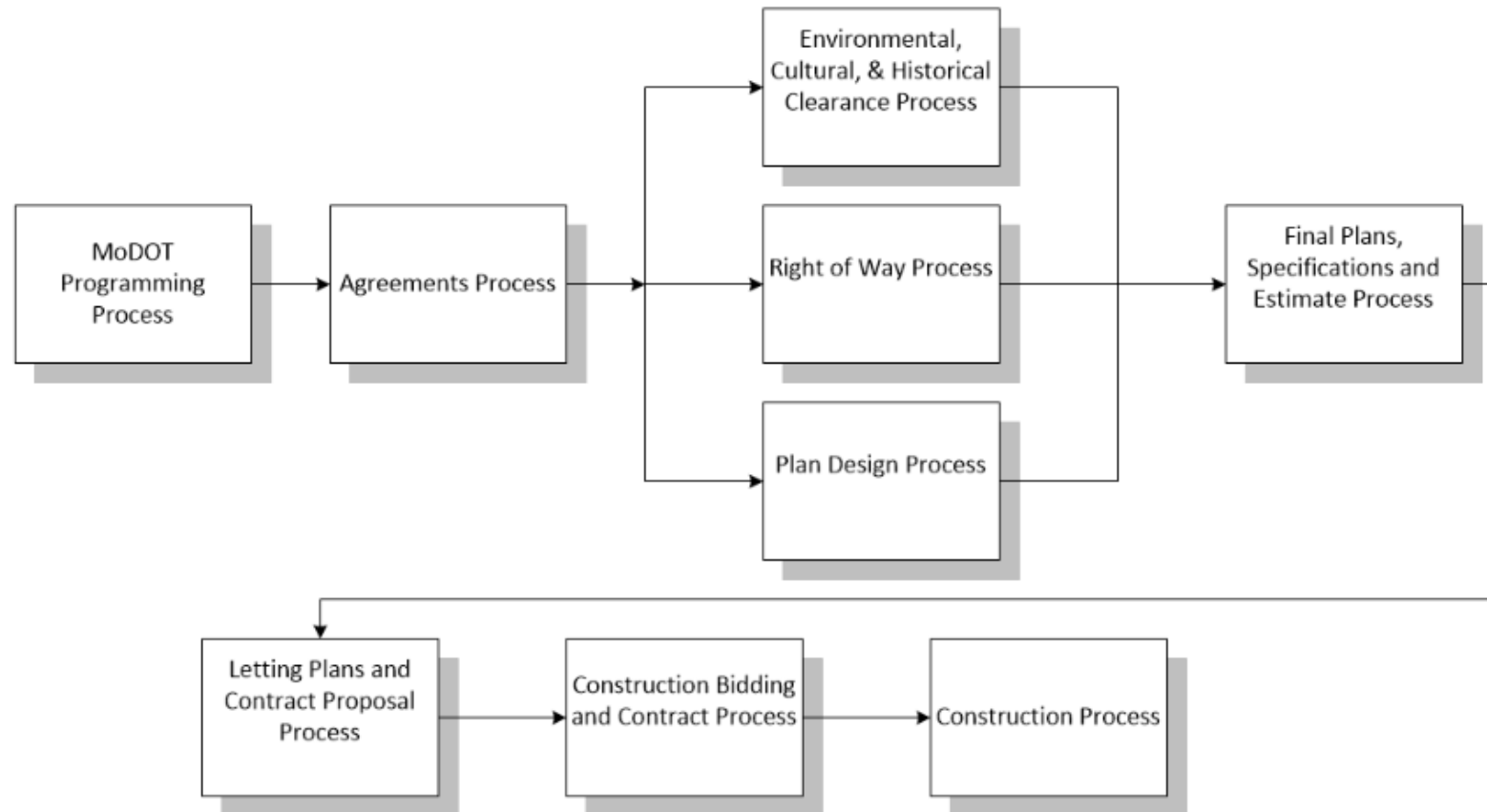


# State Assisted Funding Implementation Guidance

Update 1/15/2020

## Project Flowchart for Local State-Aid Projects



## Checklist for State Funded Capital Projects

This table provides an overview of the documentation and steps needed to be eligible for reimbursement at each project stage for these funding programs. If any project includes federal funding, the processes and checklists identified in [the EPG section 136 Local Public Agency Policy](#) shall govern.

- **Capital Improvement Program**
- **Port Administrative Funds Used for Preliminary Engineering**
- **Port Administrative Funds Used for Construction**
- **Freight Enhancement Program**

Project Stage	Project Sponsor's Submittal to MoDOT	Requested MoDOT Action	MoDOT Action Required for Reimbursement Eligibility	Comments
<input type="checkbox"/> Programming	<ul style="list-style-type: none"> <li>○ Detailed description of work</li> <li>○ Timeline for project delivery</li> <li>○ Estimated Cost</li> </ul>	Assign Project Number	Project added to State Transportation Improvement Program (STIP) and, if appropriate, MPO TIP	Timeline should identify latest possible dates. This will be used to identify when delay is sufficient to begin discussion of shifting funds to other projects.
<input type="checkbox"/> Agreement	<ul style="list-style-type: none"> <li>○ Scope of Work</li> <li>○ Board resolution for signature</li> <li>○ Budget outline for project</li> </ul>	Execution of Agreement	Fully executed agreement returned to port	

Project Stage	Project Sponsor's Submittal to MoDOT	Requested MoDOT Action	MoDOT Action Required for Reimbursement Eligibility	Comments
<input type="checkbox"/> Plan Design	<ul style="list-style-type: none"> <li>○ Scope of work</li> <li>○ Qualification based selection (QBS) RSMO 8.285-8.291             <ul style="list-style-type: none"> <li>▪ Request for Qualifications (RFQ)</li> <li>▪ Advertise on MoDOT website and local newspaper</li> <li>▪ Overview of decision-making process used</li> </ul> </li> <li>○ On-call consultant             <ul style="list-style-type: none"> <li>▪ Port Board has formally adopted MoDOT's two on-call lists</li> </ul> </li> <li>○ Copy of contract</li> </ul>	Authority to sign contract with selected consulting engineer	MoDOT letter concurring with consultant selected and approval to proceed incurring reimbursable expenses	
<input type="checkbox"/> Right of Way	<ul style="list-style-type: none"> <li>○ Appraisal</li> <li>○ Copy of Purchase documents with price</li> </ul>	Requesting concurrence with process  NOTE: Must follow Uniform Relocation Act to retain the federal funding eligibility for 10 years in the future	MoDOT letter concurring that acquisition process followed appropriate steps.	

Project Stage	Project Sponsor's Submittal to MoDOT	Requested MoDOT Action	MoDOT Action Required for Reimbursement Eligibility	Comments
<input type="checkbox"/> Equipment or Material Purchase (Procurement) 7 CSR 10-11 Advertisement for Bids	<ul style="list-style-type: none"> <li>○ &lt;\$3,000 no advertisement required</li> <li>○ &lt;\$25,000, request minimum of three quotes</li> <li>○ &gt;\$25,000 formal sealed bid process</li> </ul>	Authority to advertise for bids	MoDOT letter authorizing advertisement for bid methodology	
<input type="checkbox"/> Equipment or Material Purchase (Procurement) 7 CSR 10-11	<ul style="list-style-type: none"> <li>○ Tabulation of bids received</li> <li>○ MoDOT letter authorizing advertisement for bid methodology (see above)</li> </ul>	Concurrence in award to lowest bidder.	MoDOT letter concurring in award to lowest bidder and notice to proceed with purchase.	
<input type="checkbox"/> Construction Bidding	<ul style="list-style-type: none"> <li>○ Environmental permits, CE, or EIS (see environmental flowchart)</li> <li>○ Proposed advertisement</li> <li>○ Construction Estimate</li> <li>○ Bid package – specifications, plans, bid documents</li> <li>○ PS&amp;E checklist completed by engineer</li> </ul>	Authority to Advertise for Bids	Written Authority to Advertise	
<input type="checkbox"/> Construction Bid Award	<ul style="list-style-type: none"> <li>○ Tabulation of Bids</li> <li>○ Proof of advertising for 21 days prior to bid opening</li> <li>○ Prior authority to advertise from MoDOT</li> </ul>	Concurrence in Award to lowest bidder	Written concurrence in award and notice to proceed with incurring construction costs	
<input type="checkbox"/> Final Close Out	<ul style="list-style-type: none"> <li>○ Notification of project completion</li> <li>○ Date of final inspection</li> <li>○ Final Invoice</li> </ul>	Close out project		

Project Stage	Project Sponsor's Submittal to MoDOT	Requested MoDOT Action	MoDOT Action Required for Reimbursement Eligibility	Comments
<input type="checkbox"/> Reimbursement Requests	<ul style="list-style-type: none"> <li>○ Invoice from Port to MoDOT</li> <li>○ Supporting Documentation to verify:               <ul style="list-style-type: none"> <li>▪ The vendor who was paid</li> <li>▪ The goods or service purchased is within executed agreement's scope of work</li> <li>▪ How much was paid for the goods or service</li> <li>▪ The invoice was already paid by your organization</li> </ul> </li> </ul>	Payment from Appropriation	Executed Agreement for project	

## I. Introduction

Section 68.065 of the RSMo provides that the state highways and transportation commission (MHTC) is granted powers including development of a statewide plan for waterborne commerce and providing technical advice and assistance to public port authorities in matters of importance to port development.

The State Appropriated Funds Implementation Guidelines (SAFIG), produced by the Missouri Department of Transportation (MoDOT) is intended to be used as a guide for entities that sponsor projects using state general revenue (GR) or transportation (STF) funds. The SAFIG addresses three local programs funded through GR and STF:

- The port capital improvement program (CIP)
- The port administration program
- The freight enhancement program (FRE)

For projects funded through these programs, MoDOT will furnish information concerning the applicable state laws and will act as coordinator. The necessary design, acquisition, environmental, historical and archeological clearances and approvals, construction and maintenance of improvements will be the responsibility of the project sponsor. MoDOT personnel can advise and assist the local agency in meeting these requirements.

If federal funds are used for any portion of the project, additional project requirements may be necessary as dictated by the federal funding source. Any project using federal ferry boat program funds or receiving a USDOT discretionary grant should refer [to section 136 of MoDOT's Engineering Policy Guide](#) that details steps required for those funds.

The SAFIG is divided into sections corresponding to specific project related phases and includes multiple examples, forms, and checklists that the project sponsor and their consultants can use, if desired. The sections are:

- [Program Funding](#)
- [Project Selection & Programming](#)
- [Engineering Professional Services Selection](#)
- [Environmental Permits and Clearances](#)
- Acquisition of Real Property
- [Advertising for Bids and Construction Contractor Selection](#)
- Invoicing and Reimbursement
- Finalizing Project
- Procurement of Equipment or non-Engineering Professional Services

## II. Program Funding

The CIP, the FRE, and the port administration funding program require an annual budget appropriation from the general assembly and signature by the governor. The CIP funds are appropriated from general revenue and require a local match of at least 20%. The FRE funds are appropriated from the State Transportation Fund (STF) and require a local match of at least 20%. The port administration funds are appropriated from the STF and require no local match.

The funds become available to MoDOT on the latter of July 1 or the date the governor signs the budget bill. Since the funds are annual appropriations, they expire on June 30 each year. Each project must be completed and reimbursement requested no later than June 15 in order to prevent funds from lapsing. A limitation has been placed on cash flow for the programs by quarter

## III. Project Selection & Programming

### A. Port Administration Funding. [RSMo 68.035.1](#)

The port administration funding is divided into two programs. First, \$400,000 is divided by formula between the public port authorities for use in any expense related to port business. The formula is agreed upon by MoDOT and the public port authorities at the Missouri Port Authority Association (MPAA) meeting. The formula has two components: a base amount and performance. The base amount (1% of the \$400,000) is allocated to each port to provide minimum level of support for port activities. The formula allocates the remaining \$340,000 based on each ports relative response to performance criteria. An example of the [port questionnaire](#) is located in the appendix. The fiscal year 2017 [administrative funding completed matrix](#) is also included in the appendix for information.

The remaining \$200,000 is used for preliminary engineering for future construction projects. When the MPAA meets to develop a list of prioritized projects for the upcoming legislative budget discussions, the members also develop recommendations for allocation of these preliminary engineering funds to prepare the plans for those projects. For example, when the prioritized list for the FY2018 funds was developed the ports also developed the preliminary engineering plan for the \$200,000 of FY2017 administrative funds. This project development process allows the ports to have plans on the shelf and ready for construction when the CIP funds are released each fiscal year.

All proposed allocations of the port administrative funds are included in MoDOT's Statewide Transportation Improvement Program (STIP). The draft STIP is published for public comment each year before final approval from the Missouri Highways and Transportation Commission (MHTC). Changes can occur to the allocation of the port administrative funds between draft STIP and final STIP based on public comment, designation of projects in the final legislative budget bill, or funding increases or decreases in the final legislative budget bill.



After the budget bill is signed by the governor, an [agreement](#) is signed with each port receiving funds detailing the scope of work, the amount of available funds, and any other requirements necessary for the receipt of state revenue. The port board must include a [resolution](#) authorizing execution of the agreement. The fully executed agreement is returned to the port authority with a letter issuing a notice to proceed for the specific scope of work.

**B. Port Capital Improvement Program. [RSMo 68.035.2](#)**

An overview of the port CIP project prioritization and selection process is provided here. A detailed policy, process and statutory references are provided in the [appendix](#).

The port capital improvement program provides a maximum of 80% of funding for specific undertakings of port development such as land acquisitions, construction, terminal facility development, port improvement projects, and other related port facilities. Projects funded through this program are focused to support moving people or goods on the river and have included conveyor systems, port rail, warehousing, docks, security systems and dolphins.

CIP projects are identified by each port director prior to the summer MPAA meeting. The entire list of projects is accumulated and sent to each voting member of MPAA prior to the meeting. At the summer meeting, each project is presented to the group by the sponsoring port with discussion on why it is important for the port and how it will help overall waterborne freight or passenger movement. MPAA members jointly use this information as a guide to develop a prioritized project list.

This prioritized project list contains two segments, one section fiscally constrained to MoDOT's proposed budget request and another containing the remaining prioritized port needs. The recommended prioritized project list is determined via consensus of the MPAA voting members.

The MPAA's prioritized project list is shared with planning partners at the Metropolitan Planning Organizations (MPOs) and the Regional Planning Commissions (RPCs) during the fall development of the draft STIP. Elected officials from the MPO and RPC regions are invited to provide input on the prioritized project list for consideration in development of the final list of prioritized port projects that is incorporated into MoDOT's legislative budget request and the draft STIP.

The draft STIP is published for public comment each year before final approval from the Missouri Highways and Transportation Commission (MHTC). Changes can occur to the port CIP project list between draft STIP and final STIP based on public comment, designation of projects in the final legislative budget bill, or funding increases or decreases in the final legislative budget bill.

After the budget bill is signed by the governor, an [agreement](#) is signed with each port receiving funds detailing the scope of work, the amount of available funds, and any other requirements necessary for the receipt of state revenue. The port board must include a [resolution](#) authorizing execution of the agreement. The fully executed agreement is returned to the port authority with a letter issuing a notice to proceed for the specific work phase.

### **C. Freight Enhancement Program**

The freight enhancement program provides a maximum of 80% state funding for non-highway capital projects to improve the efficient movement of freight. The program is open to public, private, and not-for-profit entities. Project applications are solicited each spring. Selections are made based on criteria including percentage of local match and furtherance of the Missouri State Freight Plan goals, objectives, and performance metrics.

After the budget bill is signed by the governor, the FRE projects are amended into the final STIP, an [agreement](#) is signed with each FRE recipient detailing the scope of work, the amount of available funds, and any other requirements necessary for the receipt of state revenue. Public and not-for-profit entities must include a [resolution](#) authorizing execution of the agreement. The fully executed agreement is returned to FRE recipient with a letter issuing a notice to proceed for the specific work phase.

## **IV. Engineering Professional Services Selection**

### **A. Introduction**

If the project sponsor is not adequately staffed to provide the necessary engineering, architectural, and land surveying they may hire a consultant to provide professional services. Selection of these professional services is governed by section 68.057 RSMo and [sections 8.285 to 8.291 RSMo](#). If the project has federal funding, Federal Laws apply and supersede these State Laws.

Public entities in Missouri are required to follow the qualification based selection (QBS) process regardless of whether seeking reimbursement from any of the funding streams noted in the SAFIG. If the project sponsor will be seeking reimbursement from the Port Admin, CIP, or FRE funding for the professional services, they must request and receive a notice to proceed from MoDOT *prior to advertising for the professional services.*

### **B. Solicitation and Selection Process. RSMo 8.285-8.291**

The project sponsor must first develop a scope of work for the professional services before soliciting for the firm. After the scope is developed, the engineering professional services can be procured using either (1) using an on-call consultant list or (2)

solicitation using the request for qualification (RFQ)/request for proposal (RFP) process. MoDOT discourages use of lump sum contracts for engineering professional services.

## 1. **Selection Using the On-Call Consultant List**

MoDOT maintains two on-call consultant lists. Both of these lists are in compliance with the QBS process required by Missouri statute.

The first is the [Local Public Agency \(LPA\) On-Call consultant services listing](#) discussed in the Engineering Policy Guide (EPG) section [136.4.2.4.3 Using the LPA On-Call Consultant List](#). The on-call selection option was created to streamline the project delivery process for local agencies, however, this process of selection is not mandatory and the standard QBS process can be used at any time. The LPA on-call list is available for projects less than \$100,000 for work that fits into the five categories listed – structures, construction, inspection, roadway, trails and sidewalks, and traffic engineering. Details for those scopes of work are included in the EPG.

The second [on-call listing is used for MODOT work](#). Every three years MoDOT requests interested firms respond to a list of specific work categories. MoDOT uses the QBS process to select firms from those responses in those particular work categories. These contracts are used for quick delivery of small projects (Less than \$200,000) that are limited in scope. Section 134.2.4 of the EPG outlines this process as well.

For ports to use either of these lists, the port board needs to document that it is adopting section 134.2 (MoDOT list) or section 136.4 (LPA list) of the EPG for selection of consultants. Once that is documented, the ports may select from the list and be compliant with the QBS process.

Once the port has selected a consulting firm and the firm has agreed to the scope of work, a [consultant contract](#) should be developed and executed by both parties. The example in the appendix is for informational purposes and could be modified by the project sponsor if so desired. MoDOT recommends that all consultant contracts include provisions that:

- Identifying how/when/who can make changes to the contract
- Each parties respective responsibilities
- Explain how costs will be calculated, billing process and payment process
- Identify who owns and stores any property acquired through the contract and documents developed
- Require notification and approval before work is sublet
- Require a professional engineering seal on plans

- Detail retention of records, who and for how long
- Identify In what conditions can the contract be terminated or suspended and what payments will occur in those instances
- Require all successors be bound by the terms of the contract
- Require the engineer to comply with all laws
- Require the engineer be responsible for any negligence claims
- Require the engineer to maintain insurance/performance bond that can be accessed if they fail to complete the contract so the project sponsor can hire another firm
- Attest the engineer does not have a conflict of interest related to this project.

Once it is fully executed, a copy should be submitted to MoDOT. MoDOT will use this contract to set up the financial system to reimburse for this contract and will issue a notice to proceed to the project sponsor. **Any work performed under this contract prior to this notice to proceed is not eligible for reimbursement.**

## **2. Selection Using the Qualification Based Selection Process (QBS)**

## V. Environmental Permits and Clearances

Environmental permits and clearance [flowchart](#)

[Section 106 timeline](#)

[Section 106 Definitions](#)

## VI. Advertising for Bids and Construction Contractor Selection

## VII. Innovative Contracting

### A. Value Engineering

[Value Engineering \(VE\)](#) is a systematic method of examining projects or process to find cost savings. VE can be done at either before a project is awarded by the project sponsor or a proposal can be submitted by the contractor after the awards. The contractor VE proposal cannot reduce the scope of work but can propose alternate delivery or materials. If accepted, the contractor receives 50% of the cost savings.

### B. Innovative Contracting

Bid documents can reflect traditional methods for construction (the design, bid, build) method or employ non-traditional, innovative contracting methods to improve efficiency, increase flexibility, and maximize value for unique challenges presented.

[Section 147 of MoDOT's Engineering Policy Guide](#) is an online resource available to all public project sponsors providing additional details on each method.

#### 1. Contract Time Innovations

Encourages expedited completion of projects and minimizes construction time, closure, and user delay.

- [Accelerating the Completion of Closure Work \(A+B Bidding\)](#) allows the bidder to bid the time the work may be completed. The bid consists of two components and the lowest bid is determined by adding A plus B.
  - A – traditional bid for contract items
  - B – total number of calendar days the bidder states will be required times the user cost per unit of time.
- [Incentive/Disincentive Bidding](#) job special provision allows an incentive to be paid for early completion time. The project sponsor sets the completion time and the daily incentive amount in the JSP. If the contractor finishes the work ahead of time, the contractor receives an

incentive. If the contractor finishes the work after the time set for completion, the contractor is assessed a liquidated damage. The lowest bidder is determined using the traditional bid for contract items.

## 2. **Alternate Project Design**

Innovative approaches that improve contractor flexibility and may assist in cost reduction by allowing contractors to tailor the work to most advantageous process and practice. This flexibility encourages contractors to find innovative solutions to meet the project needs.

- [Alternative Technical Concepts](#) (ATC) is a proposed change proposed by the contractor that provides a solution that is equal to or better than the requirement in the bid contract. ATC is similar to value engineering, but they are made as a part of the bid proposal before contract award. The contractor proposes a change to the project design. If approved, the contractor can submit that with their bid documents. Low bidder is determined using the lowest overall bid.
- [Add Alternates](#) can be used to fully utilize the budget available and maximize the amount of work awarded within a project budget. Add alternates are additional items of work that may be awarded as part of the contract if bids come within the budget specified in the contract. Add alternates may include adding length or additional quantity to a project of similar work type or adding enhancements of different work type to a project. The lowest bidder is base plus add alternates up to the budget specified.

## 3. **Project Delivery Methods**

Assist the project sponsor and contractor with implementing projects in an effective and efficient manner while maximizing the opportunity to meet targets on specific financial limitations. Overall project delivery may occur at faster rate than traditional process would allow.

- [Design – Build](#) is a project delivery method in which the design and construction services are contracted by a single entity. It provides a single point of responsibility in the contract in an attempt to reduce project risk, shorten the delivery schedule by overlapping the design phase and construction phase of a project and minimize overall project costs. The selection of the design-build contractor is based on qualifications of the proposed teams and the overall best value of each proposal based on the established end result goals of the project.



# Appendix

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*EXAMPLE Port Administrative Funds Allocation Matrix*

PORT ADMINISTRATIVE FUNDS SFY17 ALLOCATION FORMULA MATRIX									
RPC Name	River	# of Counties	Performance Rating 0-5	Equal Allocation <sup>1</sup>	Performance Allocation	Calculated Allocation	FY2016 Allocation	FY2015 Allocation	FY2014 Allocation
Howard/Cooper Port Authority	Missouri	2	3	\$ 4,000	\$ 21,250	\$ 25,250	\$31,755	\$ 24,038	\$ 25,500
Jefferson County Port Authority	Mississippi	1	5	\$ 4,000	\$ 35,417	\$ 39,417	\$38,694	\$ 48,077	\$ 50,000
Kansas City Port Authority	Missouri	1	3	\$ 4,000	\$ 21,250	\$ 25,250	\$24,816	\$ 28,846	\$ 19,000
Lewis County Port Authority	Mississippi	1	4	\$ 4,000	\$ 28,333	\$ 32,333	\$38,694	\$ 28,846	\$ 30,000
Marion County Port Authority	Mississippi	1	0	\$ 4,000	\$ -	\$ 4,000	\$4,000	\$ -	\$ -
Mid America Port Commission	Mississippi	0	0	\$ 4,000	\$ -	\$ 4,000	\$4,000	\$ 14,423	\$ 20,000
Mississippi County Port Authority	Mississippi	1	5	\$ 4,000	\$ 35,417	\$ 39,417	\$38,694	\$ 38,462	\$ 36,500
New Bourbon Port Authority	Mississippi	2	5	\$ 4,000	\$ 35,417	\$ 39,417	\$38,694	\$ 48,077	\$ 50,000
New Madrid Port Authority	Mississippi	1	4	\$ 4,000	\$ 28,333	\$ 32,333	\$31,755	\$ 19,231	\$ 14,000
Pemiscot County Port Authority	Mississippi	1	2	\$ 4,000	\$ 14,167	\$ 18,167	\$17,878	\$ 19,231	\$ 20,000
Pike/Lincoln Port Authority	Mississippi	2	4	\$ 4,000	\$ 28,333	\$ 32,333	\$31,755	\$ 40,385	\$ 38,000
St. Joseph Port Authority	Missouri	1	5	\$ 4,000	\$ 35,417	\$ 39,417	\$38,694	\$ 40,385	\$ 42,000
St. Louis City Port Authority	Mississippi	1	5	\$ 4,000	\$ 35,417	\$ 39,417	\$31,755	\$ 25,962	\$ 10,000
St. Louis County Port Authority	Mississippi	1	1	\$ 4,000	\$ 7,083	\$ 11,083	\$10,939	\$ 9,615	\$ 5,000
SEMO Port Authority	Mississippi	2	2	\$ 4,000	\$ 14,167	\$ 18,167	\$17,878	\$ 14,423	\$ 15,000
		<b>18</b>	<b>48</b>	<b>\$ 60,000</b>	<b>\$ 340,000</b>	<b>\$ 400,000</b>	<b>\$ 400,001</b>	<b>\$ 400,001</b>	<b>\$ 375,000</b>
<p>NOTES:</p> <p>The SFY17 Administrative Funds allocation formula is based on 2 components: a base amount and performance. The formula allocates a base amount of \$4,000 (or 1% of the total funds available) to each Port Authority to provide a minimum level of support for port activities. The formula allocates the remaining \$340,000 based on a performance rating scale of 0-5. The performance rating is based on answers each port gives to the attached Performance Criteria Questions. The Performance Allocation is calculated by dividing each port's Performance Rating by the sum of the Performance Ratings of all ports, and multiplying that by \$340,000. The Calculated Allocation is the sum of the Equal Allocation and your Performance Allocation. The final columns provide a comparison of the proposed allocation with the past four years.</p>									
<sup>1</sup> The equal allocation must be requested by each port authority									

Figure 1. Sample Administrative Funding Allocation Method

## Example of Performance Criteria Questions for Administrative Funds

Date: \_\_\_\_\_

Port Name: \_\_\_\_\_

Name of person completing this questionnaire: \_\_\_\_\_

Signature of person completing this questionnaire: \_\_\_\_\_

Please answer each of the following questions in the empty box below with a Yes, No or N/A. **Your answers will be used to determine your Performance Rating and your Performance Allocation.**

Does your port authority have capital assets? (Capital assets are defined as ownership or a long-term lease of real property, not including the port's office)		A yes answer to this question adds one point to your performance rating
If your port authority does not have capital assets, does your workplan have acquiring capital assets as a goal within the next three years?		A yes answer to this question adds one point to your performance rating
Did your port authority move freight or passengers in the previous calendar year?*		A yes answer to this question adds one point to your performance rating
If your port authority did not move freight or passengers in the previous calendar year, does your workplan have freight or passenger movement as a goal within the next three years?*		A yes answer to this question adds one point to your performance rating
Has your port authority's total cumulative tonnage moved over the last four years exceeded 1 million tons (as reported quarterly to MoDOT)?		A yes answer to this questions subtracts one point from your performance rating
If your port authority has capital assets, but no freight movement, do you have signed leases with any tenants?		A no answer to this question subtracts one point from your performance rating
Did your port authority have any unexpended administrative funds at the close of any of the previous five fiscal years?		A yes answer to this question subtracts one point from your performance rating for each fiscal year with unspent funds.
Does your port authority's workplan include design work for future capital projects?		A yes answer to this question adds one point to your performance rating
Does more than 25% of your port authority's administrative budget come from Missouri Department of Transportation funds?		A yes answer to this question adds two points to your performance rating

*EXAMPLE Port Administrative Funding Agreement*

CCO Form: MO27

Approved: 05/91 (KRR)  
Revised: 12/15 (MWH)  
Modified:

Project No. \_\_\_\_\_

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
PORT AID AGREEMENT FOR ADMINISTRATIVE EXPENSES**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and \_\_\_\_\_ (hereinafter, "Grantee").

WITNESSETH:

WHEREAS, the purpose of this Agreement is to provide state financial assistance from the state port fund, as appropriated by the General Assembly, to the Grantee under section 68.035 RSMo and to state the conditions upon which such assistance will be provided.

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

(1) SCOPE OF WORK: The Grantee shall undertake and complete the work described in Grantee's Scope of Work Statement, which is attached as Appendix A and incorporated herein by reference.

(2) AMOUNT OF GRANT: The Commission shall award the Grantee the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_). The Grantee understands that if sufficient state funds are not made available to Commission to fully fund this grant, this Agreement shall be amended by the parties to provide Grantee a share of the available port-aid funds, which amount shall be determined at the sole discretion of Commission.

(3) DURATION OF AGREEMENT: This Agreement provides funding to the Grantee for the \_\_\_\_\_ Fiscal Year (July 1, 20\_\_ to June 30, 20\_\_).

(4) EXPENDITURE OF GRANT FUNDS: All funds not expended by the Grantee at the end of the term of this Agreement shall be retained by the Commission. Funds returned to the Commission may be redistributed to the other port authorities within the state at the discretion of the Commission.

(5) INFORMATION FURNISHED AND WORK PERFORMED BY THE GRANTEE: The Grantee shall make available to the Commission such data, reports, analysis, documents, and other pertinent information relating to Grantee's activities and projects under this Agreement as the Commission may require at any time.

(6) AUDIT OF RECORDS: The Grantee must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the end of the term of this Agreement.

(7) THIRD PARTY CONTRACTS:

(A) Prior to execution by either party, the Grantee shall submit to the Commission for review, comment, and approval all contracts for services included in the Scope of Work Statement to be provided to the Grantee by a third party.

(B) The Commission shall not be liable to contractors or subcontractors of the Grantee or any other person not a party to this Agreement in connection with the performance of the projects in the Scope of Work Statement funded under this Agreement without specific written consent of the Commission.

(8) PROGRESS REPORTS AND PAYMENTS:

(A) At monthly intervals the Grantee will furnish to the Commission a financial summary of the total funds expended. Each summary must show the specific times for which funds were expended in accordance with the Scope of Work Statement.

(B) A progress report will accompany the monthly financial summary. This report shall contain information relating to the progress made on the Scope of Work Statement during the preceding month. This report will identify any problems or issues which might prevent the Grantee from the successful accomplishment of the Scope of Work by the end of the term of this Agreement.

(C) Upon written request to the Commission, Grantee may submit financial summaries and progress reports on a quarterly basis in lieu of a monthly basis.

(D) The Commission shall promptly reimburse the Grantee for eligible expenses on a timely basis.

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

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the Grantee with written notice of cancellation. Should the Commission exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Grantee. Upon written notice to Grantee, the Commission reserves the right to suspend or terminate all or part of the financial assistance herein provided. Upon receipt of written notice to terminate this Agreement, the Grantee shall immediately return to the Commission all remaining grant funds, unless previously expended or otherwise encumbered by invoices, statements or vouchers.

(11) COMMISSION REPRESENTATIVE: The Department of Transportation Director of Multimodal Operations is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Director of Multimodal Operations is also authorized by the Commission to execute on its behalf any amendments to 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.

(12) 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 Commission:

\_\_\_\_\_  
\_\_\_\_\_  
Facsimile No: \_\_\_\_\_

(B) To the Grantee:

\_\_\_\_\_  
\_\_\_\_\_  
Facsimile No: \_\_\_\_\_

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.

(13) INDEMNIFICATION:

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

(B) 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.

(14) NONDISCRIMINATION CLAUSE: The Grantee shall comply with all state and federal statutes applicable to the Grantee relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(15) 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 the Agreement.

(16) 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.

(17) NONSOLICITATION: The Grantee warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Grantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

(18) DISPUTES: Any disputes that arise under this Agreement shall be decided by the Commission or its representative.

(19) 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.

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

*[The Remainder of This Page Is Intentionally Left Blank.]*

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

Executed by the Grantee this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

NAME OF GRANTEE

\_\_\_\_\_

Title \_\_\_\_\_

Attest:

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

Approved as to Form:

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

By \_\_\_\_\_

Title \_\_\_\_\_

Attest:

By \_\_\_\_\_

Title \_\_\_\_\_

RESOLUTION

WHEREAS, the Missouri Highway and Transportation Commission is authorized to make grants for administration and planning by port authorities; and,

WHEREAS, the \_\_\_\_\_ Port Authority desires to file an application with the Missouri Highway and Transportation Commission for funds to aid in said Port Authority's project,

NOW THEREFORE, be it resolved by the \_\_\_\_\_ Port Authority as follows:

1. That the Port Authority \_\_\_\_\_ and \_\_\_\_\_ be and hereby authorized to file an application for funds with the Missouri Highway and Transportation Commission and executed on behalf of the Port Authority any documents necessary thereto.

2. That the present \_\_\_\_\_ is \_\_\_\_\_ and \_\_\_\_\_ is \_\_\_\_\_ and the Port Authority will immediately notify the Missouri Highway and Transportation Commission of any changes in these positions.

Adopted by the \_\_\_\_\_ Port Authority on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Typed)

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Secretary



CCO Form: MO29

Project No. \_\_\_\_\_

Approved: 05/98 (RMH)

Revised: 05/15 (MWH)

Modified:

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
PORT AID AGREEMENT FOR CAPITAL IMPROVEMENT PROJECTS**

This AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and \_\_\_\_\_ (hereinafter, "Grantee").

WITNESSETH:

WHEREAS, the purpose of this Agreement is to provide financial assistance to the Grantee, pursuant to section 68.035.2 RSMo, and to state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

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

(1) SCOPE OF WORK: Grantee agrees to undertake, carry out, and complete the project, as described in Grantee's Project Description Statement, dated \_\_\_\_\_, 20\_\_, a copy of which is attached as Appendix A to this Agreement and incorporated herein by reference, within the specified project completion time frame in accordance with the terms and conditions of this Agreement.

(2) AMOUNT OF GRANT: The parties to this Agreement agree that the Commission's financial share for this project shall not exceed eighty percent (80%) of the total cost of this project, or \_\_\_\_\_ dollars (\$\_\_\_\_\_). Funds made available to the Grantee are subject to appropriations made by the General Assembly, gubernatorial release of such funds appropriated to the Commission, and Commission decisions regarding the allocation of such funds. In the event state funds available to the Commission for port authority capital improvement projects are reduced so that the Commission is incapable of completely satisfying its obligations to all the Grantees for the current state fiscal year, the Commission may recompute and reduce this grant. The designation of this grant does not create a lump sum quantity contract, but rather only represents the amount of funding available for qualifying expenses. In no event will the Commission provide the Grantee funding for improvements or work that are not actually performed.

(3) COMPLETION OF PROJECT BY GRANTEE:

(A) Permits: The Grantee shall secure all necessary state and federal approvals or permits required to accomplish the construction and maintenance of the project.

(B) Commencement of Work: The Grantee shall commence work on the project upon receipt of written notice to proceed from the Commission.

(C) Project Efficiency: The Grantee will proceed with the project in a sound, economical and efficient manner in order to accomplish the items listed in the Project Description Statement within the prescribed time frame.

(D) Compliance With Laws: The Grantee shall proceed with the project in accordance with the provisions contained herein, the Project Description Statement and the attachments hereto, and all applicable laws and regulations.

(E) Information Furnished by the Grantee: The Grantee shall submit to the Commission such data, reports, contracts, records, documents, and other information relating to the project as the Commission may require at any time.

(F) Project Inspection: The Commission shall have the right to inspect and review the work performed on this project.

(G) Notification of Change of Conditions: The Grantee shall immediately notify Commission, in writing, of any change in conditions or law or of any event which may significantly impair its ability to carry out the project in accordance with the provisions of this contract.

(4) PROJECT PERIOD: This Agreement provides funding to the Grantee for the Fiscal Year \_\_\_\_ (July 1, 20\_\_ to June 30, 20\_\_).

(5) PROJECT REQUIREMENTS: .Grantee costs incurred with the project phases listed below must have prior written concurrence from Commission to be eligible for funding, including local match requirements, through this Agreement.

(A) Advertisement for Professional Services

(B) Notice to Proceed for Professional Services Contract

(C) Procurement, whether purchased or donated by property owner, of any real property rights, including but not limited to leases, easements, and fee simple title.

(D) Advertisement for Contractor Services

(E) Contractor Award

(F) Contractor Notice to Proceed

(6) AUDIT OF RECORDS: The Grantee must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or

representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final payment made under this Agreement.

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

(8) PROGRESS REPORTS AND PAYMENTS:

(A) At intervals, not exceeding twice monthly, Grantee shall furnish to the Commission statements or vouchers indicating the items completed on the project and the cost thereof for the preceding period. Requests for reimbursement shall be supported with invoices. The Grantee shall clearly indicate on this statement or voucher the amount of the Grantee's obligation and the amount of the Commission's obligation. The Commission will promptly provide payment for its obligation to the Grantee for the project.

(B) Progress reports outlining the work completed during the preceding period shall be attached to the statement or voucher requesting payment by the Commission. This report will identify any problems or issues which might prevent the Grantee from the successful accomplishment of the Project Description Statement by the end of the project period.

(C) Within forty five (45) days of final inspection of the project funded under this grant, the Grantee shall provide to the Commission a final payment request and all financial performance and other reports as required by the conditions of this grant.

(D) The Commission may, in its sole discretion, perform a final audit of project costs. The Commission shall reimburse the Grantee any moneys due. The Grantee shall refund any overpayments as determined by the final audit.

(9) REQUEST FOR EXTENSION OF TIME FOR COMPLETION OF PROJECT: If the Grantee is unable to complete the project as planned, the Grantee may submit a written request to the Commission for an extension of the time to complete the project. This written request must be made no later than February 1, 20\_\_\_. The request shall identify in detail the reason(s) why an extension is necessary. Upon receipt of a request for an extension of time, the Commission will consider the request and notify the Grantee in writing of the Commission's decision as soon as possible.

***[DRAFTER'S NOTE: Please select the appropriate indemnification language from the two options listed below. Option A should be used in agreements for construction projects that will not include any connector roads, and Option B should be used in agreements for construction projects that include connector roads. If Option B is selected, please contact CCO to discuss additional provisions that should also be added to this agreement. Please delete this Drafter's Note, as well as the Option you are not using, before submitting the Agreement to the Grantee.]***

*[Option A:]*

(10) INDEMNIFICATION:

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

(B) 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.

*[Option B:]*

(10) INDEMNIFICATION:

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

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

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

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

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

(11) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the Grantee and the Commission.

(12) COMMISSION REPRESENTATIVE: The Department of Transportation's Director of Multimodal Operations is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(13) GRANTEE'S REPRESENTATIVE: The Grantee's \_\_\_\_\_ is designated as the Grantee's representative for the purpose of administering the provisions of this Agreement. The Grantee's representative may designate by written notice other persons having the authority to act on behalf of the Grantee in furtherance of the performance of this Agreement.

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

- (A) To the Grantee:  
[NOTE: Grantee's Representative Designated in Paragraph 13]

\_\_\_\_\_  
\_\_\_\_\_

Facsimile No: \_\_\_\_\_

- (B) To the Commission:

Director of Multimodal Operations  
105 West Capitol Avenue  
Jefferson City, MO 65102  
Facsimile No: 573.526.4709

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

(15) NONDISCRIMINATION CLAUSE: The Grantee shall comply with all state and federal statutes applicable to the Grantee relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

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

(17) BANKRUPTCY: Upon filing for any bankruptcy or insolvency proceeding by or against the Grantee, whether voluntarily, or upon the appointment of a receiver, trustee, or

assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the Grantee responsible for damages.

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

(19) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

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

(21) NONSOLICITATION: The Grantee warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Grantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

(22) DISPUTES: Any disputes that arise under this Agreement shall be decided by the Commission or its representative.

(23) PROFESSIONAL SERVICES BY COMPETITIVE PROPOSALS: Contracts for architectural, engineering and/or land surveying services, as defined in section 8.287 RSMo, shall be procured by competitive proposals, and the procurement process shall comply with sections 8.285-8.291 RSMo.

(24) NOTICE TO PROCEED: After the Commission receives copies of the executed construction contract between the Grantee and the contractor, the performance and payment bonds, and any other documentation as required by this Agreement, the Commission will authorize the Grantee to issue a notice to proceed with construction.

(A) The Grantee shall issue a notice to the contractor within ten (10) days of authorization by the Commission, unless otherwise approved by the Commission.

(B) Any construction work performed prior to the Grantee's issuance of a Notice to Proceed shall not be eligible for funding participation.

(25) CONSTRUCTION OBSERVATION/INSPECTION REQUIREMENTS: In conjunction with submittal of the Notice to Proceed documentation, the Grantee shall provide a construction observation/inspection program setting forth a format for accomplishment of resident observation, construction inspection and overall quality assurance.

(26) CONSTRUCTION PROGRESS AND INSPECTION REPORTS: The Grantee shall provide and maintain adequate, competent and qualified engineering supervision and construction inspection at the project site during all stages of the work to ensure that the completed work conforms with the project plans and specifications. Project oversight by the Commission's project manager or other personnel does not relieve the Grantee of this responsibility.

(A) The Grantee shall require the resident project representative to keep daily construction records and shall submit to the Commission monthly the construction progress and inspection report, completed by the resident project representative. A weekly summary of tests completed shall be included.

(B) Prior to final acceptance, the Grantee shall provide to the Commission a testing summary report bearing the engineer's seal and including a certification from the engineer that the completed project is in compliance with the plans and specifications.

(C) Certification statements from construction contractors must be provided to ensure all workers, material suppliers, etc. have been paid.

(27) CHANGE ORDERS/SUPPLEMENTAL AGREEMENTS: All change orders/supplemental agreements must be submitted to the Commission for concurrence prior to implementation to ensure funding eligibility. Requests for additional work for items not included in the original bid must be accompanied by a cost analysis to substantiate the proposed costs.

(28) PROMPT PAYMENT: The Commission and the Grantee require all contractors to pay all subcontractors and suppliers for satisfactory performance of services in compliance with Section 34.057 RSMo, Missouri's prompt payment statute. Pursuant to section 34.057 RSMo, the Commission and the Grantee also require the prompt return of all retainage held on all subcontractors after the subcontractors' work is satisfactorily completed, as determined by the Grantee and the Commission.

(29) STATE WAGE LAWS: The Grantee and its subcontractors shall pay the prevailing hourly rate of wages for each craft or type of worker required to execute this project work as determined by the Department of Labor and Industrial Relations of Missouri, and they shall further comply in every respect with the minimum wage laws of Missouri. The Grantee shall take those acts which may be required to fully inform itself of the terms of, and to comply with, any applicable state wage laws.

*[The Remainder of This Page Is Intentionally Left Blank.]*





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

Executed by the Grantee this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

NAME OF GRANTEE

\_\_\_\_\_

By\_\_\_\_\_

Title \_\_\_\_\_

Title\_\_\_\_\_

Attest:

Attest:

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

By\_\_\_\_\_

Title\_\_\_\_\_

Approved as to Form:

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

*EXAMPLE Freight Enhancement Program Agreement*

CCO Form: MO26

Project No. \_\_\_\_\_

Approved: 07/14 (MWH)

Revised:

Modified:

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

This AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and \_\_\_\_\_ (hereinafter, "Grantee").

WITNESSETH:

WHEREAS, the purpose of this Agreement is to provide financial assistance to the Grantee, pursuant to section 226.225 RSMo, and to state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

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

(1) SCOPE OF WORK: Grantee agrees to undertake, carry out, and complete the project, as described in Grantee's Project Description Statement, a copy of which is attached as Appendix A to this Agreement and incorporated herein by reference, within the specified project completion time frame in accordance with the terms and conditions of this Agreement.

(2) AMOUNT OF GRANT: The parties to this Agreement agree that the Commission's financial share for this project shall not exceed eighty percent (80%) of the total cost of this project, or \_\_\_\_\_ dollars (\$\_\_\_\_\_). Funds made available to the Grantee are subject to appropriations made by the General Assembly, gubernatorial release of such funds appropriated to the Commission, and Commission decisions regarding the allocation of such funds. In the event state funds available to the Commission for freight enhancement projects are reduced so that the Commission is incapable of completely satisfying its obligations to all the Grantees for the current state fiscal year, the Commission may recompute and reduce this grant. The designation of this grant does not create a lump sum quantity contract, but rather only represents the amount of funding available for qualifying expenses. In no event will the Commission provide the Grantee funding for improvements or work that are not actually performed.

(3) COMPLETION OF PROJECT BY GRANTEE:

(A) Permits: The Grantee shall secure all necessary state and federal approvals or permits required to accomplish the construction and maintenance of the project.

(B) Commencement of Work: The Grantee shall commence work on the

project upon receipt of written notice to proceed from the Commission.

(C) Project Efficiency: The Grantee will proceed with the project in a sound, economical and efficient manner in order to accomplish the items listed in the Project Description Statement within the prescribed time frame.

(D) Compliance With Laws: The Grantee shall proceed with the project in accordance with the provisions contained herein, the Project Description Statement and the attachments hereto, and all applicable laws and regulations.

(E) Information Furnished by the Grantee: The Grantee shall submit to the Commission such data, reports, contracts, records, documents, and other information relating to the project as the Commission may require at any time.

(F) Project Inspection: The Commission shall have the right to inspect and review the work performed on this project.

(G) Notification of Change of Conditions: The Grantee shall immediately notify Commission, in writing, of any change in conditions or law or of any event which may significantly impair its ability to carry out the project in accordance with the provisions of this contract.

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

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

(4) PROJECT PERIOD: This Agreement provides funding to the Grantee for the 20\_\_ Fiscal Year (July 1, 20\_\_ to June 30, 20\_\_).

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

(6) AUDIT OF RECORDS: The Grantee must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be

available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final payment made under this Agreement.

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

(8) PROGRESS REPORTS AND PAYMENTS:

(A) At intervals, not exceeding twice monthly, Grantee shall furnish to the Commission statements or vouchers indicating the items completed on the project and the cost thereof for the preceding period. Requests for reimbursement shall be supported with invoices. The Grantee shall clearly indicate on this statement or voucher the amount of the Grantee's obligation and the amount of the Commission's obligation. The Commission will promptly provide payment for its obligation to the Grantee's contractor for the project.

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

(C) Progress reports outlining the work completed during the preceding period shall be attached to the statement or voucher requesting payment by the Commission. This report will identify any problems or issues which might prevent the Grantee from the successful accomplishment of the Project Description Statement by the end of the project period.

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

(E) The Commission may, in its sole discretion, perform a final audit of project costs. The Commission shall reimburse the Grantee any moneys due. The Grantee shall refund any overpayments as determined by the final audit.

(9) REQUEST FOR RE-APPROPRIATION OF FUNDS AND EXTENSION OF TIME FOR COMPLETION OF PROJECT: If the Grantee is unable to complete the project as planned, the Grantee may submit a written request to the Commission for the re-appropriation of funds and an extension of the time to complete the project. This written request must be made no later than February 1, 20\_\_\_. The request shall identify in detail the reason(s) why an extension is necessary. Upon receipt of a request for the re-appropriation of funds and extension of time, the Commission will consider the request and notify the Grantee in writing of the Commission's decision as soon as possible.

**DRAFTER'S NOTE: USE FIRST OPTION BELOW FOR CITIES, COUNTIES, AND OTHER PUBLIC ENTITIES. USE SECOND OPTION BELOW FOR NOT-FOR-**

**PROFIT AND FOR-PROFIT BUSINESS ENTITIES. DELETE THE OPTION NOT CHOSEN. DELETE THIS DRAFTER'S NOTE.**

(10) INDEMNIFICATION:

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

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

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

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

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

(10) INDEMNIFICATION: The \_\_\_\_\_ 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 \_\_\_\_\_'s performance of its obligations under this Agreement.

(11) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the Grantee and the Commission.

(12) COMMISSION REPRESENTATIVE: The Department of Transportation's Director of Multimodal Operations is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(13) GRANTEE'S REPRESENTATIVE: The Grantee's \_\_\_\_\_ is designated as the Grantee's representative for the purpose of administering the provisions of this Agreement. The Grantee's representative may designate by written notice other persons having the authority to act on behalf of the Grantee in furtherance of the performance of this Agreement.

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

(A) To the Grantee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile No: (xxx) xxx-xxxx

(B) To the Commission:

Michelle Teel, MoDOT  
105 W. Capitol  
Jefferson City, MO 65102  
Facsimile No: (573) 526-4709

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

**DRAFTERS NOTE: USE THE FIRST OPTION WHEN ONLY STATE MONEY IS INVOLVED. USE THE SECOND OPTION WHEN FEDERAL MONEY IS INVOLVED. DELETE THE OPTION NOT CHOSEN. DELETE THIS DRAFTER'S NOTE.**

(15) NONDISCRIMINATION CLAUSE: The Grantee shall comply with all state and federal statutes applicable to the Grantee relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(15) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the \_\_\_\_\_ agrees as follows:

(A) Civil Rights Statutes: The \_\_\_\_\_ 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. In addition, if the \_\_\_\_\_ 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 \_\_\_\_\_ 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 CFR Subtitle A, Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The \_\_\_\_\_ shall not discriminate on grounds of the race, color, religion, creed, 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 \_\_\_\_\_ shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 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 \_\_\_\_\_. These apply to all solicitations either by competitive bidding or negotiation made by the \_\_\_\_\_ for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the \_\_\_\_\_ of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The \_\_\_\_\_ 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 \_\_\_\_\_ is in the exclusive possession of another who fails or refuses to furnish this information, the \_\_\_\_\_ 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 \_\_\_\_\_ 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 \_\_\_\_\_ complies; and/or

2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The \_\_\_\_\_ shall include the provisions of paragraph \_\_\_\_\_ 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 or the United States Department of Transportation. The \_\_\_\_\_ 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 \_\_\_\_\_ becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the \_\_\_\_\_ may request the United States to enter into such litigation to protect the interests of the United States.

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

(17) BANKRUPTCY: Upon filing for any bankruptcy or insolvency proceeding by or against the Grantee, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the Grantee responsible for damages.

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

(19) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

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

(21) NONSOLICITATION: The Grantee warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Grantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

(22) DISPUTES: Any disputes that arise under this Agreement shall be decided by the Commission or its representative.

(23) PROFESSIONAL SERVICES BY COMPETITIVE PROPOSALS: Contracts for architectural, engineering and/or land surveying services, as defined in section 8.287 RSMo, shall be procured by competitive proposals, and the procurement process shall comply with sections 8.285-8.291 RSMo.

(24) ENGINEER'S DESIGN REPORT: Prior to development of the plans and specifications, the Grantee shall provide an engineer's report setting forth the general analysis and explanation of reasons for design choices. Said report shall include an itemized cost



estimate, design computations, reasons for selections and modifications, comparison of alternatives, life cycle cost analysis, geotechnical report and any other elements that support the engineer's final plans and specifications.

(25) NOTICE TO PROCEED: After the Commission receives copies of the executed construction contract between the Grantee and the contractor, the performance and payment bonds, and any other documentation as required by this Agreement, the Commission will authorize the Grantee to issue a notice to proceed with construction.

(A) The Grantee shall issue a notice to the contractor within ten (10) days of authorization by the Commission, unless otherwise approved by the Commission.

(B) Any construction work performed prior to the Grantee's issuance of a Notice to Proceed shall not be eligible for funding participation.

(26) CONSTRUCTION OBSERVATION/INSPECTION REQUIREMENTS: In conjunction with submittal of the Notice to Proceed documentation, the Grantee shall provide a construction observation/inspection program setting forth a format for accomplishment of resident observation, construction inspection and overall quality assurance.

(27) CONSTRUCTION PROGRESS AND INSPECTION REPORTS: The Grantee shall provide and maintain adequate, competent and qualified engineering supervision and construction inspection at the project site during all stages of the work to ensure that the completed work conforms with the project plans and specifications. Project oversight by the Commission's project manager or other personnel does not relieve the Grantee of this responsibility.

(A) The Grantee shall require the resident project representative to keep daily construction records and shall submit to the Commission a weekly construction progress and inspection report, completed by the resident project representative. A weekly summary of tests completed shall be included.

(B) Prior to final acceptance, the Grantee shall provide to the Commission a testing summary report bearing the engineer's seal and including a certification from the engineer that the completed project is in compliance with the plans and specifications.

(C) Certification statements from construction contractors must be provided to ensure all workers, material suppliers, etc. have been paid.

(28) CHANGE ORDERS/SUPPLEMENTAL AGREEMENTS: All change orders/supplemental agreements must be submitted to the Commission for approval prior to implementation to ensure funding eligibility. Requests for additional work for items not included in the original bid must be accompanied by a cost analysis to substantiate the proposed costs.

(29) PROMPT PAYMENT: The Commission and the Grantee require all contractors to pay all subcontractors and suppliers for satisfactory performance of services in compliance with section 34.057 RSMo, Missouri's prompt payment statute. Pursuant to section 34.057 RSMo, the Commission and the Grantee also require the prompt return of all retainage held

on all subcontractors after the subcontractors' work is satisfactorily completed, as determined by the Grantee and the Commission.

(30) STATE WAGE LAWS: The Grantee and its subcontractors shall pay the prevailing hourly rate of wages for each craft or type of worker required to execute this project work as determined by the Department of Labor and Industrial Relations of Missouri, and they shall further comply in every respect with the minimum wage laws of Missouri. The Grantee shall take those acts which may be required to fully inform itself of the terms of, and to comply with, any applicable state wage laws.

(31) NON-EMPLOYMENT OF UNAUTHORIZED ALIENS: Pursuant to section 285.530, RSMo, no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of any contract or grant in excess of five thousand dollars by the State or by any political subdivision of the State to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall:

(A) By sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. E-Verify is an example of a federal work authorization program. The business entity must affirm its enrollment and participation in the E-Verify federal work authorization program with respect to the employees proposed to work in connection with the services requested herein by providing acceptable enrollment and participation documentation consisting of **completed** copy of the E-Verify Memorandum of Understanding (MOU). For business entities that are not already enrolled and participating in a federal work authorization program, E-Verify is available at [http://www.dhs.gov/xprevprot/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm).

(B) By sworn affidavit, affirm that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. A copy of the affidavit referenced herein is provided within this document, attached as Exhibit 1.

*[The Remainder of This Page Is Intentionally Left Blank.]*

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

Executed by the Grantee this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

NAME OF GRANTEE

\_\_\_\_\_

By\_\_\_\_\_

Title \_\_\_\_\_

Title\_\_\_\_\_

Attest:

Attest:

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

By\_\_\_\_\_

Title\_\_\_\_\_

Approved as to Form:

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

Ordinance No. \_\_\_\_\_  
(if applicable)

## *EXAMPLE Engineering Service Contract*

**SPONSOR:** \_\_\_\_\_

**LOCATION:** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

**[DRAFTER'S NOTE – Delete DRAFTER'S NOTE prior to contract execution. Verify that the project number and location are correct for the contract.]**

*THIS CONTRACT* is between (*Port Authority Name*), Missouri, hereinafter referred to as the "Port Authority", and (*name and address of consulting firm*), hereinafter referred to as the "Engineer".

*INASMUCH* as funds have been made available by the State of Missouri, coordinated through the Missouri Department of Transportation, the Port Authority intends to (*specify improvement*)\_\_\_\_\_ and requires professional engineering services. The Engineer will provide the Port Authority with professional services hereinafter detailed for the planning, design and construction inspection of the desired improvements and the Port Authority will pay the Engineer as provided in this contract. It is mutually agreed as follows:

### **ARTICLE I – SCOPE OF SERVICES**

Refer to Attachment A for the Scope of Service specific to this project. The Scope of Service should include PE and/or CE professional services.

### **ARTICLE II – ADDITIONAL SERVICES**

The Port Authority reserves the right to request additional work, and changed or unforeseen conditions may require changes and work beyond the scope of this contract. In this event, a supplement to this agreement shall be executed and submitted for the approval of MoDOT prior to performing the additional or changed work or incurring any additional cost thereof. Any change in compensation will be covered in the supplement.

### **ARTICLE III – RESPONSIBILITIES OF PORT AUTHORITY**

The Port Authority will cooperate fully with the Engineer in the development of the project, including the following:

- A. Make available all information pertaining to the project which may be in the possession of the Port Authority;
- B. Provide the Engineer with the Port Authority's requirements for the project;
- C. Make provisions for the Engineer to enter upon property at the project site for the performance of his duties;
- D. Examine all studies and layouts developed by the Engineer, obtain reviews by MoDOT, and render decisions thereon in a prompt manner so as not to delay the Engineer;

- E. Designate a Port Authority's employee to act as Port Authority's Person in Responsible Charge under this contract, such person shall have authority to transmit instructions, interpret the Port Authority's policies and render decisions with respect to matters covered by this agreement (see EPG 136.3);
- F. Perform appraisals and appraisal review, negotiate with property owners and otherwise provide all services in connection with acquiring all right-of-way needed to construct this project.

#### **ARTICLE IV – PERIOD OF SERVICE**

**[DRAFTER'S NOTE: Delete DRAFTER'S NOTE prior to contract execution  
Completion dates shall be in month/day/year – calendar days are not acceptable]**

The Engineer will commence work within two weeks after receiving notice to proceed from the Port Authority. The general phases of work will be completed in accordance with the following schedule:

- A. PS&E Approval by MoDOT shall be completed on (calendar date – not days)
- B. Construction Phase shall be completed 60 days after construction final completion schedule.

The Port Authority will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Engineer. Requests for extensions of time shall be made in writing by the Engineer, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

#### **ARTICLE V – STANDARDS**

The Engineer shall be responsible for working with the Port Authority in determining the appropriate design parameters and construction specifications for the project using good engineering judgment based on the specific site conditions and the Port Authority needs.

#### **ARTICLE VI – COMPENSATION**

For services provided under this contract, the Port Authority will compensate the Engineer as follows:

- A. For design services, including work through the construction contract award stage, the Port Authority will pay the Engineer the actual costs incurred plus a predetermined fixed fee of \$\_\_\_\_\_, with a ceiling established for said design services in the amount of \$\_\_\_\_\_, which amount shall not be exceeded.

**[DRAFTER'S NOTE: Delete DRAFTER'S NOTE prior to contract execution  
Does the fixed fee and contract amount match attached cost estimate? Retainage is not allowed]**

- B. For construction inspection services, the Port Authority will pay the Engineer the actual costs incurred plus a predetermined fixed fee of \$\_\_\_\_\_, with a ceiling established for said inspection services in the amount of \$\_\_\_\_\_, which amount shall not be exceeded.

**[DRAFTER'S NOTE: Delete DRAFTER'S NOTE prior to contract execution  
Does the fixed fee and contract amount match attached cost estimate? Retainage is not allowed]**

- C. The compensation outlined above has been derived from estimates of cost which are detailed in Attachment B. Any major changes in work, extra work, exceeding of the contract ceiling, or change in the predetermined fixed fee will require a supplement to this contract, as covered in Article III - ADDITIONAL SERVICES.
- D. Actual costs in Sections A and B above are defined as:
1. Actual payroll salaries paid to employees for time that they are productively engaged in work covered by this contract, plus
  2. An amount calculated at \_\_\_\_% of actual salaries in Item 1 above for payroll additives, including payroll taxes, holiday and vacation pay, sick leave pay, insurance benefits, retirement and incentive pay, plus
  3. An amount calculated at \_\_\_\_% of actual salaries in Item 1 above for general administrative overhead, based on the Engineer's system for allocating indirect costs in accordance with sound accounting principles and business practice, plus
  4. Other costs directly attributable to the project but not included in the above overhead, such as vehicle mileage, meals and lodging, printing, surveying expendables, and computer time, plus
  5. Project costs incurred by others on a subcontract basis, said costs to be passed through the Engineer on the basis of reasonable and actual cost as invoiced by the subcontractors.
- E. The rates shown for additives and overhead in Sections VI. D.2 and VII. D.3 above are the established Engineer's overhead rate accepted at the time of contract execution and shall be utilized throughout the life of this contract for billing purposes.
- F. **METHOD OF PAYMENT** – Partial payments for work satisfactorily completed will be made to the Engineer upon receipt of itemized invoices by the Port Authority. Invoices will be submitted no more frequently than once every two weeks and must be submitted monthly for invoices greater than \$10,000. A pro-rated portion of the fixed fee will be paid with each invoice. Upon receipt of the invoice and progress report, the Port Authority will, as soon as practical, but not later than 45 days from receipt, pay the Engineer for the services rendered, including the proportion of the fixed fee earned as reflected by the estimate of the portion of the services completed as shown by the progress report, less partial payments previously made. A late payment charge of one and one half percent (1.5%) per month shall be assessed for those invoiced amount not paid, through no fault of the Engineer, within 45 days after the Port Authority's receipt of the Engineer's invoice. The Port Authority will not be liable for the late payment charge on any invoice which requests payment for costs which exceed the proportion of the maximum amount payable earned as reflected by the estimate of the portion of the services completed, as shown by the progress report. The payment, other than the fixed fee, will be subject to final audit of actual expenses during the period of the Agreement.
- G. **PROPERTY ACCOUNTABILITY** – If it becomes necessary to acquire any specialized equipment for the performance of this contract, appropriate credit will be given for any residual value of said equipment after completion of usage of the equipment.

## ARTICLE VII - COVENANT AGAINST CONTINGENT FEES

The Engineer warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the Port Authority shall have the right to annul this agreement without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee, plus reasonable attorney's fees.

## ARTICLE VIII - SUBLETTING, ASSIGNMENT OR TRANSFER

No portion of the work covered by this contract, except as provided herein, shall be sublet or transferred without the written consent of the Port Authority. The subletting of the work shall in no way relieve the Engineer of his primary responsibility for the quality and performance of the work. It is the intention of the Engineer to engage subcontractors for the purposes of: *(list sub-consultant(s) and services, such as surveying, foundation borings and tests, abstracts of title, archaeological studies, material testing, etc.).*

Sub-Consultant Name	Address	Services
---------------------	---------	----------

**[DRAFTER'S NOTE: Delete DRAFTER'S NOTE prior to contract execution  
Insert all sub-consultants here.**

## ARTICLE IX - PROFESSIONAL ENDORSEMENT

All plans, specifications and other documents shall be endorsed by the Engineer and shall reflect the name and seal of the Professional Engineer endorsing the work. By signing and sealing the PS&E submittals the Engineer of Record will be representing to MoDOT that the design is meeting the intent of the federal aid programs.

## ARTICLE X - RETENTION OF RECORDS

The Engineer shall maintain all records, survey notes, design documents, cost and accounting records, construction records and other records pertaining to this contract and to the project covered by this contract, for a period of not less than three years following final payment by the State of Missouri. Said records shall be made available for inspection by authorized representatives of the Port Authority or MoDOT during regular working hours at the Engineer's place of business.

## ARTICLE XI - OWNERSHIP OF DOCUMENTS

Plans, tracings, maps and specifications prepared under this contract shall be delivered to and become the property of the Port Authority upon termination or completion of work. Basic survey notes, design computations and other data prepared under this contract shall be made available to the Port Authority upon request. All such information produced under this contract shall be available for use by the Port Authority without restriction or limitation on its use. If the Port Authority incorporates any portion of

the work into a project other than that for which it was performed, the Port Authority shall save the Engineer harmless from any claims and liabilities resulting from such use.

## **ARTICLE XII – SUSPENSION OR TERMINATION OF AGREEMENT**

- A. The Port Authority may, without being in breach hereof, suspend or terminate the Engineer's services under this Agreement, or any part of them, for cause or for the convenience of the Port Authority, upon giving to the Engineer at least fifteen (15) days prior written notice of the effective date thereof. The Engineer shall not accelerate performance of services during the fifteen (15) day period without the express written request of the Port Authority.
- B. Should the Agreement be suspended or terminated for the convenience of the Port Authority, the Port Authority will pay to the Engineer its costs as set forth in Attachment B including actual hours expended prior to such suspension or termination and direct costs as defined in this Agreement for services performed by the Engineer, a proportional amount of the fixed fee based upon an estimated percentage of Agreement completion, plus reasonable costs incurred by the Engineer in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Engineer's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.
- C. The Engineer shall remain liable to the Port Authority for any claims or damages occasioned by any failure, default, or negligent errors and/or omission in carrying out the provisions of this Agreement during its life, including those giving rise to a termination for non-performance or breach by Engineer. This liability shall survive and shall not be waived, or estopped by final payment under this Agreement.
- D. The Engineer shall not be liable for any errors or omissions contained in deliverables which are incomplete as a result of a suspension or termination where the Engineer is deprived of the opportunity to complete the Engineer's services.
- E. Upon the occurrence of any of the following events, the Engineer may suspend performance hereunder by giving the Port Authority 30 days advance written notice and may continue such suspension until the condition is satisfactorily remedied by the Port Authority. In the event the condition is not remedied within 120 days of the Engineer's original notice, the Engineer may terminate this agreement.
  - 1. Receipt of written notice from the Port Authority that funds are no longer available to continue performance.
  - 2. The Port Authority's persistent failure to make payment to the Engineer in a timely manner.
  - 3. Any material contract breach by the Port Authority.

## **ARTICLE XIII - DECISIONS UNDER THIS CONTRACT**



The Port Authority will determine the acceptability of work performed under this contract, and will decide all questions which may arise concerning the project. The Port Authority's decision shall be final and conclusive.

#### **ARTICLE XIV - SUCCESSORS AND ASSIGNS**

The Port Authority and the Engineer agree that this contract and all contracts entered into under the provisions of this contract shall be binding upon the parties hereto and their successors and assigns.

#### **ARTICLE XV - COMPLIANCE WITH LAWS**

The Engineer shall comply with all state and local laws, ordinances, and regulations applicable to the work, and shall procure all licenses and permits necessary for the fulfillment of obligations under this contract.

#### **ARTICLE XVI - RESPONSIBILITY FOR CLAIMS AND LIABILITY**

The Engineer agrees to save harmless the Port Authority, MoDOT, and the State of Missouri from all claims and liability due to his negligent acts or the negligent acts of his employees, agents or subcontractors.

#### **ARTICLE XVII – INSURANCE**

**[DRAFTER'S NOTE: Delete DRAFTER'S NOTE prior to contract execution  
The below language regarding insurance is not required but is suggested as a best practice, the language below may be modified without MoDOT approval]**

- A. The Engineer shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Engineer from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Engineer and its employees, agents, and Subconsultants in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.
- B. The Engineer shall also maintain professional liability insurance to protect the Engineer against the negligent acts, errors, or omissions of the Engineer and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.
- C. The Engineer's insurance coverage shall be for not less than the following limits of liability:
  - 1. Commercial General Liability: \$500,000 per person up to \$3,000,000 per occurrence;
  - 2. Automobile Liability: \$500,000 per person up to \$3,000,000 per occurrence;
  - 3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000; and
  - 4. Professional ("Errors and Omissions") Liability: \$1,000,000, each claim

and in the annual aggregate.

- D. The Engineer shall, upon request at any time, provide the Port Authority with certificates of insurance evidencing the Engineer's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance are in effect as to the services under this Agreement.
- E. Any insurance policy required as specified in (ARTICLE XVII) shall be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri.

#### **ARTICLE XVIII - ATTACHMENTS**

The following exhibits are attached hereto and are hereby made part of this contract:

Attachment A – Scope of Service

Attachment B – Estimate of Cost

Attachment C – Conflict of Interest Disclosure Form

Executed by the Engineer this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Executed by the Port Authority this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**FOR:** \_\_\_\_\_  
Port Authority

**BY:** \_\_\_\_\_  
Executive Director

ATTEST: \_\_\_\_\_

**FOR:** \_\_\_\_\_, INC.

**BY:** \_\_\_\_\_  
Title

ATTEST: \_\_\_\_\_

I hereby certify under Section 50.660 RSMo there is either: (1) a balance of funds, otherwise unencumbered, to the credit of the appropriation to which the obligation contained herein is chargeable, and a cash balance otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation contained herein; or (2) bonds or taxes have been authorized by vote of the people and there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury.

\_\_\_\_\_  
FISCAL OFFICER

## **ATTACHMENT A**

### **Scope of Services**

[INSERT SCOPE OF SERVICES]

## 7. ATTACHMENT B

### ESTIMATE OF COST

#### DESIGN PHASE

	<u>Hours</u>	<u>Rate (Salary Only)</u>	<u>Cost</u>
<i>Surveying</i>			
Registered Land Surveyor	_____	_____	_____
Rodman	_____	_____	_____
<i>Preliminary Design</i>			
Partner	_____	_____	_____
Engineer	_____	_____	_____
Technician	_____	_____	_____
<i>Final Design</i>			
Partner	_____	_____	_____
Engineer	_____	_____	_____
Technician	_____	_____	_____
Typist	_____	_____	_____
<b>SUBTOTAL</b>	_____	_____	_____

*[DRAFTER's NOTE: do the Hours x Rate = cost?  
Are the subtotal added correctly?]*

*[DRAFTER's NOTE: the overhead rate listed must be the accepted provisional overhead rate determined by MoDOT through the annual financial pre-qualification process]*

*Payroll Overhead (Est. at \_\_\_\_% X SUBTOTAL))* \_\_\_\_\_

*General and Admin. Overhead (Est. at \_\_\_\_% X SUBTOTAL))* \_\_\_\_\_

**TOTAL LABOR & OVERHEAD** \_\_\_\_\_

*Fixed Fee(Percent X TOTAL LABOR & OVERHEAD)* \_\_\_\_\_

**TOTAL LABOR, OVERHEAD & FIXED FEE** \_\_\_\_\_

#### *Other Direct Costs*

Travel, \_\_\_\_ trips @ \_\_\_\_ miles X \_\_\_\_ IRS Rate \_\_\_\_\_  
 Per Diem (cannot exceed maximum per diem rates per Federal Travel  
 Regulations) \_\_\_\_\_  
 Computer Time \_\_\_\_\_  
 Printing \_\_\_\_\_

*[DRAFTER's NOTE: If the sub-consultant(s) cost are close to \$25,000, they must develop a cost plus fixed fee breakout of those costs and if not pre-qualified, include documentation to support the overhead rate used in the cost estimate.]*

#### *Subcontract Pass-Through Costs (Identify by Name \*\*indicates DBE firm(s))*

Surveying \_\_\_\_\_  
 Borings \_\_\_\_\_  
 Archaeological Study \_\_\_\_\_

**SUBTOTAL DIRECT COSTS** \_\_\_\_\_

**TOTAL FOR DESIGN PHASE** \_\_\_\_\_**CONSTRUCTION PHASE**

	<u>Hours</u>	<u>Rate</u> <u>(Salary Only)</u>	<u>Cost</u>
<i>Engineer Inspector</i>	_____	_____	_____
<b>SUBTOTAL</b>			_____

*[DRAFTER's NOTE: do the Hours x Rate = cost?  
Are the subtotal added correctly?]*

*[DRAFTER's NOTE: the overhead rate listed must be the accepted provisional overhead rate determined by MoDOT through the annual financial pre-qualification process]*

*Payroll Overhead (Est. at \_\_\_\_% X SUBTOTAL))* \_\_\_\_\_

*General and Admin. Overhead (Est. at \_\_\_\_% X SUBTOTAL))* \_\_\_\_\_

**TOTAL LABOR & OVERHEAD** \_\_\_\_\_

*Fixed Fee (Percent X TOTAL LABOR & OVERHEAD)* \_\_\_\_\_

**TOTAL LABOR, OVERHEAD AND FIXED FEE** \_\_\_\_\_

***Other Direct Costs***

Travel, ____ trips @ ____ miles X ____ IRS Rate	_____
Per Diem (cannot exceed the maximum per diem rates in effect at the time of Travel as set forth in the Federal Travel Regulations)	_____
Lab Testing Fees	_____

*[DRAFTER's NOTE: If the sub-consultant(s) cost are close to \$25,000, they must develop a cost plus fixed fee breakout of those costs and if not pre-qualified, include documentation to support the overhead rate used in the cost estimate.]*

*Subcontract Pass-Through Costs (Identify by Name \*\*indicates DBE firm(s))*

**SUBTOTAL DIRECT COSTS** \_\_\_\_\_

**TOTAL FOR CONSTRUCTION PHASE** \_\_\_\_\_

**Attachment C**  
**Conflict of Interest Disclosure Form for Port Authority/Consultants**  
Port Authority Capital Improvement Projects

**Firm Name (Consultant):**

**Project Owner (Port Authority):**

**Project Name:**

**Project Number:**

As the Port Authority and/or consultant for the above local federal-aid transportation project, I have:

1. Reviewed the conflict of interest information found in Missouri's Local Public Agency Manual (EPG 136.4)

And, to the best of my knowledge, determined that, for myself, any owner, partner or employee, with my firm or any of my sub-consulting firms providing services for this project, including family members and personal interests of the above persons, there are:

☐ No real or potential conflicts of interest  
If no conflicts have been identified, complete and sign this form and submit to Port Authority.

☐ Real conflicts of interest or the potential for conflicts of interest  
If a real or potential conflict has been identified, describe on an attached sheet the nature of the conflict, and provide a detailed description of Consultant's proposed mitigation measures (if possible). Complete and sign this form and send it, along with all attachments to MoDOT Multimodal Operations along with the executed engineering services contract.

Port Authority

Consultant

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Capital Improvement Program  
Project Prioritization and Selection  
Revised 6/26/2019

## Guidance Modification Process

This prioritization and selection process guidance is a living document. Modifications to the document are brought before MPAA for a collaborative discussion.

Items to be discussed at the October 2019 meeting include:

- Process for emerging projects tied to new or expanding businesses
- Increasing MoDOT's role as facilitator in the prioritization process

## Overview

Each year, MoDOT submits a list of unfunded, prioritized public port projects to the legislature in support of a funding appropriation. Prior to 2013, applications for these projects were received by MoDOT who defined the priority. However, in 2013, MoDOT initiated a project prioritization process where the executive directors of the public port authorities presented their capital improvement program (CIP) project requests to both MoDOT and the other port directors. This allowed the group to jointly identify what would be the best use of the limited funding to support the statewide goals of increased volume of commerce and improved transportation facilities on or adjacent to the navigable rivers of Missouri.

Over the last few years, new executive directors, new port board members and even new port authorities have joined this discussion. A need for documentation on eligible project types and the process for prioritization and selection emerged during these discussions.

## Funding

The state legislature is authorized to appropriate funds to MoDOT for allocation through §68.035.2 RSMo which states:

The state may make capital improvement matching grants contributing eighty percent of the funds and local port authorities contributing twenty percent of the funds for specific undertakings of port development such as land acquisitions, construction, terminal facility development, port improvement projects, and other related port facilities. Notwithstanding the foregoing, any matching grants awarded by the Missouri highways and transportation commission under the Port Capital Improvement Program **shall be transportation related.**

Each year, MoDOT submits a legislative budget appropriation requesting General Revenue (GR) for CIP funding. A list of prioritized projects accompanies this budget request.

## Purposes and Powers

The purpose of port authorities is defined in §68.020 RSMo which states:



It shall be the purposes of every port authority to promote the general welfare, to promote development within the port district, to encourage private capital investment by fostering the creation of industrial facilities and industrial parks within the port district and to endeavor to **increase the volume of commerce**, and to promote the establishment of a foreign trade zone within the port districts.

Section 68.065 RSMo enumerates MHTC's powers relating to ports. Section 68.056 states, in part, as follows:

The state highways and transportation commission is hereby granted, has and may exercise all powers necessary or convenient to effectuate its purposes, including the following:

(1) To develop a statewide plan for **waterborne commerce** and to review the plans of local or regional port authorities for major public capital improvements to encourage coordination with a state plan;

(4) To petition any interstate commerce commission (or like body), public service commission, public utilities commission (or like body), or any other federal, state, local or municipal authority, administrative, judicial or legislative, having jurisdiction, for the adoption and **execution of any physical improvements**, which, in the opinion of the state highways and transportation commission, may be designed to improve the **handling of commerce or terminal and transportation facilities on or adjacent to the navigable rivers of the state**;

(5) To represent the state in any **programs to achieve financial assistance for waterborne commerce**;

(9) To receive for its lawful activities any contributions, moneys, gifts, grants, or loans from the United States; the state of Missouri; any other state; any local port district, municipality, county, or other political subdivision or agency of this or any other state; any agency created by interstate compact; or any public or private person, firm, corporation, trust or **foundation for purposes consistent with the provisions of this chapter**;

(11) To provide technical advice and assistance to local and regional port authorities in their activities, including planning, issuing bonds, financing port facilities, availability of state and federal grants, interagency coordination, and **related matters of importance in port development** (Bold language is MO emphasis).

## Project Types

While each need is important to the port requesting, some needs are more local in nature and have less benefit to the statewide handling of commerce. State General Revenue funds should be focused on those with the broader benefit. The following guidance will maintain flexibility for ports while providing accountability for state GR funding to the ports and state.

All projects funded with CIP should:

- Focus on execution of physical improvements designed to improve the handling of commerce or terminal and transportation facilities on or adjacent to the navigable rivers of the state (RSMo 68.065(4))
- To maintain the flexibility for evolving port needs, as port projects are presented for prioritization, the following needs to be included with the request:
  - How this project improves the handling of commerce

- For property acquisition, how this property lies in relation to the rest of the port and how it fits into the overall comprehensive plan for the port
- What specifically the funds would be used to accomplish. There should be enough detail to support a legislative request.
- If funded, some projects need to have clawback provisions. An accounting made annually during the CIP discussions:
  - For equipment purchases, a requirement that the item be depreciated in accordance with IRS tax rules. When the equipment is sold/salvaged, the amount of value remaining should be used for CIP eligible projects at that port site. This should be reported back to MPAA and MoDOT annually.
  - For buildings, if the building is transferred to private ownership, the sale price should be used for CIP eligible projects at that port site. This should be reported back to MPAA and MoDOT annually.
- Routine maintenance is not an eligible project type.
- Each project submitted shall include a timeline for implementation that will be used for project progress reports throughout the fiscal year. The project progress actual versus proposed will be shared with MPAA members each year.

## **Project Prioritization and Appropriation Process**

The port CIP draft project list is developed as a collaborative effort between MPAA and MoDOT annually. Each port is eligible to submit two projects for consideration. At the summer MPAA meeting, the projects are presented to members for discussion. Any port seeking project funding must have a representative present to answer questions related to the proposed improvement.

The MPAA members created a matrix that evaluates the relative priority of each project submittal to waterborne commerce and economic impact to Missouri. This list is then evaluated by MPAA and MoDOT jointly for adjustment to account for ability to match, consideration for new tenants, and funding limitations for the program.

The draft list is shared with legislative members for use in their budget deliberations. The draft list is also added to the State Transportation Improvement Program (STIP). Modifications are made throughout the year to allow projects with unforeseeable delays to move to following years and projects that are ready for construction to move into the current year. The list is finalized after the governor signs the budget bills. Amendments are made to the STIP for any modifications from draft to final project list.

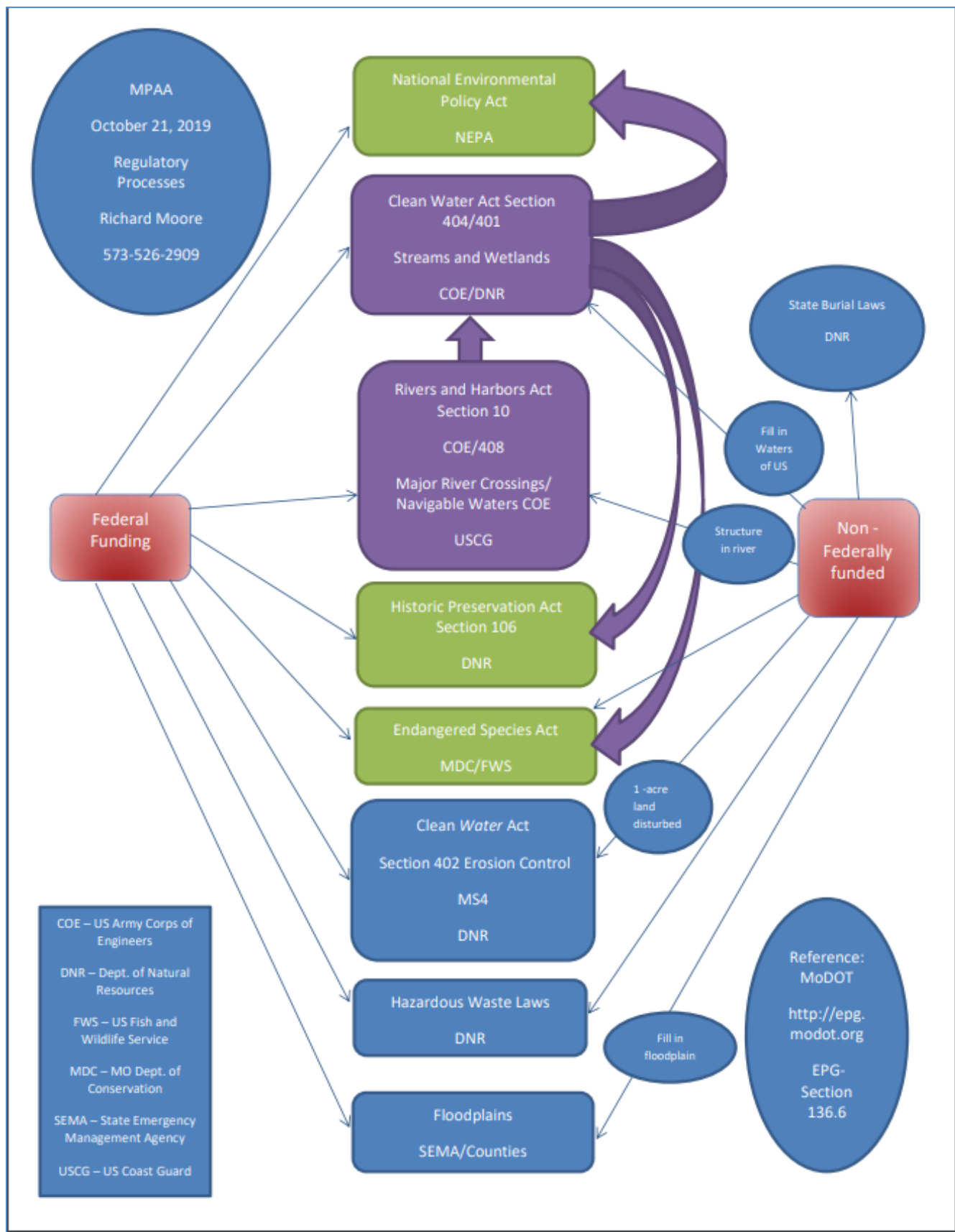
## **Modifications to Final Project List**

After the project list is finalized, agreements between MoDOT and the port are executed. During the course of the fiscal year, modifications to this project list can become necessary due to unforeseen events at a port such as rising water, weather, or delay in permits. In those cases, MoDOT works with the port to move the project to the next fiscal year, allowing a project prioritized high for the following fiscal year to be accelerated. This rolling over of funds allows best use of the available general revenue funding each fiscal year. Any proposed modification between the fiscal years is discussed with the Chair and Vice-Chair of MPAA. A STIP Amendment is made for any project changes that occur throughout the year.

Funds allocated to projects can be rolled to a subsequent year no more than twice. After that, the project must be reprioritized with other new projects. MoDOT provides MPAA with a comparison of when projects were initially allocated funding and when the projects have rolled over to subsequent years at the summer MPAA meeting.

A port's priorities can change throughout the year based on new tenants or expansion by existing tenants. The scope of projects can be modified within the fiscal year through a discussion with MoDOT and the Chair and Vice-Chair of MPAA. Scope changes will be reported annually to MPAA at their summer meeting.

## Environmental Requirements



## Guide to Section 106 of the National Historic Preservation Act Compliance

Definitions:

**Area of Potential Effects:** The locality in which the project could have an effect upon historic properties.

**Cultural Resources:** These are defined as the collective evidence of the past activities and accomplishments of people, such as archaeological sites, buildings, objects, features, locations, and structures with scientific, historic, and cultural value.

**Effect:** The alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places. “Adverse effects” are those that diminish characteristics qualifying a property for inclusion in the National Register.

**Historic Property:** A cultural resource that meets the criteria of eligibility for listing, or already listed, on the National Register of Historic Places

**National Register of Historic Places:** Official inventory of “districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering and culture.”

**Phase I Survey:** The Phase I Survey is a reconnaissance survey to identify archaeological sites and buildings in a project’s area of potential effects. Systematic shovel test pit sampling is employed to locate as archaeological sites. If potentially significant archaeological sites are identified in the survey, a Phase II Site Testing is generally recommended.

**Phase II Archaeological Site Testing:** The purpose of Phase II testing is to collect sufficient archaeological data to determine historical and cultural significance of archaeological materials located during Phase I survey and to determine the site’s eligibility for listing on the National Register and what the project’s affect will be upon it.

**Phase III Mitigation/Data Recovery:** Phase III archaeological data recovery is specifically tailored to recover the data that will be destroyed by the project. It is a highly-intensive version of Phase II, incorporating significantly more excavation, testing, mapping, and analysis of cultural material found on the site.

**Section 106:** Provision in the National Historic Preservation Act that requires federal agencies to consider the effects of proposed undertakings on properties listed or eligible for listing in the National Register of Historic Places. (16 U.S. Code §470f; 36 C.F.R. Part 800)

## Section 106 Clearance Timeline

- Approximate timelines for Section 106 (cultural) compliance after establishing a project's footprint and receiving landowner permission:
  - Jobs requiring new right-of-way/easements and where no historic properties are found or adversely affected will take approximately 3 months to complete the Section 106 process. The Section 106 work needs to be initiated in the Location/Conceptual Plan stage.
  - Archaeological sites that need Phase II testing can add 1 to 3 months to the process – the timeline to complete the Section 106 process is now 4-6 months. This work needs to be conducted during the Preliminary Plan stage.
  - An adversely affected historic property will take an additional 4-6 months to negotiate and draft an agreement document (Memorandum of Agreement or Programmatic Agreement). The timeline to complete the Section 106 process is now 8-12 months. If federal funds are to be used to purchase property, this work needs to be completed during the Preliminary Plan stage. If state funds are to be used to purchase property, this work needs to be completed during the Right of Way Plan stage.
  - An adversely affected historic property that requires an individual Section 4(f) evaluation, this will require an additional 4-6 months. The overall timeline is now 12-18 months for Section 106 and 4(f) compliance. This evaluation needs to be completed before Final Plans are approved.
- Bottom-line:
  - Approximately 80% of the projects will receive Section 106 clearance 6 months after establishing a project's footprint and receiving landowner permission.
  - A project replacing a historic bridge will take approximately a year after the Section 106 process is initiated to complete the Section 106 process.

The SHPO Section 106 guidance page is at <https://dnr.mo.gov/shpo/sectionrev.htm>

The direct link to the consultant page is <https://dnr.mo.gov/shpo/profqualifications.htm>