

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B 326-14

Department Source: Public Works

To: City Council

From: City Manager & Staff

Council Meeting Date: October 20, 2014

Re: First Supplemental Master Reimbursable Utility Agreement with Missouri Highways and Transportation Commission

Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Exhibits to Resolution/Ordinance

Supporting documentation includes: Copy of City Ordinance 014961, and Master Reimbursable Utility Agreement with MHTC

Executive Summary

Authorizing the City Manager to execute a First Supplemental Master Reimbursable Utility agreement with the Missouri Highways and Transportation Commission (MHTC) to include Buy America requirement.

Discussion

On September 3, 1996, Ordinance 14961 was passed authorizing a Master Reimbursable Utility agreement (attached) with MHTC. This agreement covers the reimbursement of the City's costs to relocate or adjust City facilities required by the Commission's statewide highway projects. With the passage of the Moving Ahead for Progress in the 21st Century Act (MAP-21), the Federal Government now requires that any reimbursable utility work for projects that receive federal aid are now required to meet the provisions of the Buy America policy. Due to this requirement, MoDOT must amend their Master Reimbursable Utility agreement to include Buy America Requirement Compliance.

Fiscal Impact

Short-Term Impact: None

Long-Term Impact: None

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Not Applicable

Strategic Plan Impact: Not Applicable

Comprehensive Plan Impact: Not Applicable

Suggested Council Action

Authorizing the City Manager to execute a First Supplemental Master Reimbursable Utility agreement

City of Columbia

701 East Broadway, Columbia, Missouri 65201



with the Missouri Highways and Transportation Commission to include Buy America requirement.

Legislative History

9/3/96 (Ord 14961) - Authorizing a Master Reimbursable Utility Agreement with MHTC.

A handwritten signature in black ink, appearing to read "John D. Hunt", written over a horizontal line.

Department Approved

A handwritten signature in black ink, appearing to read "Billy White", written over a horizontal line.

City Manager Approved

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 326-14

AN ORDINANCE

authorizing a first supplemental master reimbursable utility agreement with the Missouri Highways and Transportation Commission as it relates to City of Columbia utility relocations along state roadway improvements; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a first supplemental master reimbursable utility agreement with the Missouri Highways and Transportation Commission as it relates to City of Columbia utility relocations along state roadway improvements. The form and content of the agreement shall be substantially in the same form as set forth in "Exhibit A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2014.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

CCO Form: UT
Approved:
Revised: 03/14 (AR)
Modified:

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
FIRST SUPPLEMENTAL MASTER REIMBURSABLE UTILITY AGREEMENT**

THIS FIRST SUPPLEMENTAL MASTER REIMBURSABLE UTILITY AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Columbia (hereinafter, "**City**").

WITNESSETH:

WHEREAS, on September 16, 1996, the **City** and Commission entered into a Master Reimbursable Utility Agreement (hereinafter, "Original Agreement").

WHEREAS, the parties desire to revise the Original Agreement as provided in this First Supplemental Agreement.

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

(1) ADDITION OF PARAGRAPH (20): The following paragraph is hereby added to the Original Agreement:

(20) BUY AMERICA REQUIREMENT COMPLIANCE: The **City** agrees to abide by the provisions of the Buy America requirements as found in 23 USC 313 and 23 CFR 635.410 for the Commission's Federal-Aid Construction Program.

(A) Buy America Compliance Certification: The **City** certifies that when determining products/materials subject to Buy America requirements to use in the performance of this Agreement, it shall use only such products/materials for which it has received a certification from its supplier, or provider of construction services that procures the product/material, certifying compliance with Buy America requirements. This does not include products/materials for which waivers have been granted pursuant to 23 CFR 635.410 or those products/materials that are excluded from compliance with Buy America requirements in the Commission's Engineering Policy Guide 643.2.1.43. The **City** will not be required to provide the Commission copies of the supplier certification as part of this Agreement or with the final invoice of said Commission's Federal-Aid Highway Construction Project.

(B) Buy America Record Retention: The **City** agrees to retain all Buy America compliance documents obtained pursuant to paragraph (20)(A) above, for a period of time of no less than 3 years after the receipt of the final reimbursement for the project by FHWA of said Commission's Federal-Aid Highway Construction Project in accordance with 49 CFR 18.42 (b) and (c). All Buy America compliance documents shall be made available upon request of, and at no cost to, the Commission and/or Federal Highway Administration.

(2) ORIGINAL AGREEMENT: Except as otherwise modified, amended, or supplemented by this First Supplemental Agreement, the Original Agreement between the parties shall remain in full force and effect.

[Remainder of Page Intentionally Left Blank. Signatures Appear on Following Page.]

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

Executed by the **City** this ____ day of _____, 20__.

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

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF COLUMBIA

By _____

Title _____

ATTEST:

Secretary to the Commission

Approved as to Form:

Commission Counsel

Print Name Mike Matthes

Title City Manager

ATTEST:

By _____

Sheela Amin

Title City Clerk

Approved as to Form:

Nancy Thompson

Title City Counselor

(Seal, if available)

Ordinance No. _____

ACKNOWLEDGMENT BY CITY

STATE OF _____)
)
COUNTY OF _____) SS

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

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

Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT BY COMMISSION

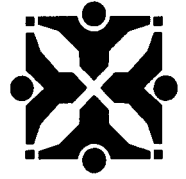
STATE OF MISSOURI _____)
)
COUNTY OF _____) SS

On this _____ day of _____, 20__, before me appeared _____ personally known to me, who being by me duly sworn, did say that he/she is the _____ of the Missouri Highways and Transportation Commission and the seal affixed to the foregoing instrument is the official seal of said Commission and that said instrument was signed in behalf of said Commission by authority of the Missouri Highways and Transportation Commission and said _____ acknowledged said instrument to be the free act and deed of said Commission.

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

Notary Public

My Commission Expires:



SUPPORTING DOCUMENTS INCLUDED WITH THIS AGENDA ITEM ARE AS FOLLOWS:

Copy of City Ordinance 014961, and Master Reimbursable Utility Agreement with
MHTC

COPY

Introduced by Windman
First Reading 8-19-96 Second Reading 9-3-96
Ordinance No. 014961 Council Bill No. B 242-96

014961

AN ORDINANCE

authorizing the City Manager to execute an agreement with the Missouri Highway and Transportation Commission; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a Master Reimbursable Utility Agreement with the Missouri Highway and Transportation Commission to serve as a blanket agreement for all utility relocations along state roadway improvements. The form and content of the agreement shall be substantially as set forth in Attachment "A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this 3rd day of September, 1996.

ATTEST:

Launa H. Daniel Larri Windman
City Clerk Mayor and Presiding Officer

APPROVED AS TO FORM:

Fred Boechmann
City Counselor

Permanent Record
Filed in Clerk's Office

State of Missouri)
County of Boone) ss.
City of Columbia)

I, the undersigned, City Clerk of the City of Columbia, Missouri, certify that the above and foregoing instrument is a true and exact copy of Ordinance No. 14961 as the same appears of record in the council records of said city in my custody in my office in the Daniel Boone Building.

In Witness Whereof, I have hereto set my hand and affixed the corporate seal of said city, this

9th day of September, 1996
Launa H. Daniel
City Clerk

COPY

CCO FORM: MRUA
Approved: 12/95 (MGB)
Revised:
Modified:

(For Company or City Use)
When Facility Occupies Private Easement

MASTER REIMBURSABLE UTILITY AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highway and Transportation Commission (hereinafter "Commission") and the City of Columbia (hereinafter "City").

WITNESSETH:

WHEREAS, the Commission proposes to construct and improve numerous sections of state highways designated by Job Number, Route, and County, in accordance with road plans filed in the office of the County Clerk in the County in which the job is located; and

WHEREAS, in order to improve said highway in accordance with said plans, it will be necessary to adjust certain facilities now located on private easement(s) of the City in order to maintain the present services of said City. Such changes are generally shown in legend on separate plans marked Exhibit A, and on separate estimate of cost marked Exhibit B. The percentage thereof located on private easement(s) is set out in Exhibit B and in the Section below entitled "COST"; and

WHEREAS, in order to reduce paperwork which will improve the business operations of the City and the Commission, it is agreed that this Master Agreement will be the only Agreement executed to cover the reimbursement of the City costs to relocate or adjust the City facilities required by the Commission's state-wide highway projects. This Agreement will remain in full force until both parties agree, in writing, that amendments are needed. It is further agreed that the Commission will acknowledge approval of Exhibits A and B on each project by letter to the City. The City agrees to accept the Commission's approval letter in the same spirit with the same effect as a fully signed utility agreement which was accepted on each Commission highway project in the past.

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

(1) RELEASE: The City grants to the Commission such right, title and interest which the City may have in and to the right of way of said state highway, as specifically described in a separate easement for highway construction.

(2) COMPLY WITH FEDERAL AID POLICY GUIDE (FAPG): The City agrees that the detail plan and estimate of cost for the required adjustment of the City's facilities have been prepared in accordance with FAPG 23 CFR 645A and any amendments which by reference are made a part of this Agreement. The City also agrees that the work hereunder will be performed in accordance with said regulation.

(3) HIGHWAY IMPROVEMENT INFORMATION: The Commission agrees to furnish the City all necessary information on the highway improvement in order to

properly carry out the utility relocation. Known hazardous waste sites will be identified on the right of way.

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

(5) CITY REPRESENTATIVE: The City shall designate a representative for each project to sign transmittal letters for Exhibits "A" and "B" approvals.

(6) COST: The Commission will furnish written approval of the City's plan of adjustment, estimate of cost and percentage of the Commission's obligation of cost for each Commission project. The Commission shall then promptly pay the City 100 percent of the estimated cost of the Commission's obligation. When a lump sum cost estimate is approved, the Commission shall pay no more or no less than the approved Commission obligation. When an actual cost estimate is approved, the Commission shall pay the Commission's obligation. If the final invoice is greater than the Commission's payment, the Commission shall promptly pay the City the additional Commission obligation. Conversely, if the final invoice is less than the Commission's payment, the City shall promptly remit the Commission's overpayment. If the Commission instructs the City not to proceed with the work, the Commission shall reimburse the City for the Commission's hereinabove stated percentage share of the City's costs incurred prior to the date the work is cancelled, as allowed pursuant to FAPG 23 CFR 645A. The City shall promptly return any funds to the Commission in excess of those actually incurred prior to the date work is cancelled.

(7) CHANGE ORDER: If any substantial change is made in the original plan and extent of the work, the City agrees that reimbursement shall be limited to costs covered by a supplemental agreement or change order prepared by the Commission's resident engineer or his/her representative and having approval of the Commission and Federal Highway Administration PRIOR to the performance of the work, as set out in FAPG 23 CFR 645A.

(8) PERMIT REQUIREMENT: The City shall obtain a no cost permit from the Commission's district engineer prior to adjusting or relocating its property from, within, or onto the Commission's right of way. The permit shall be signed by an authorized City representative.

(9) SUBCONTRACT: If the City determines to contract any of the work of adjusting its facilities, it shall furnish the Commission with evidence that it is not adequately staffed or equipped to perform the work and shall comply with the procedures outlined in FAPG 23 CFR 645A relating to performing part or all of the work by contract. Furthermore, if the Company solicits bids for the work, the City shall furnish the Commission a tabulation of bids received, a copy of the invitation to bid, and any other information to support the City's recommendation for award to the lowest qualified bidder prior to any contract work being performed. The City shall obtain the Commission's written approval prior to awarding the contract. The Commission's approval or disapproval shall be communicated to the City no later than twenty-one (21) days after the City's having provided the above information to the Commission, failing which, the Commission shall be deemed to have approved the City's selection. When the lump sum method of reimbursement is approved, the Commission shall not require approval of the City's contractors.

(10) COMMENCEMENT AND COMPLETION OF WORK: After approval of the detail plan and estimate of cost and upon notification by the Commission, the City will commence, without unnecessary delay, to make the changes to its facilities. The City will actively pursue completion of the work to reach the earliest possible completion date and to minimize interference with the Commission's roadway contractor. The City agrees to provide a written estimated time schedule of its planned work and a written notification to the Commission's district engineer at least five (5) days prior to beginning the work. If the City falls behind in its work schedule, it shall submit a revised work schedule to the Commission's resident engineer. The City will make every effort to get back on schedule and complete its work.

(11) COOPERATION: When the City relocation work is being done concurrent with the Commission's roadway contractor operation, the City agrees to cooperate and coordinate its work to minimize disturbance to the roadway contractor or other utility companies working on the project. The Commission's contractor has a contractual duty to cooperate and coordinate its activities with utility companies.

(12) BACKFILL: The City agrees to compact backfill of all excavation within the roadway limits in accordance with the Missouri Standard Specifications for Highway Construction, current edition, or as approved by the Commission's resident engineer.

(13) SAFETY DEVICES: At all times when work is being performed by the City under such conditions as will affect traffic on the public highways, the City will display warning signs, barricades, flags, lights and/or flares as circumstances may require and shall employ and use a flagger when required for safety of the traveling public, all in accordance with the standards set forth in the "Manual on Uniform Traffic Control Devices" (MUTCD).

(14) CONDITION OF RIGHT OF WAY: Upon completion of the work provided in this Agreement, the City shall remove all leftover materials and debris resulting from the work and leave the right-of-way in a neat, workmanlike condition, free of holes, mounds of dirt, or other objectionable material.

(15) FINAL INVOICE SUBMITTAL: After completion of the utility work, the City agrees to submit a final invoice for the cost of the work to the Commission within sixty (60) days or as mutually agreed to by the Commission's resident engineer or his/her representative. The final invoice shall be in as much detail as possible to verify the cost of the completed work. It should follow the format of the original cost estimate (Exhibit B) when possible to promote faster processing by the Commission. The Commission's resident engineer will process the final invoice for payment as soon as possible after receipt.

(16) AUDIT OF RECORDS: For actual cost reimbursement only, the City's final invoice shall be based on the actual direct and related indirect costs. The direct costs shall be in accordance with an established accounting procedure used by the City for its regular operations. The City shall keep a detailed and accurate account of all services, labor, materials, supplies, incidentals, additional necessary private easement acquisition, if any, and other necessary costs involved in making such changes. The Commission's resident engineer in charge of said project, or any authorized agent of the Commission or the Federal Highway Administration, shall have access during normal business hours to audit such City records. These records shall be available at no charge during the contract period and any extension thereof, and for three (3) years from the date of final payment. If the audit reveals that the City has been overpaid, the City will immediately refund to the Commission such overpayment. If the audit reveals that the City has been

underpaid, the Commission will immediately pay the City the difference. For lump sum reimbursement, the Commission shall not audit the City's records.

(17) 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.

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

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

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

Executed by the City this 9th day of September, 1996

Executed by the Commission this 16th day of September, 1996

MISSOURI HIGHWAY AND
TRANSPORTATION COMMISSION

By *Gary Chubb*
Title Deputy Chief Engineer

City of Columbia

By *Raymond A. Beck*
Print Name Raymond A. Beck, P.E.
Title City Manager

ATTEST:

Signed *Mari Ann Winters*
Typed Mari Ann Winters
Secretary to the Commission

ATTEST:

By *Launa H. Daniel*
Launa H. Daniel
Title City Clerk

Approved as to Form:

Signed *Robert M. Hibbs*
Commission Counsel
Typed ROBERT M. HIBBS
Assistant Counsel

Approved as to Form:

Fred Boeckmann
Fred Boeckmann
Title City Counselor
(City Seal, if available)

j:\contract\de\mrua

ACKNOWLEDGMENT BY CITY

STATE OF MISSOURI)
COUNTY OF Boone) SS

On this 9th day of September, 1996, before me personally appeared Raymond A. Beck, to me known, who, being by me duly sworn, did say that he/she is ~~the~~ the City Manager of the City of Columbia, and the seal affixed to the foregoing instrument is the official seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Raymond A. Beck, acknowledged said instrument to be the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at my office in Boone County the day and year first above written.

Carol A. Rhodes
Notary Public

My Commission expires: May 30, 2000

CAROL A. RHODES
Notary Public - Notary Seal
State of Missouri
County of Boone
My Commission Expires May 30, 2000

ACKNOWLEDGEMENT BY COMMISSION

STATE OF MISSOURI)
)
COUNTY OF COLE) ss

On this 16th day of September 1996 before me personally appeared Gary Chullino to me known, who, being by me duly sworn, did say that he/she is the Deputy Chief Engineer of the Missouri Highway and Transportation Commission and the seal affixed to the foregoing instrument is the official seal of said Commission and that said instrument was signed in behalf of said Commission by authority of the Missouri Highway and Transportation Commission and said Gary Chullino acknowledged said instrument to be the free act and deed of said Commission.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at my office in Cole County, the day and year first above written.

Marcia L. Mims
Notary Public

My Commission expires: MARCIA L. MIMS
NOTARY PUBLIC, STATE OF MISSOURI
COUNTY OF COLE

My Commission Expires September 28, 1999