



September 20, 2024

To: Sam Anselm, City Administrator
Kellie Mayers, City Clerk

From: Mike Falwell

Re: Bill 4777 MODOT Highway Safety Program

Executive Summary

The purpose of this ordinance is to approve the agreement between MODOT and the City of West Plains for participation in the Highway Safety Program.

Discussion

MODOT supplements funds for the city's transit department. This is a biennial program renewal agreement between the city and Missouri Department of Transportation. MODOT requires ordinances for their agreements.

Fiscal Impact

N/a

BILL NO. 4777

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING PARTICIPATION IN MISSOURI'S HIGHWAY SAFETY PROGRAM THROUGH THE MISSOURI DEPARTMENT OF TRANSPORTATION.

Whereas, the City of West Plains (the "City") recognizes the importance of highway safety; and

Whereas, the Missouri Department of Transportation, Highway Safety and Traffic Division, at times, provides funding to municipal governments for programs to enforce and encourage safe driving; and

Whereas, the City Council of the City of West Plains has determined that it is in the best interest of the City to be supportive of and participate in programs funded in whole or in part through the Missouri Highway Safety Program.

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

Section 1. The City Council of the City of West Plains, Missouri, hereby authorizes the City's attempts to obtain funding from the Missouri Highway Safety Program and develop programs and undertake enforcement or other actions in connection therewith.

Section 2. The Mayor and City Councilpersons are authorized to execute the "City Council Authorization" for submittal to the Missouri Department of Transportation, Highway Safety and Traffic Division. In addition, the City Administrator is authorized to execute other documents necessary to obtain funding and participate in the Safety Program.

Section 3. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF WEST PLAINS, MISSOURI, ON THIS ____ DAY OF _____, 2024.

MICHAEL TOPLIFF, MAYOR

Attest:

KELLIE MAYERS, CITY CLERK

CCO Form: MO77
Approved: 01/92 (KRR)
Revised: 03/24 (TLP)
Modified:

Project No. MO-2024-24-00
or other available funding

CFDA Number: CFDA #20.509
CFDA Title: Formula Grants for Other Than Urbanized Areas
Federal Agency: Federal Transit Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
NONURBANIZED AREA PUBLIC TRANSPORTATION
OPERATING AND NON-OPERATING ASSISTANCE GRANT AGREEMENT**

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

WITNESSETH:

WHEREAS, the Grantee has applied to the Commission for a grant of funds made available to the Commission under 49 United States Code (USC) 5311 (hereinafter, "5311"), to defray a portion of the costs of a general public transportation project carried out by the Grantee; and

WHEREAS, pursuant to Truly Agreed to and Finally Passed House Bill 4 (TAFP HB 4) of the 96th General Assembly, 1st Regular Session, and subsequent annual appropriations bills, additional public funds are available for programs to support public transit systems, and the Commission is authorized by law to reimburse these public transit systems with these public funds; and

WHEREAS, the Commission has awarded funds available pursuant to TAFP HB 4, 96th General Assembly, 1st Regular Session, or subsequent annual appropriations bills to the Grantee with the understanding that such funds will be used for projects pursuant to this Agreement for the purposes specified in the Grantee's application for 5311 assistance (Appendix A and B, which are attached hereto and incorporated herein by this reference).

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

(1) PURPOSE AND SOURCE OF FUNDS: The purpose of this Agreement is to assist the Grantee in financing the project's expenses that are eligible for federal financial assistance.

(A) Net Operating Cost: Net operating cost is the total cost of operation less revenues received from the service provided. Such net operating cost is estimated

to be the amount determined from the Grantee's projected operating budget (Appendix B).

(B) Non-Operating Cost: Non-operating costs are project administrative expenses incurred by the Grantee (Appendix B).

(C) The Commission will make a grant from available federal funds in the amount not to exceed eighty percent (80%) of certain non-operating costs and fifty percent (50%) of the net operating cost in a manner consistent with the administrative rules of the United States Department of Transportation (USDOT) as contained in the Federal Transit Administration (FTA) Circular 9040.1G dated November 24, 2014, and any other regulations pursuant to the Federal Transit Act, as amended. Reimbursement of non-operating costs will be determined annually based upon available funding.

(D) The Grantee will provide funds from sources other than: (a) unauthorized restricted federal funds; (b) receipts from the use of the project facilities and equipment; or (c) revenues of the general public transportation system in which such facilities and equipment are used in an amount sufficient, together with the grant pursuant to this Agreement, to pay the actual operating and non-operating costs. The non-operating portion of the grant under this Agreement will not exceed eighty percent (80%) of non-operating costs selected by the Commission, and the operating portion of the grant under this Agreement will not exceed fifty percent (50%) of the actual net operating cost.

(2) SCOPE OF WORK AND BUDGET: The Grantee will undertake and complete the project specified in the approved project application and budget (Appendixes A and B).

(3) USE OF PROJECT FACILITIES AND EQUIPMENT:

(A) The project facilities and equipment shall be used to provide general public mass transportation service within the Grantee's transportation service area, substantially as described in the project description (Appendix A and B).

(B) The Grantee agrees to observe the property management standards as set forth in Office of Management and Budget Title 2 Code of Federal Regulations (CFR) Part 200, as now or hereafter amended in order to protect the interest of the USDOT.

(C) Exceptions to the requirements of subparagraph (3)(B) of this Agreement must be specifically approved by the Commission.

(D) If during the grant period, any project facilities/equipment are not used in mass transportation service, whether by planned withdrawal or casualty loss, the Grantee shall immediately notify the Commission and shall remit to the Commission a proportional amount of the fair market value, if any, of the property, which shall be determined on the basis of the ratio of the grant made by the Commission to the actual

cost of the project.

(E) Fair market value shall be deemed to be the value of the property as determined by competent appraisal at the time of such withdrawal from use or misuse, or the net proceeds from public sale, whichever is approved by the Commission.

(F) In the event of loss due to casualty or fire, the damages paid by the insurance carrier or payable from the self-insured reserve account shall be considered fair market value. In no event is salvage value to be considered fair market value.

(G) The Grantee shall keep satisfactory records with regard to the use of the property and submit to the Commission upon request such information as is required in order to assure compliance with this paragraph and shall immediately notify the Commission in all cases in which project facilities/equipment are used in a manner substantially different from that described in the project description.

(H) The Grantee shall maintain in amount and form satisfactory to the Commission such insurance as will be adequate to protect project facilities/equipment throughout the period of required use.

(I) The Grantee shall also submit to the Commission at the beginning of each calendar year during such period, a certification that the project facilities/equipment are still being used in accordance with the terms of paragraph (3) of this Agreement and that no part of the local contribution to this cost of the project has been refunded or reduced, except as authorized above.

(4) PROJECT TIME PERIOD: The project period shall be from July 1, 2023 to December 31, 2026.

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

(6) LABOR PROTECTION:

(A) The Grantee agrees to accept and abide by the terms and conditions of 49 USC 5333(b), as amended, (hereinafter, "5333(b)"), absent a waiver by the United States Department of Labor.

(B) The Grantee agrees that it is the exclusive party responsible under the terms of the special 5333(b) warranty and that the State of Missouri, acting through the Commission, assumes no obligation under the terms of the special 5333(b) warranty.

(C) The Grantee shall be solely financially responsible for the application of the conditions of 5333(b).

(7) AUDITS, INSPECTION, AND RETENTION OF RECORDS: The

Commission and the USDOT, or any of their representatives, shall have full access to and the right to examine, during normal business hours and as often as the Commission or the USDOT deems necessary at no charge to the Commission and/or its designees or representatives, all of the Grantee's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit under the guidelines of 2 CFR Part 200, examine and make excerpts or transcripts from such records and other matters covered by this Agreement. Such rights shall last for three years beyond the longer of the following periods: (a) the period during which any property acquired with funds provided pursuant to this Agreement is used for purposes for which the federal financial assistance is extended, or for another purpose involving the provisions of similar services or benefits; or (b) the period during which the Grantee retains ownership or possession of such property; or (c) the end of the project time period specified in paragraph (4). All documents, accounting records and other material pertaining to costs incurred in connection with the project shall be retained by the Grantee for three (3) years from the date of final payment to facilitate any audits or inspections.

(8) PROPERTY MANAGEMENT STANDARDS: The Grantee's services rendered and reimbursable expenses incurred shall be those allowable under 2 CFR Part 200.

(9) REPORTS: The Grantee shall advise the Commission regarding the progress of the projects at such times and in such a manner as the Commission may require, including, but not limited to, meetings and interim reports.

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

(11) INSURANCE:

(A) The Grantee is required or will require any contractor procured by the Grantee to work under this Agreement:

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

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$600,000 per claimant and \$4,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions

and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

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

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

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

(B) Administrative Rules: The Grantee shall comply with the administrative rules of the USDOT relative to nondiscrimination in federally assisted programs of the USDOT (49 CFR Subtitle A, Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The Grantee shall not discriminate on grounds of the race, color, religion, 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 Grantee shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices.

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

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

who fails or refuses to furnish this information, the Grantee shall so certify to the Commission or the USDOT as appropriate and shall set forth what efforts it has made to obtain the information.

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

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

(G) Incorporation of Provisions: The Grantee shall include the provisions of paragraph (12) 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 USDOT. The Grantee will take such action with respect to any subcontract or procurement as the Commission or the USDOT may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the Grantee becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Grantee may request the United States to enter into such litigation to protect the interests of the United States.

(13) SECTION 504 ASSURANCES AND THE AMERICANS WITH DISABILITIES ACT OF 1990: The Grantee shall comply with all the requirements imposed by the USDOT regulations implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 (and any subsequent amendments thereto) set forth in 49 CFR Subtitle A, Parts 27, 37, and 38, as well as all applicable regulations and directives issued pursuant thereto by other Federal Departments or agencies.

(14) DISADVANTAGED BUSINESS ENTERPRISE (DBE): The Grantee agrees to either prepare and submit for Commission approval a DBE plan as defined in 49 CFR Subtitle A, Part 26 or to be included in the Commission's DBE goals. Should the Grantee opt to be included in the Commission's DBE goals, the Grantee will submit semi-annual reports to the Commission documenting its compliance with the Commission's goals.

(15) INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.

(16) REIMBURSEMENT:

(A) Net Operating Cost: The Commission, using funds made available from the grant made to it by the USDOT, shall reimburse the Grantee for no more than fifty percent (50%) of the actual net operating cost described in subparagraph (1)(A) of this Agreement; provided, however, in no event shall the total amount reimbursed by the Commission for net operating cost exceed the maximum federal share of \$250,000.00.

(B) Non-Operating Cost: The Commission, using funds made available from the grant made to it by the USDOT, shall reimburse the Grantee for no more than eighty percent (80%) of the non-operating costs selected by the Commission described in subparagraph (1)(B) of this Agreement; provided, however, reimbursement of non-operating costs will be determined annually based upon available funding and in no event shall the total amount reimbursed by the Commission for non-operating cost exceed the maximum federal share of \$25,000.00.

(17) PAYMENT: Progress payments, based upon actual allowable operating and non-operating costs, for not less than one (1) month may be made upon receipt of an itemized invoice from the Grantee. The itemized invoice shall be reviewed by the Commission prior to payment.

(18) REIMBURSEMENT CONDITIONS: Reimbursement by the Commission is subject to the following conditions:

(A) Funds made available to the Commission and Grantee are subject to appropriations made by the General Assembly. The maximum Commission payment on any monthly or quarterly request and in the aggregate, when added to federal operating assistance funds available and applied to the same operating period, shall not cause the total of state and federal operating assistance to exceed the amount of operating assistance for which Grantee would have qualified in federal funds had additional federal funds been available.

(B) Financial summaries submitted to the Commission must include a certification that costs have been incurred in the performance of this Agreement and a record of the actual costs.

(C) Reimbursement will be made by the Commission on an incremental basis. Reimbursement is subject to approval by the Commission. All requisition forms shall be in an appropriate format approved by the Commission.

(D) Requisitions requesting reimbursement for operating expenses and for non-operating expenses shall be in accordance with the approved project operating budget (Appendix B).

(E) The Grantee shall not be reimbursed for any expenses incurred prior to or after the project period. Post audit activities will be conducted by the Commission.

(19) AMENDMENTS: Any change in this Agreement, whether by modification or

supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Grantee and the Commission.

(20) SUBCONTRACTS: None of the project activities described in Appendixes A or B shall be subcontracted without the prior written consent of the Commission. All subcontracts shall be subject to the terms and conditions of this Agreement. The Grantee, however, shall remain responsible for the proper completion of the project notwithstanding any subcontract.

(21) TERMINATION: This Agreement may be terminated upon any of the following conditions:

(A) If, for any cause, the Grantee shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Grantee shall violate any of the covenants, agreements, or stipulations contained herein, the Commission shall have the right to terminate this Agreement if such default or violation is not corrected within twenty (20) days after written notice is sent to the Grantee describing such default or violation.

(B) The Commission may terminate this Agreement without recourse in the event that, for any reason, federal funds and/or state funds are not appropriated, allotted, or available to the Commission for the purpose of meeting the Commission's obligation hereunder. The Commission will provide written notice of such termination to the Grantee at least five (5) days prior to the effective date of termination.

(C) Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least forty-five (45) days in advance of such termination date.

(22) STATEMENT OF REVENUE AND EXPENDITURES: The Grantee agrees that a statement of revenue and expenditures, based on actual figures, will be submitted with each invoice in a format approved by the Commission upon completion of the project. The Grantee shall provide the Commission with a final invoice indicating the detailed costs, revenues and actual operating loss, when applicable, to the 5311 grants. Upon receipt of the final invoice, an audit will be performed by the Commission.

(23) SOURCE OF COMMISSION FUNDS: The obligation of the Commission for financial assistance in the project is contingent upon this Agreement being approved by the FTA and the USDOT, and upon federal funds being allocated to, and approved, for the project.

(24) LACK OF WAIVER: In no event shall payment of grant funds to the Grantee by the Commission constitute or be construed as a waiver by the Commission of any breach of covenants, or any default which may exist on the part of the Grantee, and the making of any such payment by the Commission while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Commission with respect to such breach or default.

(25) SECURITY: The Grantee agrees that upon purchase with funds provided under this Agreement of any equipment for which a title certificate may be obtained or is required under the laws of Missouri that the Grantee shall execute such documents as may be necessary to protect and secure a lien upon such equipment in favor of the Commission. Any and all fees required to be paid to secure and maintain said lien shall be paid by the Grantee.

(26) CONTRACTS FOR PROVIDERS OF TRANSIT SERVICE: The Commission reserves the right to review and concur in the Grantee's specifications and advertisements for transit and professional services contracts prior to submission to prospective bidders. The Commission will concur in award of bid by the Grantee prior to the execution of this Agreement between the Grantee and any bidder.

(27) COMMISSION REPRESENTATIVE: The Commission's chief 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.

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

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

(30) 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.

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

(32) STATE MANAGEMENT PLAN: The Grantee agrees to the terms and conditions of the Missouri Department of Transportation's State Management Plan incorporated herein by reference.

(33) CONFIDENTIALITY: The Grantee shall not disclose to third parties confidential factual matters provided by the Commission except as may be required by statute, ordinance, or order of court, or as authorized by the Commission. The Grantee shall notify the Commission immediately of any request for such information.

(34) PRIVACY ACT:

(A) The Grantee agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC 552a. Among other things, the Grantee agrees to obtain the express consent of the USDOT before the Grantee or its employees operate a system of records on behalf of the USDOT. The Grantee understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the Agreement.

(B) The Grantee also agrees to include these requirements in each of its contracts to administer any system of records on behalf of the USDOT financed in whole or in part with Federal assistance provided by FTA.

(35) STATE AND LOCAL LAW DISCLAIMER: The use of many of the suggested clauses are not governed by Federal law but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on State law, and that before the suggested clauses are used in the Grantee's procurement documents, the Grantee should consult with their local attorney.

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

(37) DRUG-FREE WORKPLACE: The Grantee agrees to maintain a drug-free workplace for all employees and to have an anti-drug policy and awareness program in accordance with the Drug-Free Workplace Act of 1988 (41 USC 701 *et seq.*), as amended, and 49 CFR Part 32.

(38) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006 (FFATA): The Grantee shall comply with all reporting requirements of FFATA, as amended. This Agreement is subject to the award terms within 2 CFR Part 170.

(39) FEDERAL CLAUSES: The Grantee and its subcontractors shall comply with the Federal Transit Administrations third party contracting clauses as specified in Appendix C of this agreement.

[The remainder of this page left intentionally blank]

DRAFT

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

Executed by Grantee on _____ (date).

Executed by MHTC on _____ (date).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF WEST PLAINS

By: _____

By: _____

Title: _____

Title: _____

ATTEST:

ATTEST:

Secretary to the Commission

By: _____

Title: _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Counsel

Ordinance No. _____