



**TENTATIVE AGENDA
REGULAR BOARD OF ALDERMEN MEETING
City of St. Peters Justice Center
1020 Grand Teton Drive, St. Peters, MO 63376
August 10, 2023 at 6:30 p.m.**

- A. Call to Order, Mayor Len Pagano
- B. Roll Call
- C. Opening Ceremonies
 - 1. Invocation: Steve Koeneman
 - 2. Pledge of Allegiance
 - 3. Oath of Office: Jared A. Drury, Commissioned Police Officer
- D. Approval of Minutes
 - 1. [Board of Aldermen Work Session meeting of July 27, 2023](#) and [Regular Board of Aldermen meeting of July 27, 2023](#)
- E. Reports of Officers, Boards and Commissions
 - 1. Mayoral Report of Appointments to Boards and Commissions:
 - 2. City Administrator's Report:
 - 3. Report of Director, Planning, Community and Economic Development:
None
 - 4. St. Peters Business Spotlight: None
- F. Open Forum
 - 1. Citizens Petitions and Comments
 - 2. Communications from the Elected Officials
 - 3. Announcements
- G. Public Hearings
- H. Unfinished Business Items

I. New Business Items

1. **Bill No. 23-97: Bill** authorizing the City Administrator to execute a Cooperation Agreement with the Department of the Army for rehabilitation of the St. Peters Old Town Levee System
2. **Bill No. 23-98: Bill** authorizing the City Administrator of the City of St. Peters, Missouri to enter into a contract with Parking Lot Maintenance LLC for the 2023 Partial Depth Repair Program
3. **Bill No. 23-99: Bill** authorizing the City Administrator of the City of St. Peters, Missouri to enter into a Missouri Highways and Transportation Commission Transportation Alternatives Program Agreement for the Mid Rivers Mall Drive Multi-Use Path Project (RTE N to MO 364) (Federal Project No. TAP 7303(625))

II. Executive Session re: Litigation, Real Estate and Personnel, pursuant to Section 610.021 (1)(2)(3)(9)(12)(13)(14) & 610.022 (1-6)

III. Adjournment

Agenda Posted at City Hall: August 7, 2023 at 9:00 a.m.
By: L. Schroeder, Deputy City Clerk

Next Regular Board of Aldermen Meeting: August 24, 2023

Meeting available for viewing at www.sptvnow.net



**CITY OF ST. PETERS
BOARD OF ALDERMEN WORK SESSION MINUTES
JULY 27, 2023**

The Work Session was called to order at approximately 5:00 p.m. on Thursday, July 27, 2023 at the St. Peters Justice Center Board of Aldermen Conference Room located at 1020 Grand Teton Drive.

City Clerk Patty Smith called the roll.

The following Elected Officials were present: Mayor Len Pagano

Ward 1 – Alderman Joyce Townsend and Alderman John “Rocky” Reitmeyer

Ward 2 – Alderman Judy Bateman and Alderman Dr. Gregg Sartorius

Ward 3 – Alderman Dave Kuppler and Board President Alderman Melissa Reimer

Ward 4 – Alderman Nick Trupiano and Alderman Patrick Barclay

A quorum was established.

The following staff were present: Elliot Schneider, Environmental & Fleet Services Manager; Dan Emrick, Parks and Recreation Services Manager; Amy Haddock, Water Environment Services Manager; Burt Benesek, Transportation Development Services Manager; Cathy Pratt, Staff Support Services Manager; Andy Ramirez, Police Chief; Bill Malach, City Administrator; and Patty Smith, City Clerk. John Young, City Attorney was also present.

COMMUNICATIONS FROM BOARD MEMBERS/ALDERMANIC REPRESENTATIVES

Committee reports were given during this time.

BOARD OF ALDERMEN ITEMS FOR DISCUSSION

No items for discussion

MAYOR/CITY ADMINISTRATOR ITEMS

Unfinished Business Items: None

New Business Items:

Alderman Reitmeyer moved and Alderman Reimer seconded the motion to remove Use Tax Ballot Measure 2024 from the agenda for discussion. All in favor, the motion was approved.

USE TAX BALLOT MEASURE 2024 – MAYOR

Mayor stated after reviewing the budget shortfalls, and the recent brick and mortar store closings in the area, the City is in need to plan for the future. Mayor explained his request to submit to the St. Peters voters at the April 2, 2024 General Municipal election a ballot measure, Proposition Fair, to impose a local use tax rate to out-of-state vendors equal to the total local sales tax rate for general revenue purposes currently in effect for our brick and mortar stores. The State of Missouri and St. Charles County already collect a use tax, as do the cities of O’Fallon, Lake Saint Louis, Wentzville,

and City of Saint Charles. The City of St. Peters currently does not receive “use tax” revenue and believes that a use tax will help level the economic playing field between local retail merchants and out-of-state sellers, and that the revenue from such a tax will support the provisions of critical municipal services such as police safety services and streets maintenance and repair. Extensive Board discussion ensued including concerns of the timing is too soon after residents voted this measure down at this year’s General Municipal election; suggestions to move this item to the August, 2024; November 2024, or the April 2025 ballot; concerns regarding online vendors making daily deliveries, however don’t pay for street maintenance or purchase fuel in the City; discussed the need to educate residents on the importance of this tax to continue supporting City amenities; suggestion to review budget after a year without the use tax, and poll staff and residents on what services they suggest cutting if use tax is not supported. **This item is business item I-5 on this evening’s Board of Aldermen meeting agenda for consideration by the Board of Aldermen.**

Alderman Townsend moved and Alderman Bateman seconded the motion to remove U.S. Army Corp of Engineers Cooperative Agreement from the agenda for discussion. All in favor, the motion was approved.

U.S. ARMY CORP OF ENGINEERS COOPERATIVE AGREEMENT – HADDOCK

Ms. Haddock explained the need for a Cooperative Agreement between U.S. Army Corp of Engineers (USACE) and City of St. Peters for Rehabilitation of the St. Peters Old Town Levee System to benefit a section of the Old Town Levee that was impacted during the July 2022 severe rain event. Ms. Haddock further explained that the Old Town Levee was a federally built project, and the City is active with operations and maintenance in accordance with the USACE Rehabilitation and Inspection Program, therefore the repair is eligible for federal funding. The total rehabilitation cost is approximately \$279,500, to repair approximately 180 linear feet of erosion along the levee. The project costs will be paid by the Federal program and USACE has designed project improvements and will manage the construction. The project is anticipated to begin late summer/early fall. The City of St. Peters is required to execute the Cooperative Agreement with the Department of the Army to receive said funding for this levee repair. No comments or questions from the Board of Aldermen. Alderman Reimer moved and Alderman Sartorius seconded the motion to place this item on the August 10, 2023 Board of Aldermen meeting agenda for consideration. All in favor, the motion was approved. **This item will be placed on the August 10, 2023 Board of Aldermen meeting agenda.**

Alderman Reimer moved and Alderman Townsend seconded the motion to remove MO Highways and Transportation Commission Agreement for City Entrance Monuments from the agenda for discussion. All in favor, the motion was approved.

MO HIGHWAYS AND TRANSPORTATION COMMISSION AGREEMENT FOR CITY ENTRANCE MONUMENTS – BENESEK

Mr. Benesek explained that execution of two (2) agreements with the Missouri Highways and Transportation Commission is required to construct City entrance monument signs and associated landscaping on right-of-way owned by the Commission. Mr. Benesek displayed aerial photos of proposed sites of two City entrance monuments at the Mid Rivers Mall Drive interchanges at Highway 70 and one at Mid Rivers Mall Drive interchange at Highway 364 (State Route 94). The FY2023 Transportation Trust Fund Budget includes \$225,000 for the design, installation, maintenance and future relocation or removal in required. Aldermen questions on future sign locations at Cave Spring Blvd., Salt Lick Road and sign lighting were addressed by Mr. Benesek. No further comments or

questions from the Board of Aldermen. **This is business item I-7 on this evening's Board of Aldermen meeting agenda for consideration.**

Alderman Reimer moved and Alderman Barclay seconded the motion to remove Annual Roadway Salt Purchase Recommendation from the agenda for discussion. All in favor, the motion was approved.

ANNUAL ROADWAY SALT PURCHASE RECOMMENDATION – BENESEK

Mr. Benesek stated roadway salt is used for annual snow and ice control operations. The City of St. Peters is a member of the St. Louis Metro APWA Salt Cooperative. On May 15, 2023, competitive bids were received by the City of Chesterfield on behalf of the St. Louis Metro APWA Salt Cooperative. Compass Minerals submitted the low bid for supply and delivery of roadway salt at \$84.05 per ton. The City of St. Peters' Snow and Ice Control Operations consume 2,500 tons of roadway salt annually. Staff is recommending utilizing the competitive bids received by the St. Louis Metro APWA Salt Cooperative. Approval of this recommendation will authorize the total expenditure of \$168,100.00 for the supply and delivery of 2,000 tons of roadway salt for the 2023/2024 snow and ice control operations, with the final total value adjusted to reflect actual quantities at the unit prices bid. The City of Chesterfield is requesting member purchase orders by August 11, 2023. Alderman question on cost increase was addressed by Mr. Benesek; which is a 7.5% increase from the previous season. No further comments or questions from the Board of Aldermen. **This is business item I-6 on this evening's Board of Aldermen meeting agenda for consideration.**

Alderman Sartorius moved and Alderman Barclay seconded the motion to remove MoDOT Agreement for Mid Rivers Mall Drive Multi-Use Path from the agenda for discussion. All in favor, the motion was approved.

MODOT AGREEMENT FOR MID RIVERS MALL DRIVE MULTI-USE PATH – BENESEK

Mr. Benesek gave a slideshow presentation on a Missouri Highway and Transportation Commission Transportation Alternatives Program Agreement for the Mid Rivers Mall Drive Multi-Use Path Project (Route N to MO 364). Mr. Benesek further explained the City has been awarded federal funds of \$519,181 of the total estimated cost of \$798,740.00 for design, right-of-way acquisition, and construction, through the East-West Gateway Coordinating Council of Governments. This project includes the construction of a 10 feet wide multi-use path located along the east side of Mid Rivers Mall Drive. The new path will connect to existing multi-use paths located at the north and south ends of the project. The project will provide a continuous path from St. Charles County's Veteran's Tribute Park to the Dardenne Greenway at St. Charles Community College. In order to receive said funds, the City of St. Peters must execute a Transportation Alternative Program (TAP) agreement with the Missouri Highways and Transportation Commission detailing funding requirements. Questions addressing Great Rivers Greenway trail system location and the City of Cottleville's trail and contribution towards the project were addressed by Mr. Benesek. Alderman Townsend moved and Alderman Reimer seconded the motion to place this item on the August 10, 2023 Board of Aldermen meeting agenda for consideration. All in favor, the motion was approved. **This item will be placed on the August 10, 2023 Board of Aldermen meeting agenda.**

Alderman Sartorius moved and Alderman Reitmeyer seconded the motion to remove 2023 Partial Depth Concrete Repair Bid Recommendation from the agenda for discussion. All in favor, the motion was approved.

2023 PARTIAL DEPTH CONCRETE REPAIR BID RECOMMENDATION – BENESEK

Mr. Benesek stated the City has a budgeted Partial Depth Concrete Repair Program with goals to extend the useful life of arterial and collector roadway pavement and avoid extended lane closures associated with full depth pavement replacement. This preventative maintenance project on Mid Rivers Mall Drive from Suemandy Drive to Grand Teton Drive consists of milling damaged concrete pavement around joints and potholes and placement of a polymer joint repair material with a stone topping. On July 6, 2023, staff received two (2) bids for the 2023 Partial Depth Concrete Repair and recommending the low bidder of Parking Lot Maintenance LLC in the initial amount of \$144,900.00. No comments or questions from the Board of Aldermen. Alderman Reimer moved and Alderman Sartorius seconded the motion to place this item on the August 10, 2023 Board of Aldermen meeting agenda for consideration. All in favor, the motion was approved. **This item will be placed on the August 10, 2023 Board of Aldermen meeting agenda.**

MISCELLANEOUS UPDATES – MALACH

None

BOARD MEETING AGENDA ITEM REVISIONS – MALACH

None

EXECUTIVE SESSION RE: LITIGATION, REAL ESTATE AND PERSONNEL, PURSUANT TO SECTION 610.021 (1)(2)(3)(9)(12)(13)(14)(19) & 610.022 (1-6)

Alderman Reimer moved and Alderman Sartorius seconded the motion to enter Executive Session re: Litigation, Real Estate and Personnel, pursuant to Section 610.021(1)(2)(3)(9)(12)(13)(14)(19) & 610.022 (1-6) and then adjourn the Work Session meeting from the Executive Session. With the motion approved, the Board of Aldermen entered Executive Session at approximately 6:06 p.m. Roll Call was taken as follows: President of the Board of Aldermen, Alderman Reimer, yes; Alderman Townsend, yes; Alderman Sartorius, yes; Alderman Bateman, yes; Alderman Reitmeyer, yes; Alderman Barclay, yes; Alderman Kuppler, yes; Alderman Trupiano, yes.

ADJOURNMENT OF THE EXECUTIVE SESSION AND THE WORK SESSION

Alderman Reimer moved and Alderman Barclay seconded the motion to adjourn the Executive Session and the Work Session meetings. The motion carried and the Executive Session and the Work Session was adjourned at approximately 6:19 p.m. with roll call shown as follows: President of the Board of Aldermen, Alderman Reimer, yes; Alderman Townsend, yes; Alderman Sartorius, yes; Alderman Bateman, yes; Alderman Reitmeyer, yes; Alderman Barclay, yes; Alderman Kuppler, yes; Alderman Trupiano, yes.

Submitted by,

Patricia E. Smith
City Clerk



**CITY OF ST. PETERS
BOARD OF ALDERMEN REGULAR MEETING MINUTES
JULY 27, 2023**

CALL TO ORDER

Mayor Len Pagano called the Board of Aldermen meeting to order at approximately 6:30 p.m. on July 27, 2023, at the St. Peters Justice Center located at 1020 Grand Teton Drive.

ROLL CALL

City Clerk Patty Smith called the roll.

The following Elected Officials were present: Mayor Len Pagano

Ward 1 – Alderman Joyce Townsend and Alderman Rocky Reitmeyer

Ward 2 – Alderman Judy Bateman and Alderman Dr. Gregg Sartorius

Ward 3 – Alderman Dave Kuppler and Board President Alderman Melissa Reimer

Ward 4 – Alderman Nick Trupiano and Alderman Patrick Barclay

A quorum was established.

The following staff were present: Bill Malach, City Administrator; Police Captain Ramirez; and City Clerk Patty Smith. John Young, City Attorney was also present.

OPENING CEREMONIES

INVOCATION:

Steve Koeneman delivered the Invocation.

PLEDGE OF ALLEGIANCE:

Mayor Pagano led the Pledge of Allegiance.

GRADUATION: JUNIOR CITIZEN POLICE ACADEMY, SERGEANT MELISSA DOSS

Sergeant Doss spoke about the program before introducing the two Junior Citizen Police Academy Graduating classes.

APPROVAL OF MINUTES

BOARD OF ALDERMEN WORK SESSION MEETING OF JUNE 22, 2023 AND REGULAR BOARD OF ALDERMEN MEETING OF JUNE 22, 2023 AND FY'24 BUDGET WORKSHOP & FY'23 CIP MEETING MINUTES OF JUNE 1, 2023 AND JUNE 6, 2023

Alderman Reitmeyer moved and Alderman Trupiano seconded the motion to approve the Board of Aldermen Work Session meeting minutes of June 22, 2023 and the Regular Board of Aldermen meeting of June 22, 2023; and FY'24 Budget Workshop & FY'23 CIP Meeting Minutes of June 1, 2023 and June 6, 2023. All in favor, the motion carried and the minutes were approved as presented.

REPORTS OF OFFICERS, BOARDS AND COMMISSIONS

MAYORAL REPORT OF APPOINTMENTS TO BOARDS AND COMMISSIONS:

REAPPOINTMENTS TO SHOPPES OF MID RIVERS COMMUNITY IMPROVEMENT DISTRICT

Alderman Reimer read the Reappointments of the following individuals to serve as members of the Board of Directors for the Shoppes of Mid Rivers Community Improvement District for the terms set forth herein: Scott Drachnik, Craig Frahm, Craig O'Sadnick for four (4) year terms expiring 1/26/27. Alderman Reimer moved and Alderman Barclay seconded the motion to approve the reappointments. All in favor, the motion carried and the reappointments were approved.

APPOINTMENT TO THE PLANNING AND ZONING COMMISSION

Alderman Bateman read the appointment of the following individual as alternate member to the Planning and Zoning Commission: Joshua Becker, 113 Woodline Court, (Ward 3) for the term effective immediately and expiring September 30, 2023. Mr. Becker will be filling the vacancy of Sherry Gibson, who was appointed to member. Alderman Reimer moved and Alderman Sartorius seconded the motion to approve the appointment. All in favor, the motion carried and the appointment was approved.

CITY ADMINISTRATOR'S REPORT: None

REPORT OF DIRECTOR OF PLANNING, COMMUNITY AND ECONOMIC DEVELOPMENT:

TITLE II AND IV CODE CHANGES (FLAGPOLES, HENS AND MISCELLANEOUS) – POWERS

Ms. Powers presented Title II and Title IV proposed City Code changes with a slideshow explaining the proposed code changes to Chapters 205 and 215 in addition to Chapter 405, which the Planning and Zoning Commission recommended approval of these code changes to the Board of Aldermen at their July 5, 2023 Planning and Zoning Commission meeting. These code changes were addressed at a previous Joint Work Session in May 2023. Code changes – General, are related to definitions, flagpole height, completion of remodeling projects, landscaping, non-conforming use regulations, access points to residential lots and signage, off-street parking, street name change (existing street). Also changes include a new definition to Chapter 205 regarding hens, modifies Section 205.020 Care and Treatment; 205.106 Hen Permit; 205.116 Permit Revocation, Denial and Hearing; 205.120 Restraint; 215.010 Definitions; Section 405.280 Animals (to allow Hens); Permits and Inspections. Ms. Powers addressed a question from the Board concerning driveway size.

ST. PETERS BUSINESS SPOTLIGHT: None

OPEN FORUM

CITIZENS PETITIONS AND COMMENTS:

Christa Waterman, 17 Pilot Hill Drive, spoke in support of proposed bill on tonight's agenda allowing residents to have chickens; and provided a handout to the Board of Aldermen.

Robert Worlitz, 408 Sutters Mill Road, spoke in opposition to a proposed pet store located near Value City.

COMMUNICATIONS FROM THE ELECTED OFFICIALS:

Elected Officials made comments during this time.

ANNOUNCEMENTS: None

PUBLIC HEARINGS

None

UNFINISHED BUSINESS ITEMS

None

NEW BUSINESS ITEMS

MOTION/APPROVED: BILL NO. 23-84: ORDINANCE NO. 7829: AN ORDINANCE ACCEPTING FOR MAINTENANCE THE DEDICATION OF A CERTAIN WATER LINE AND CERTAIN SECTIONS OF STORM SEWER LINES LOCATED IN AND CONNECTED WITH THE MID RIVERS TRADE PARK RESUBDIVISION OF RESUBDIVIDED LOT 1 AND MID RIVERS TRADE PARK RESUBDIVISION OF RESUBDIVIDED LOT 6 PLATS

Alderman Reitmeyer moved and Alderman Bateman seconded the motion to introduce the Bill. The motion carried. Alderman Reitmeyer moved and Alderman Bateman seconded the motion to read Bill No. 23-84 for the first time. The motion carried and Alderman Reitmeyer read the Bill. Alderman Reimer moved and Alderman Sartorius seconded the motion to read the Bill for the second time. The motion carried and Alderman Sartorius read the Bill. Alderman Bateman moved and Alderman Trupiano seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-84 passed becoming Ordinance No. 7829.

Barclay: Yes Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: Yes Bateman: Yes Townsend: Yes
AYES: 8 NAYS: 0 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

MOTION/APPROVED: BILL NO. 23-85: ORDINANCE NO. 7830: AN ORDINANCE REPEALING SECTION 145.060 EXEMPTION FROM LOCAL SALES TAX HOLIDAY IN ITS ENTIRETY

Alderman Reimer moved and Alderman Bateman seconded the motion to introduce the Bill. The motion carried. Alderman Reimer moved and Alderman Bateman seconded the motion to read Bill No. 23-85 for the first time. The motion carried and Alderman Barclay read the Bill. Alderman Reitmeyer moved and Alderman Barclay seconded the motion to read the Bill for the second time. The motion carried and Alderman Reimer read the Bill. Alderman Reimer moved and Alderman Trupiano seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-85 passed becoming Ordinance No. 7830.

Barclay: Yes Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: Yes Bateman: Yes Townsend: Yes
AYES: 8 NAYS: 0 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

MOTION/APPROVED: BILL NO. 23-86: ORDINANCE NO. 7831: AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OF THE CITY OF ST. PETERS, MISSOURI TO ISSUE A BLANKET PURCHASE ORDER TO INFOSEND FOR THE DELIVERY OF THE CITY'S UTILITY BILLS

Alderman Reimer moved and Alderman Reitmeyer seconded the motion to introduce the Bill. The motion carried. Alderman Reimer moved and Alderman Reitmeyer seconded the motion to read Bill No. 23-86 for the first time. The motion carried and Alderman Townsend read the Bill. Alderman Barclay moved and Alderman Townsend seconded the motion to read the Bill for the second time. The motion carried and Alderman Bateman read the Bill. Alderman Bateman moved and Alderman Trupiano seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-86 passed becoming Ordinance No. 7831.

Barclay: Yes Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: Yes Bateman: Yes Townsend: Yes
AYES: 8 NAYS: 0 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

MOTION/APPROVED: BILL NO. 23-87: ORDINANCE NO. 7832: AN ORDINANCE PERTAINING TO CITY ELECTIONS AND SETTING THE FILING DATES, TIMES AND PLACE FOR THE GENERAL MUNICIPAL ELECTION TO BE HELD ON APRIL 2, 2024 IN THE CITY OF ST. PETERS, MISSOURI

Alderman Kuppler moved and Alderman Reimer seconded the motion to introduce the Bill. The motion carried. Alderman Kuppler moved and Alderman Reimer seconded the motion to read Bill No. 23-87 for the first time. The motion carried and Alderman Kuppler read the Bill. Alderman Bateman moved and Alderman Kuppler seconded the motion to read the Bill for the second time. The motion carried and Alderman Trupiano read the Bill. Alderman Reitmeyer moved and Alderman Sartorius seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-87 passed becoming Ordinance No. 7832.

Barclay: Yes Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: Yes Bateman: Yes Townsend: Yes
AYES: 8 NAYS: 0 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

MOTION/TABLED: BILL NO. 23-88: AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF ST. PETERS, MISSOURI, FOR THEIR APPROVAL AT THE GENERAL MUNICIPAL ELECTION TO BE HELD IN THE CITY ON THE 2ND DAY OF APRIL, 2024, A PROPOSITION TO AUTHORIZE THE city TO IMPOSE A USE TAX AT THE SAME RATE AS THE LOCAL ST. PETERS SALES TAX FOR THE PRIVILEGE OF STORING, USING OR CONSUMING WITHIN THE CITY ANY ARTICLE OF TANGIBLE PERSONAL PROPERTY; PROVIDING FOR THE USE TAX TO BE REDUCED OR RAISED IN THE SAME AMOUNT AS ANY CITY SALES TAX IS REDUCED OR RAISED

Alderman Trupiano spoke, recounting previous discussion during tonights Work Session on the draft Bill No. 23-88 regarding the proposed Use Tax Proposition, pros, cons, how and when we get there. Alderman Trupiano moved and Alderman Bateman seconded the motion to table Bill No. 23-88 to

acquire more understanding of where the budget will be in the future. All in favor, the motion was approved.

MOTION/APPROVED: BILL NO. 23-89: ORDINANCE NO. 7833: AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OF THE CITY OF ST. PETERS, MISSOURI TO ISSUE A PURCHASE ORDER TO COMPASS MINERALS FOR THE PROCUREMENT, DELIVERY, AND OFF-LOADING OF ROADWAY DE-ICING SALT FOR THE CITY'S SNOW AND ICE CONTROL OPERATIONS

Alderman Reitmeyer moved and Alderman Townsend seconded the motion to introduce the Bill. The motion carried. Alderman Reitmeyer moved and Alderman Townsend seconded the motion to read Bill No. 23-89 for the first time. The motion carried and Alderman Reitmeyer read the Bill. Alderman Sartorius moved and Alderman Trupiano seconded the motion to read the Bill for the second time. The motion carried and Alderman Sartorius read the Bill. Alderman Townsend moved and Alderman Reimer seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-89 passed becoming Ordinance No. 7833.

Barclay: Yes Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: Yes Bateman: Yes Townsend: Yes
AYES: 8 NAYS: 0 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

MOTION/APPROVED: BILL NO. 23-90: ORDINANCE NO. 7834: AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OF THE CITY OF ST. PETERS, MISSOURI, TO ENTER INTO TWO (2) MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION AGREEMENTS FOR THE MONUMENTS INSTALLED AND MAINTAINED BY CITY OF ST. PETERS (CITY ENTRANCE MONUMENTS AT I-70 AND ROUTE 94)

Alderman Barclay moved and Alderman Reimer seconded the motion to introduce the Bill. The motion carried. Alderman Barclay moved and Alderman Reimer seconded the motion to read Bill No. 23-90 for the first time. The motion carried and Alderman Barclay read the Bill. Alderman Reitmeyer moved and Alderman Sartorius seconded the motion to read the Bill for the second time. The motion carried and Alderman Reimer read the Bill. Alderman Kuppler moved and Alderman Townsend seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-90 passed becoming Ordinance No. 7834.

Barclay: Yes Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: Yes Bateman: Yes Townsend: Yes
AYES: 8 NAYS: 0 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

MOTION/APPROVED: BILL NO. 23-91: ORDINANCE NO. 7835: AN ORDINANCE ACCEPTING FOR MAINTENANCE THE DEDICATION OF CERTAIN STORM SEWER LINES IN AND CONNECTED WITH STONE RIDGE ESTATES AT HEARTH STONE PLAT

Alderman Barclay moved and Alderman Bateman seconded the motion to introduce the Bill. The motion carried. Alderman Barclay moved and Alderman Bateman seconded the motion to read Bill No. 23-91 for the first time. The motion carried and Alderman Townsend read the Bill. Alderman Reimer moved and Alderman Barclay seconded the motion to read the Bill for the second time. The motion carried and Alderman Bateman read the Bill. Alderman Townsend moved and Alderman Bateman seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-91 passed becoming Ordinance No. 7835.

Barclay: Yes Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: Yes Bateman: Yes Townsend: Yes
AYES: 8 NAYS: 0 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

MOTION/APPROVED: BILL NO. 23-92: ORDINANCE NO. 7836: AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OF THE CITY OF ST. PETERS, MISSOURI TO ENTER INTO A PERMANENT SANITARY SEWER LINE EASEMENT AGREEMENT WITH BAUERHOUSE PROPERTIES, LLC

Alderman Reitmeyer moved and Alderman Trupiano seconded the motion to introduce the Bill. The motion carried. Alderman Reitmeyer moved and Alderman Trupiano seconded the motion to read Bill No. 23-92 for the first time. The motion carried and Alderman Kuppler read the Bill. Alderman Reitmeyer moved and Alderman Sartorius seconded the motion to read the Bill for the second time. The motion carried and Alderman Trupiano read the Bill. Alderman Townsend moved and Alderman Reitmeyer seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-92 passed becoming Ordinance No. 7836.

Barclay: Yes Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: Yes Bateman: Yes Townsend: Yes
AYES: 8 NAYS: 0 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

MOTION/APPROVED: BILL NO. 23-93: ORDINANCE NO. 7837: AN ORDINANCE APPROVING A RECORD PLAT WITHIN THE CITY OF ST. PETERS, MISSOURI, FOR THE PURPOSE OF RECORDING IN ST. CHARLES COUNTY, MISSOURI (PREMIER PARKWAY CENTER)

Alderman Reitmeyer moved and Alderman Sartorius seconded the motion to introduce the Bill. The motion carried. Alderman Reitmeyer moved and Alderman Sartorius seconded the motion to read Bill No. 23-93 for the first time. The motion carried and Alderman Reitmeyer read the Bill. Alderman Sartorius moved and Alderman Reitmeyer seconded the motion to read the Bill for the second time. The motion carried and Alderman Sartorius read the Bill. Alderman Reimer moved and Alderman Barclay seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-93 passed becoming Ordinance No. 7837.

Barclay: Yes Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: Yes Bateman: Yes Townsend: Yes
AYES: 8 NAYS: 0 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

MOTION/APPROVED: BILL NO. 23-94: ORDINANCE NO. 7838: AN ORDINANCE APPROVING A RECORD PLAT WITHIN THE CITY OF ST. PETERS, MISSOURI, FOR THE PURPOSE OF RECORDING IN ST. CHARLES COUNTY, MISSOURI (SCHWERDT RECORD PLAT)

Alderman Reimer moved and Alderman Barclay seconded the motion to introduce the Bill. The motion carried. Alderman Reimer moved and Alderman Barclay seconded the motion to read Bill No. 23-94 for the first time. The motion carried and Alderman Barclay read the Bill. Alderman Reitmeyer moved and Alderman Kuppler seconded the motion to read the Bill for the second time. The motion carried and Alderman Reimer read the Bill. Alderman Bateman moved and Alderman Townsend seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-94 passed becoming Ordinance No. 7838.

Barclay: Yes Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: Yes Bateman: Yes Townsend: Yes
AYES: 8 NAYS: 0 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

MOTION/APPROVED: BILL NO. 23-95: ORDINANCE NO. 7839: AN ORDINANCE AMENDING OR REPEALING CERTAIN SECTIONS AND ENACTING NEW SECTIONS OF THE MUNICIPAL CODE OF THE CITY OF ST. PETERS, TITLE IV: LAND USE DEALING WITH THE ESTABLISHMENT OF ZONING AND REGULATING LAND USE IN THE CITY LIMITS OF THE CITY OF ST. PETERS, MISSOURI AND PROVIDING FOR THE ESTABLISHMENT OF REGULATIONS FOR LAND SUBDIVISION IN THE LIMITS OF THE CITY OF ST. PETERS, MISSOURI

Alderman Townsend moved and Alderman Sartorius seconded the motion to introduce the Bill. The motion carried. Alderman Townsend moved and Alderman Sartorius seconded the motion to read Bill No. 23-95 for the first time. The motion carried and Alderman Townsend read the Bill. Alderman Barclay moved and Alderman Bateman seconded the motion to read the Bill for the second time. The motion carried and Alderman Bateman read the Bill. Alderman Bateman moved and Alderman Kuppler seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-95 passed becoming Ordinance No. 7839.

Barclay: Yes Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: Yes Bateman: Yes Townsend: Yes
AYES: 8 NAYS: 0 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

MOTION/APPROVED: BILL NO. 23-96: ORDINANCE NO. 7840: AN ORDINANCE AMENDING OR REPEALING CERTAIN SECTIONS AND ENACTING NEW SECTIONS OF THE MUNICIPAL CODE OF THE CITY OF ST. PETERS, TITLE II: PUBLIC HEALTH, SAFETY AND WELFARE AND TITLE IV: LAND USE DEALING WITH THE ESTABLISHMENT OF ZONING AND REGULATING LAND USE IN THE CITY LIMITS OF THE CITY OF ST. PETERS, MISSOURI AND PROVIDING FOR THE ESTABLISHMENT OF REGULATIONS FOR LAND SUBDIVISION IN THE LIMITS OF THE CITY OF ST. PETERS, MISSOURI

Alderman Reimer moved and Alderman Townsend seconded the motion to introduce the Bill. The motion carried. Alderman Reimer moved and Alderman Townsend seconded the motion to read Bill No. 23-96 for the first time. The motion carried and Alderman Kuppler read the Bill. Aldermen comments were made for and against the provisions within this bill. Alderman Townsend moved and Alderman Bateman seconded the motion to read the Bill for the second time. The motion carried and Alderman Trupiano read the Bill. Alderman Reitmeyer moved and Alderman Townsend seconded the motion to put the Bill to a final vote. Motion approved and Bill No. 23-96 passed becoming Ordinance No. 7840.

Barclay: No Reimer: Yes Sartorius: Yes Reitmeyer: Yes
Trupiano: Yes Kuppler: No Bateman: Yes Townsend: Yes
AYES: 6 NAYS: 2 ABSTENTIONS: 0 ABSENT: 0 MAYOR:

EXECUTIVE SESSION RE: LITIGATION, REAL ESTATE AND PERSONNEL, PURSUANT TO SECTION 610.021 (1)(2)(3)(9)(12)(13)(14)(19) & 610.022 (1-6)

No Executive Session was called at this time.

ADJOURNMENT OF THE REGULAR BOARD OF ALDERMEN MEETING

Alderman Reimer moved and Alderman Reitmeyer seconded the motion to adjourn the Regular Board of Aldermen meeting. The motion carried and the Regular Board of Aldermen meeting was adjourned at approximately 7:52 p.m.

Submitted by,

Patricia E. Smith
City Clerk

DRAFT

ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A COOPERATION AGREEMENT WITH THE DEPARTMENT OF THE ARMY FOR REHABILITATION OF THE ST. PETERS OLD TOWN LEVEE SYSTEM

WHEREAS, the Federal Government constructed the St. Peters Old Town Levee System, and pursuant to Public Law 84-99, as amended (33 U.S.C. 701n), the Government is authorized to conduct repair or restoration (hereinafter “rehabilitation”) of the project;

WHEREAS, rehabilitation of the project consists of repairing damaged slope revetment with stone of adequate size on top of bedding material and geotextile, as generally described in the St. Peters Old Town Levee System Project Implementation Report, dated October 2022 and approved by the Division Commander for Mississippi Valley Division on 07 February 2023; and

WHEREAS, the Government and the City of St. Peters have the full authority and capability to perform the rehabilitation of the project in accordance with the terms of Cooperation Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ST. PETERS, MISSOURI, AS FOLLOWS:

SECTION NO. 1. Cooperation Agreement Between the Department of the Army and the City of St. Peters, Missouri for Rehabilitation of the St. Peters Old Town Levee System.

A. That the terms and provisions of the Cooperation Agreement Between the Department of the Army and the City of St. Peters, Missouri for Rehabilitation of the St. Peters Old Town Levee System (Cooperation Agreement) attached hereto, marked as **Exhibit “A”**, and incorporated by reference herein, be and they hereby are, in all respects approved, and that the City Administrator is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City said Cooperation Agreement, in substantially the form attached hereto, with the Department of the Army.

B. That the City Administrator is hereby further authorized and directed for and on behalf of and in the name of the City to agree to do any and all other acts and things and to execute and deliver any and all other agreements, documents, instruments and certificates, all as may be necessary or appropriate to consummate said Cooperation Agreement, and to perform all of the terms, provisions and conditions of said Cooperation Agreement. The execution by the City Administrator of any agreement, document, instrument, check or certificate referred to in this Ordinance and said Cooperation Agreement shall be conclusive evidence of the approval thereof and of all of the terms, provisions and conditions contained therein. Any and all acts which the

City Administrator may do or perform in conformance with the powers conferred upon them by this Ordinance are hereby expressly authorized, approved, ratified and confirmed.

SECTION NO. 2. Savings.

Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

SECTION NO. 3. Severability.

If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION NO. 4. Effective Date.

This ordinance shall be in full force and take effect from and after the date of its final passage and approval.

Read two times, passed, and approved this 10th day of August, 2023.

Len Pagano, as Presiding Officer and as Mayor

Attest: _____
Patricia E. Smith, City Clerk

No.

EXHIBIT A

[see Cooperation Agreement Between the Department of the Army and the City of St. Peters, Missouri for Rehabilitation of the St. Peters Old Town Levee System attached hereto]

DRAFT

EXHIBIT A

**COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND THE CITY OF ST. PETERS, MISSOURI
FOR REHABILITATION OF THE
ST. PETERS OLD TOWN LEVEE SYSTEM**

THIS AGREEMENT is entered into this ____ day of _____, 2023, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for St. Louis District (hereinafter the “District Commander”) and the City of St. Peters (hereinafter the “Public Sponsor”), represented by its City Administrator.

WITNESSETH, THAT:

WHEREAS, the Government constructed the St. Peters Old Town Levee System (hereinafter the “project”),

WHEREAS, pursuant to Public Law 84-99, as amended (33 U.S.C. 701n), the Government is authorized to conduct repair or restoration (hereinafter “rehabilitation”) of the project;

WHEREAS, on 10 August, 2022, the Public Sponsor requested in writing that the Government, undertake rehabilitation of the project;

WHEREAS, rehabilitation of the project consists of repairing damaged slope revetment with stone of adequate size on top of bedding material and geotextile, as generally described in the St. Peters Old Town Levee System Project Implementation Report, dated October 2022 and approved by the Division Commander for Mississippi Valley Division on 07 February 2023; and

WHEREAS, the Government and the Public Sponsor have the full authority and capability to perform the rehabilitation of the project in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - OBLIGATIONS OF THE PARTIES

A. In accordance with applicable Federal laws, regulations, and policies, the Government shall undertake rehabilitation of the project at Federal expense. In carrying out its obligations under this Agreement, the Public Sponsor shall comply with all the requirements of applicable

Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

B. The Public Sponsor shall provide the following, in accordance with the provisions of this paragraph:

1. As further specified in Article II, the Public Sponsor, at no cost to the Government, shall provide the real property interests, placement area improvements, and relocations required for rehabilitation of the project.

2. In accordance with Article III, the Public Sponsor, at no cost to the Government, shall be responsible for undertaking any investigations required by the Government for rehabilitation of the project that are necessary to identify the existence and extent of any hazardous, toxic, and radioactive wastes (hereinafter "HTRW"), which includes any material listed as a "hazardous substance" (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Public Sponsor the opportunity to review and comment on contract solicitations, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. Within 30 calendar days of the District Commander determining that rehabilitation of the project is complete, the District Commander shall so notify the Public Sponsor in writing. The Government shall furnish the Public Sponsor with an update to the Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") to reflect changed conditions resulting from rehabilitation of project and copies of all as-built drawings for the completed work.

1. The Government undertaking rehabilitation of the project has no effect on the Public Sponsor's responsibility for operation, maintenance, repair, rehabilitation, and replacement of the project, to include any additional responsibilities related to rehabilitation of the project, at no cost to the Government. The Public Sponsor shall continue to operate and maintain the project in a manner compatible with the authorized purpose of the project and in accordance with applicable Federal laws and regulations, and the Government's specific directions in the OMRR&R Manual. The Government and the Public Sponsor shall consult on any subsequent updates or amendments to the OMRR&R Manual.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Public Sponsor now or hereafter owns or controls to inspect the project, and, if necessary, to undertake any work necessary to the functioning of the project for its authorized purpose. If the Government determines that the Public Sponsor is failing to perform its obligations under this Agreement and the Public Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, repair, rehabilitation, or replacement of the project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Public Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

E. The Public Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for rehabilitation of the project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

F. The Public Sponsor shall hold and save the Government free from all damages arising from rehabilitation of the project, and for operation and maintenance of the project, except for damages due to the fault or negligence of the Government or the Government's contractors.

G. The Public Sponsor agrees to continue to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program, and of Title 33, Code of Federal Regulations, Part 208.10 (33 CFR 208.10).

H. The Public Sponsor may request in writing that the Government perform betterments on the Public Sponsor's behalf. Each request shall be subject to review and written approval by the Division Commander for Mississippi Valley Division. If the Government agrees to such request, the Government shall provide written notice to the Public Sponsor of the amount of funds required to cover such costs in advance of the Government performing such betterments. In addition, the Public Sponsor is responsible for providing, at no cost to the Government, any additional real property interests, relocations, and placement area improvements determined by the Government to be required for such betterments.

1. As of the effective date of this Agreement, the costs for betterments are projected to be \$___NA___.

2. No later than 60 calendar days of receiving written notice from the Government of the costs of betterments, the Public Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED," to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Public Sponsors shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE II - REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, AND RELOCATIONS

A. The Government, after consultation with the Public Sponsor, shall determine the real property interests required for the rehabilitation of the project. The Government shall provide the Public Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Public Sponsor must provide for rehabilitation of the project. The real property interests required for the rehabilitation of the project may be provided incrementally for each construction contract. In accordance with Article III, the Public Sponsor shall investigate to verify that HTRW does not exist in, on, or under any of the real property interests required for rehabilitation of the project. For real property interests currently owned or controlled by the Public Sponsor, such HTRW investigations must be completed prior to the Government advertising a construction contract for that work. For any additional real property interests to be acquired by the Public Sponsor, such HTRW investigations must be completed by the Public Sponsor prior to the Government providing the Public Sponsor with a written notice to proceed with that acquisition. The Public Sponsor shall provide the Government with authorization for entry to such real property interests according to the Government's construction schedule for that work. The Public Sponsor shall ensure that real property interests they provide are retained in public ownership for uses compatible with the authorized purposes of the project.

B. The Government, after consultation with the Public Sponsor, shall determine the placement area improvements required for rehabilitation of the project, provide the Public Sponsor with general written descriptions, including maps as appropriate, of such improvements, and provide the Public Sponsor with a written notice to proceed with such improvements. The Public Sponsor shall construct the improvements in accordance with the Government's construction schedule for that work.

C. The Government, after consultation with the Public Sponsor, shall determine the relocations required for rehabilitation of the project, provide the Public Sponsor with general written descriptions, including maps as appropriate, of such relocations, and provide the Public Sponsor with a written notice to proceed with such relocations. The Public Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for that work.

D. In acquiring the real property interests for rehabilitation of the project, the Public Sponsor assures the Government that it will comply with the following:

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624;

(2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3);

(4) in acquiring real property, the Public Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) property owners will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

ARTICLE III - HTRW

A. The Public Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law that may exist in, on, or under real property interests required for rehabilitation of the project.

B. In the event it is discovered that HTRW exists in, on, or under any of the real property interests needed for the rehabilitation work, the Public Sponsor and the Government shall provide written notice to each other within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Public Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Public Sponsor should proceed. If HTRW is discovered after acquisition of the real property interests, no further rehabilitation activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable law and determine whether to initiate construction, or if already initiated, whether to continue, suspend, or terminate construction.

1. Should the parties initiate or continue construction, the Public Sponsor shall be solely responsible, as between the Government and the Public Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Public Sponsor shall pay such costs without reimbursement or credit by the Government. In no event will the Government proceed with that construction before the Public Sponsor has completed the required cleanup and response actions.

2. In the event the parties cannot reach agreement on how to proceed or the Public Sponsor fails to discharge its responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction. Additionally, the Government may undertake any actions it determines necessary to avoid a release of such HTRW with the Public Sponsor responsible for such costs without credit or reimbursement by the Government.

D. In the event of a HTRW discovery, the Public Sponsor and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as required by applicable law. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

E. To the maximum extent practicable, the Government and Public Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause HTRW liability to arise under applicable law.

F. As between the Government and the Public Sponsor, the Public Sponsor shall be considered the owner and operator of the project, including the rehabilitation work, for purposes of CERCLA liability or other applicable law.

ARTICLE IV - TERMINATION OR SUSPENSION

A. If at any time the Public Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for rehabilitation of the project are not sufficient to complete such work, the Government shall so notify the Public Sponsor in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds available to allow construction to resume.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to rehabilitation of the project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Public Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE V - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Public Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE VI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Public Sponsor:

Amy Haddock
Water Environment Services, Manager
St. Peters Old Town Levee System
1 St Peters Centre Blvd
St. Peters, MO 63376

If to the Government:

Kevin R. Golinghorst
Colonel, U.S. Army
District Engineer
1222 Spruce Street
St. Louis, Missouri 63103

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE VII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE VIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

CITY OF ST. PETERS

BY: _____
Kevin R. Golinghorst
COL, EN
Commanding

BY: _____
William J. Malach
City Administrator
City of St. Peters

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer for the City of St. Peters, that the City of St. Peters is a legally constituted public body with full authority and legal capability to perform the terms of the Cooperation Agreement between the Department of the Army and the City of St. Peters in connection with the St. Peters Old Town Levee Rehabilitation Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Cooperation Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Cooperation Agreement on behalf of the City of St. Peters acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 2023.

DRAFT

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

BY: _____

DATE: _____

ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OF THE CITY OF ST. PETERS, MISSOURI TO ENTER INTO A CONTRACT WITH PARKING LOT MAINTENANCE LLC FOR THE 2023 PARTIAL DEPTH REPAIR PROGRAM

WHEREAS, the City of St. Peters has long been an advocate of improved transportation systems and facilities to promote the general health, safety, and welfare of the community; and

WHEREAS, funds have been appropriated by the Board of Aldermen for the maintenance and repair of City streets; and

WHEREAS, the City received two (2) bids on July 6, 2023 for preventative maintenance on City streets by means of partial depth repairs; and

WHEREAS, it is recommended that the bid be awarded to the low, responsive bidder, Parking Lot Maintenance LLC of Lake St. Louis, Missouri.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ST. PETERS, MISSOURI, AS FOLLOWS:

SECTION 1. That the City Administrator of the City of St. Peters, Missouri be and he is hereby authorized to enter into a contract with Parking Lot Maintenance LLC in the initial amount of \$144,900.00 to perform work associated with the 2023 Partial Depth Repair Program. Upon approval of the City Administrator, the initial contract amount shall be adjusted as necessary based on the final measured quantities at the unit prices bid in the contract.

SECTION 2. The City Administrator be and he is hereby authorized to negotiate, execute and administer said contract on behalf of the City of St. Peters.

SECTION 3. The Project approved by this Ordinance is subject to the requirements of Section 292.675, RSMo, which requires all contractors or subcontractors doing work on the Project to provide, and require its on-site employees to complete, a ten (10) hour course in construction safety and health approved by the Occupational Safety and Health Administration (“OSHA”) or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program. The training must be completed within sixty (60) days of the date work on the Project commences. On-site employees found on the worksite without documentation of the required training shall have twenty (20) days to produce such documentation. Non-compliance with this ordinance will be investigated and adjudicated by the Department of Labor and Industrial Relations pursuant to RSMo 292.675.

SECTION 4. Savings Clause. Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

SECTION 5. Severability Clause. If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision, which had been held invalid, is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION 6. This ordinance shall be in full force and take effect from and after the date of its final passage and approval.

Read two times, passed and approved this 10th day of August, 2023.

Len Pagano, As Presiding Officer and as Mayor

Attest: _____
Patricia E. Smith, City Clerk

No.

ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OF THE CITY OF ST. PETERS, MISSOURI TO ENTER INTO A MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION TRANSPORTATION ALTERNATIVES PROGRAM AGREEMENT FOR THE MID RIVERS MALL DRIVE MULTI-USE PATH PROJECT (RTE N TO MO 364) (FEDERAL PROJECT NO. TAP 7303(625))

WHEREAS, the City of St. Peters has long been an advocate of improved transportation systems and facilities to promote the general health, safety and welfare of the community; and

WHEREAS, the United States Congress has authorized SAFETEA-LU funds to be used for transportation alternatives activities in order to facilitate transportation and transportation-related projects to be more fully integrated into the fabric of the communities they serve; and

WHEREAS, the Missouri Highways and Transportation Commission (“Commission”) is the agency designated to receive and dispense funds for the Transportation Alternatives Program (TAP); and

WHEREAS, the Commission has determined that the Mid Rivers Mall Drive Multi-Use Path Project (Rte N to MO 364) is consistent with the goals of the Transportation Alternatives Program (TAP).

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ST. PETERS, MISSOURI, AS FOLLOWS:

SECTION 1. That the form, terms, and provisions of the Missouri Highways and Transportation Commission Transportation Alternatives Program (TAP) Agreement attached hereto, marked as Exhibit “A”, and incorporated by reference herein, be and they hereby are, in all respects approved, and that the City Administrator is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer for and on behalf of the City said Agreement for the Mid Rivers Mall Drive Multi-Use Path Project (Rte N to MO 364) (Federal Project No. TAP 7303(625)) in substantially the form attached hereto. The City Clerk of the City is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Missouri Highways and Transportation Commission Transportation Alternatives Funds Program (TAP) Agreement.

SECTION 2. Savings Clause.

Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise mollify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

SECTION 3. Severability Clause.

If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is not longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION 4. This ordinance shall be in full force and take effect from and after the date of its final passage and approval.

Read two times, passed and approved this 10th day of August 2023.

Len Pagano, As Mayor and as Presiding Officer

Attest: _____
Patricia E. Smith, City Clerk

CCO Form: FS25
Approved: 04/95 (MGB)
Revised: 10/22 (MWH)
Modified:

CFDA Number: 20.205
CFDA Title: Highway Planning and Construction
Award name/number: TAP-7303(625)
Award Year: 2024
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION ENHANCEMENTS FUNDS
PROGRAM AGREEMENT**

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

WITNESSETH:

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

(1) PURPOSE: The United States Congress has authorized, in Infrastructure Investment and Jobs Act (IIJA); 23 U.S.C. §101, §106 §133; and §208 funds to be used for transportation enhancements activities. The purpose of this Agreement is to grant the use of such transportation enhancement funds to the City.

(2) LOCATION: The transportation enhancements funds which are the subject of this Agreement are for the project at the following location: construct Shared Used Path on Mid Rivers Mall Drive from former Route N to MO 364.

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

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

made to the City from future payments to the City. The City may not be eligible for future Transportation Enhancements Funds if the City does not meet the reasonable progress policy.

(4) INDEMNIFICATION:

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

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

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

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

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

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

(6) COMMISSION REPRESENTATIVE: The Commission's St. Louis District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

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

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the City 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 City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City 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 City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City 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 City 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 City is in the exclusive possession of another who fails or refuses to furnish this information, the City 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 City 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 City complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City 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 City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

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

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The

City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

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

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalk or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalk or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalk or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City's failure to maintain the improvement. If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The

Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

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

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 65 percent not to exceed \$519,181. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. The City shall repay any progress payments which involve ineligible costs.

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

(19) PERMITS: The City shall secure any necessary approvals or permits from any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(20) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs

incurred in connection with the Transportation Enhancement Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(21) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(22) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(23) 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.

(24) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(25) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

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

(27) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding

Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

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

Executed by the City this _____ (date).

Executed by the Commission this _____ (date).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF ST. PETERS

By _____

Title _____

Title City Administrator

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

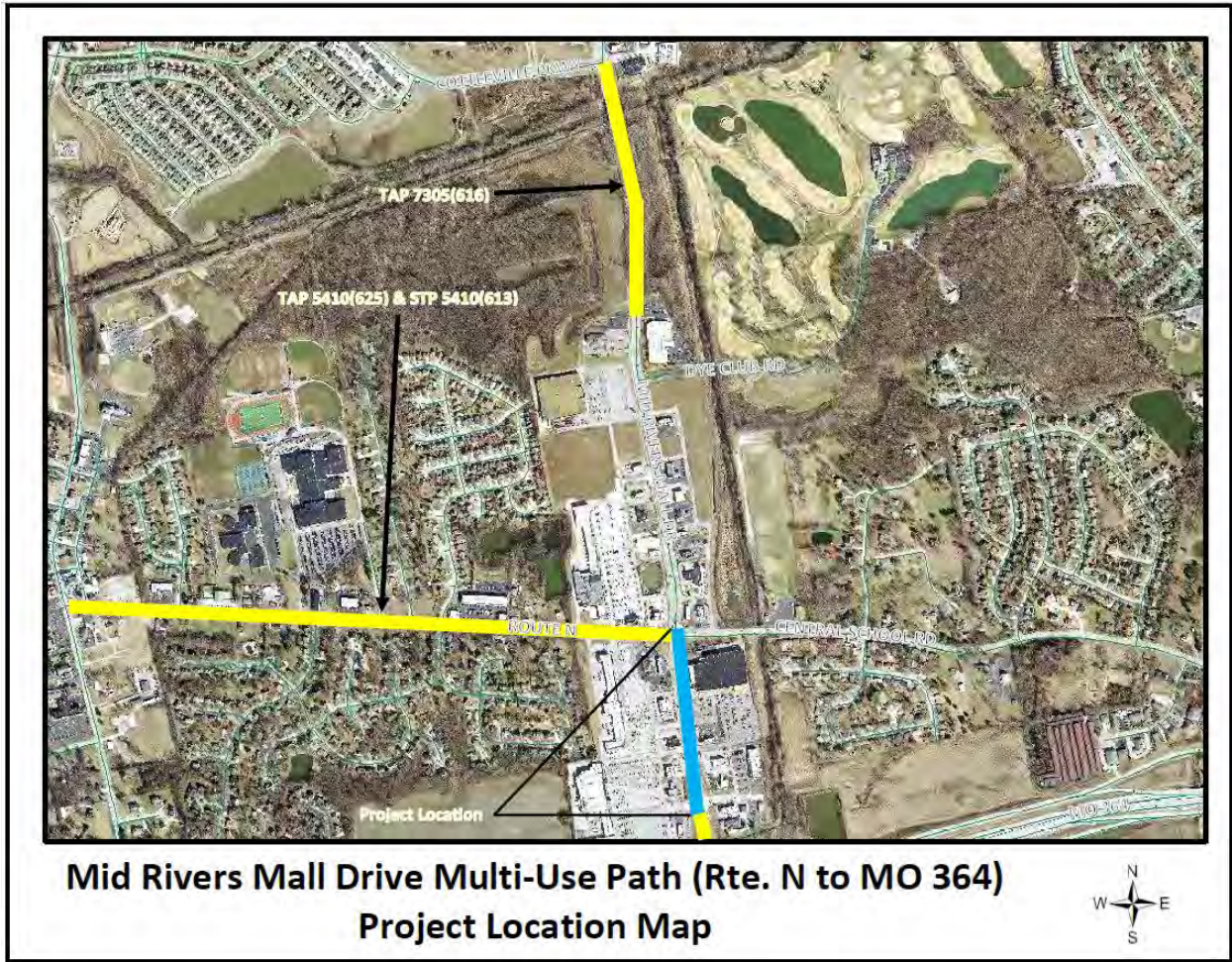
Approved as to Form:

Commission Counsel

Title _____

Ordinance No _____

Exhibit A - Location of Project



Mid Rivers Mall Drive Multi-Use Path (Rte. N to MO 364)
Project Location Map

Exhibit B – Project Schedule

Project Description: TAP-7303(625) Mid Rivers Mall Drive

PROJECT DEVELOPMENT SCHEDULE			
<i>Note: many stages can occur concurrently.</i>			
Activity Description	Start Date (MM/YYYY)	Finish Date (MM/YYYY)	Time Frame (Months)
Receive notification letter	04/2023	04/2023	1
Execute agreement (project sponsor and DOT)	10/2023	12/2023	3
Engineering services contract submitted and approved*	11/2023	01/2024	3
Obtain environmental clearances (106, CE2, T&E, etc.)	11/2024	07/2025	20
Public meeting/hearing			
Develop and submit preliminary plans	01/2024	06/2024	6
Preliminary plans approved	06/2024	07/2024	2
Develop and submit right-of-way plans	01/2024	09/2024	9
Review and approval of right-of-way plans	09/2024	10/2024	2
Submit and receive approval for notice to proceed for right-of-way acquisition (A-Date)*	10/2024	11/2024	2
Right-of-way acquisition	11/2024	07/2025	8
Utility coordination	01/2024	06/2025	18
Develop and submit PS&E	01/2024	07/2025	19
District approval of PS&E/advertise for bids*	07/2025	09/2025	3
Submit and receive bids for review and approval	10/2025	01/2026	4
Project implementation/construction	01/2026	09/2026	9
* Finish date must match fiscal year for each milestone shown in bold text.			

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

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and a Supplemental Agreement is required to modify this date.

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

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Assurances Required:

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

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

1. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages.

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

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

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

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

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

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

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

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

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