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REIMBURSEMENT AGREEMENT BETWEEN
THE MISSOURI DEPARTMENT OF NATURAL RESOURCES
AND
THE CITY OF ST. LOUIS
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®

CONTRACT NO: 59900

CONTRACT NOT TO EXCEED AMOUNT: \$75,000.00

CONTRACTOR:

Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

ESTIMATED ANNUAL ENCUMBRANCES:

FY 09-10: \$18,750.00
FY 10-11: \$25,000.00
FY 11-12: \$25,000.00
FY 12-13: \$ 6,250.00

CONTRACT AUTHORIZED BY:

Ordinance Numbers: 68337
Budget Account: 5650

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
ST. LOUIS, MISSOURI

**REIMBURSEMENT AGREEMENT BETWEEN
THE MISSOURI DEPARTMENT OF NATURAL RESOURCES
AND
THE CITY OF ST. LOUIS
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®**

This Reimbursement Agreement, made and entered into this ____ day of _____, 2009 (the “**Agreement**”), by and between the City of St. Louis, a municipal corporation of the State of Missouri (the “**City**”) and the Missouri Department of Natural Resources (“**MDNR**”).

WITNESSETH THAT:

WHEREAS, City owns and operates Lambert-St. Louis International Airport® (the “**Airport**”);

WHEREAS, the City entered into a Memorandum of Understanding with MDNR dated [insert date] (“**MOU**”), subject to amendment or replacement from time to time, that obliges the City to reimburse MDNR for certain services described herein, consistent with MDNR’s reimbursement practices under the Voluntary Cleanup Program (“**VCP**”) or any succeeding or amended program as described more fully in ARTICLE III of this Agreement, in order to facilitate the City’s existing Airport operations;

WHEREAS, the previous reimbursement agreement is to expire on September 30, 2009;

WHEREAS, the City and MDNR recognize the importance of the MOU to ensure expenses associated with environmental regulatory issues associated with Airport operations continue to be borne by the City.

NOW, THEREFORE, in consideration of the payments, terms, conditions, agreements, hereinafter set forth, to be made and performed by City, MDNR hereby promises and agrees that it will faithfully perform all the services called for by the Agreement, in the manner and under the terms, covenants, and conditions hereinafter set forth.

ARTICLE I – SCOPE OF SERVICES

- A. Provide personnel to perform oversight of permitting, investigation, remediation, and beneficial reuse activities at the Airport which may include property to be acquired at a future date as part of the Airport Operations.
- B. Conduct site visits as necessary.
- C. Provide timely stormwater, air emissions and land disturbance permit reviews as may be necessary.

- D. Monitor risk management controls, as needed, to ensure protection of the environmental and the public health and safety.
- E. Provide written correspondence and hold meetings as needed to discuss accomplishments, project needs and resolve any remaining contamination issues that may impact the Airport as may be needed.
- F. The MDNR will purchase needed supplies and keep detailed staff time accounting records in the above areas.

ARTICLE II – PERIOD OF AGREEMENT

The total period of this Agreement shall be for a three (3) year period beginning on the date specified below and ending thirty-six (36) months thereafter. The Agreement is expressly subject to the City's Charter and ordinances and shall not become effective or binding on the City until fully executed by all signatories of the City. The commencement and expiration dates shall be as follows:

Commencement Date: October 1, 2009 Expiration Date: September 30, 2012

ARTICLE III – REIMBURSEMENT AND ACCOUNTING ARRANGEMENTS

- A. The City will reimburse MDNR on a quarterly basis to cover costs incurred by MDNR for the preceding quarter. Consistent with the MOU with the City, Mo.Rev.Stat. Section 260.569.1 and MDNR's existing reimbursement practices as set forth in the VCP or any succeeding or amended program, the reimbursable costs shall include direct salary or labor costs; fringe benefits, calculated at a rate previously developed by MDNR; direct expenses incurred during administration and oversight and reasonable and customary analytical costs associated sampling; plus indirect costs calculated as the approved United States Department of Interior rates in accordance with amounts and rates shown in the "Project Financial Budget Plan" found at **EXHIBIT A**. Itemized invoices will be in a format acceptable to the City, and shall segregate costs as requested by the City. Payment shall be made within 30 days of receipt unless written notice is given to the MDNR as to why payment is being withheld. The total Not-To-Exceed Contract Amount of this Agreement is Seventy-Five Thousand Dollars (\$75,000.00). All payments hereunder shall be contingent upon the appropriation of sufficient funds by the City annually.
- B. MDNR will take all reasonable measures to ensure that costs do not exceed the Not-To-Exceed Contract Amount. In the event actual costs fall short of the MDNR budget estimates, the City shall pay only the actual costs incurred. In the event MDNR expects costs to exceed the Not-To Exceed Contract Amount, MDNR shall promptly notify the City in writing as soon as reasonably possible after learning of the expected exceedance. As part of this notification, the

MDNR shall provide the City with a revised estimate to perform the remaining work.

- C. Upon receiving such an upwardly revised estimate, the City shall make a reasonably good faith effort to obtain additional appropriations to cover the revised costs. In the event the City cannot obtain such additional appropriations, the City shall notify the MDNR of its inability to complete funding. If the City cannot obtain additional funds to cover the increased costs, MDNR will no longer be required to accelerate its normal efforts related to this project.

ARTICLE IV – AMENDMENT

Any change to this Agreement shall be formalized by an appropriate written amendment to the Agreement duly authorized and executed by all the signatories to this Agreement. However, the Director of Airports, on behalf of the City and in its best interest, may agree to amend the exhibit(s) referred to herein provided that such amendments do not increase the total Not-To-Exceed Contract Amount of this Agreement.

ARTICLE V - REVOCATION

This Agreement may be terminated, revoked, or canceled by either party without cause and with no liability whatsoever to the canceling party upon thirty (30) days' notice in writing. The City will pay MDNR for all approved services provided up to the date of termination.

ARTICLE VI – LIABILITY

- A. With regard to liability that may arise from activities that are the subject of this Agreement, each party expressly agrees that it shall be solely and exclusively liable for the negligence of its own agents, servants, contractors, and/or employees, in accordance with applicable laws and that neither party looks to the other to save or hold harmless for the consequences of any negligence on the part of one of its own agents, servants, and/or employees.
- B. City will assist MDNR personnel with obtaining the necessary security clearances and/or escorts to allow freedom of movement to fulfill conditions of this Agreement, and will advise MDNR of any condition which may impact the work under this Agreement.
- C. The City and MDNR agree to work diligently and to use their best efforts to carry out program activities as described in this Agreement.

ARTICLE VII - AUDITS/INSPECTIONS

- A. MDNR shall maintain all records relating to the reimbursable costs incurred by MDNR and invoiced to the City, including but not limited to itemized invoices,

payroll records, time sheets, contracts, and other proof of payments (the **“Records”**), in accordance with generally accepted accounting practices.

- B. MDNR shall allow any authorized representative of the City, state, and federal agencies access to all Records for inspection for auditing purposes (at all reasonable times upon reasonable notice to the MDNR and at no charge to the City or its authorized representatives or agents and state and federal agencies) during the period of this Agreement and any extension thereof, for at least three (3) years from the date of the last final payment made hereunder.
- C. MDNR shall allow authorized representative of the City, state and federal agencies (at all reasonable times and at no charge to the City of its authorized representatives or agents and state and federal agencies) to make progress audits and inspections at any time during this project or Agreement, upon reasonable notice to the MDNR.
- D. If audit findings have not been resolved, MDNR shall retain the applicable Records until those findings have been resolved.

ARTICLE VIII - REQUIRED APPROVALS

When the consent, approval, waiver, or certification (**“Approval”**) of either party is required under the terms of this Agreement, such Approval must be in writing and signed by the party making the Approval. Whenever the Approval of the City or the Director of Airports is required, the Approval must be from the Director of Airports or his/her authorized or designated representative.

ARTICLE IX – NOTICE

Any notice, request, consent, approval, information, document, correspondences provided for in this Agreement shall be in writing and delivered personally or sent by an overnight or express mail service, with a return receipt, postage prepaid to the person and address set forth below. Notice shall be deemed effective upon personal delivery or when such notice is mailed. Any party may change the person or address to which notices are to be sent to it by giving written notice of such change to the other party in the manner herein provided for giving notice:

If to MDNR:

Missouri Department of Natural
Resources Accounting Program
P.O. Box 176
Jefferson City, Missouri 65102

with, a copy to:

Dan Schuette
Director, Division of Environmental Quality
Missouri Department of Natural Resources
Hazardous Waste Program
P.O. Box 176
Jefferson City, MO 65102

Scott Totten
Chief Ombudsman
Missouri Department of Natural Resources
Hazardous Waste Program
P.O. Box 176
Jefferson City, MO 65102

and, if to the City:

Director of Airports
Task Orders, Agreement and Facility Issues
Lambert-St. Louis International Airport
10701 Lambert International Boulevard
P.O. Box 10212
St. Louis, Mo. 63145

with, a copy to:

Gerard Slay
Senior Deputy Airport Director
Lambert-St. Louis International Airport P.O. Box 10212
P.O. Box 10212
St. Louis, Missouri 63145

Airport Contract Administration Manager
Lambert-St. Louis International Airport
P.O. Box 10212
St. Louis, Missouri 63145.

ARTICLE X - MISCELLANEOUS PROVISIONS

- A. Exhibits. All exhibits described herein are fully incorporated into this Agreement by this reference as if fully set out herein. City and MDNR shall reasonably and in good faith finalize and attach all such exhibits, appendices, and attachments to the Agreement which may not have been in final form as of the date of the Agreement.
- B. Civil Rights Act. MDNR shall comply with Title VI of the Civil Rights Act of 1964 as amended and the regulations relating to nondiscrimination in federally assisted programs and provide a certification to that effect if requested by the City (see, Title 49, Code of Federal Regulations, Part 21).
- C. Force Majeure. Neither City nor MDNR shall be deemed in violation of this Agreement if it is prevented from performing any obligation hereunder by reason of strike, boycott, labor disputes, embargoes, shortage of materials, acts of God, acts of a public enemy, acts of superior governmental authority,

weather conditions, riots, rebellion, or sabotage or any other circumstances for which it is not responsible and which is not within its control.

- D. Modification for Granting Funding. In the event the Federal Aviation Administration or any other governmental agency request, as a condition to the granting of funds for this Agreement or program or the improvement, expansion or development of the Airport, modifications or changes to this Agreement, MDNR warrants, represents, and agrees to consider in good faith such necessary amendments or modifications of the terms, covenants, conditions, representations, warranties, and provisions of this Agreement; provided that such amendments or modifications do not in any way increase the amount of non-reimbursable expenses to be incurred by MDNR in connection with this Agreement.
- E. No Personal Liability. The City and MDNR acknowledge and agree that the signatories to this Agreement shall not have any personal liability or obligation for performance of this Agreement merely by virtue of having signed this Agreement.
- F. Assignment. This Agreement shall not be assigned by either party.
- G. Acknowledgment of Terms and Conditions. The parties hereto affirm each has full knowledge of the provisions and requirements contained in this Agreement. Each party acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Agreement. As such, the provisions of this Agreement shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of the Agreement or any amendments, modifications, or exhibits thereto.
- H. Waiver. No waiver of any breach of any term or provision herein contained shall be deemed, or shall constitute a waiver of any preceding or succeeding breach thereof of any term or provision contained herein. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act. No waiver shall be binding unless executed in writing by the party granting the waiver.
- I. Severability. If for any reason one or more of the terms or provisions contained in this Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement and shall be construed as if such invalid, illegal or unenforceable term or provision never had been included in this Agreement, provided the invalidity of such terms or provision does not materially prejudice either the City or MDNR in its respective rights and obligations contained in the valid terms and provisions of this Agreement.

J. Governing Law. This Agreement shall be deemed to have been made in, and construed in accordance with the laws of the State of Missouri, and is subject to the City's Charter and ordinances. The parties shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement or the work contemplated herein.

K. Disputes. If disputes or technical disagreements develop between the parties concerning the work and services contemplated herein or the provisions of this Agreement, the parties hereto agree that they will elevate these disputes or technical disagreements to the highest practicable level of their respective organizations for good faith negotiations in order to resolve any such disputes or technical disagreements.

Confidential
garvinm@stlouis-mo.gov
2020-01-16 13:34:26 +0000

IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals
as set forth below:

THE CITY OF ST. LOUIS, MISSOURI, OPERATING
LAMBERT - ST. LOUIS INTERNATIONAL AIRPORT®:

The foregoing Agreement was approved on this 2nd day of September 2009, by the
Airport Commission.

BY: [Signature] 9-2-09
Commission Chairman and Date
Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at
this meeting on 9-16, 2009.

BY: [Signature] 9-16-09
Secretary, Board of Estimate & Apportionment Date

APPROVED AS TO FORM BY:

COUNTERSIGNED BY:

[Signature] 9-3-09 [Signature] 9/24/09
City Counselor Date Comptroller Date

ATTESTED BY:

[Signature] OCT 01 2009
Register Date

59900

MISSOURI DEPARTMENT OF NATURAL RESOURCES

[Signature] 11-11-09
Director Date

EXHIBIT A

PROJECT FINANCIAL BUDGET PLAN

(October 1, 2009 – September 30, 2012)

OPERATING BUDGET	<u>\$75,000.00</u>
TOTAL CONTRACT NOT-TO-EXCEED AMOUNT	\$75,000.00

MDNR will have a number of individuals working to assist the Airport with the City's cleanup of contamination associated with existing Airport operations. All MDNR staff shall complete time sheets to document their actions, and their expenses shall be coded to track costs to specific activities or projects. Time codes and project codes have been established within MDNR's time accounting and expense billing systems to segregate costs incurred by MDNR for services provided to the Airport.

The expenditures reimbursable by the City shall not exceed the total Not-To-Exceed Contract Amount of this Agreement.

It is believed that the all Department of Natural Resources personnel will be involved from time to time in supporting the MOU with the City for the Airport's activities.

The composition of the team will be reviewed quarterly by both parties to ensure that the project has the proper staffing to provide the required services.

- (1) All permanent employees earn leave each month. This is part of the department's direct labor cost. In order to fairly charge each project or activity with its share of this leave benefit, a leave rate is assessed to each dollar of labor cost on the project. The leave rate is calculated annually. The current leave rate is 11.44%.
- (2) "Fringe Benefits" shall be calculated at the current department fringe benefit rate times the Staff Direct Salary cost. This rate is currently 48.6%.
- (3) "Indirect Costs" shall be calculated at the approved U.S. Department of Interior rate times the sum of Staff Direct Salary Costs plus Direct Expenses (excluding equipment purchases) plus Subcontract Work plus Fringe Benefits. This rate is currently 25.93%.

MEMORANDUM OF UNDERSTANDING

Extension 2009-2012

This Memorandum of Understanding (“MOU”) is entered into between the City of St. Louis (“City”) and the Missouri Department of Natural Resources (“Department”) (each a “Party” and jointly referred to hereafter as “Parties”) for the purpose of memorializing their understanding of their mutual responsibilities to accomplish the purposes stated below.

The Parties represent that:

WHEREAS, the City operates Lambert-St. Louis International Airport (“Airport”), the efficient operation of which is critical to the economic well-being of the St. Louis region; and

WHEREAS, the operation of the Airport involves a complex interrelationship among the City, Airport tenants and neighboring property owners, all of which use the Airport facility, but each have their own operations, many of which impact on the environmental and energy operations of the Airport; and

WHEREAS, to efficiently manage the environmental aspects of the Airport and thereby promote economic development of the region, facilitate the public transportation system and ensure safety of the traveling public, the State of Missouri (“State”) representatives have established a working relationship, which was memorialized in the March 10, 2001 Memorandum of Understanding executed by the Department and the City (“Original MOU”) to represent the joint commitment to achieve environmental compliance and protection in the context of Airport expansion and further development of a tremendous public resource; and

WHEREAS, the City and the Department previously executed an extension of the Original MOU, dated March 3, 2004 (“2004 Extension”); and

WHEREAS, the Airport is embarking on new development initiatives, including the Airport Experience program which will include over \$100 million investment in Airport facilities and operations improvement. Other developments, such as a possible international air cargo development, are also in the planning stages. The Department recognizes the importance of these initiatives to the St. Louis region both economically and as a component of a safe and efficient public transport system and is willing to participate with the Airport in efficiently managing any changes; and

WHEREAS, it is incumbent upon the City and the State, as institutions of public trust, to balance the economic interests of its citizens while being certain to protect human health and the environment; and

WHEREAS, the City has reimbursed the Department's costs in accordance with the Department's practices under the Voluntary Cleanup Program (VCP) under the terms of the Reimbursement Agreement entered into by the City and the Department on September 20, 2006;

WHEREAS, the City and the Department have enlisted the use of a Department Advisory Team, consisting of senior environmental management staff, and an Airport Team, consisting of two City employees, to ensure the prompt resolution of environmental, historical and/or cultural matters potentially affected by the Airport's initiatives and existing operations; and

WHEREAS, the City and the Department recognize the value of continuing the joint and cooperative approach established under the Original MOU and continued in the 2004 Extension to ensure decisions relating to environmental, historical and/or cultural matters impacted by the Airport's operations, including innovative remedial approaches to existing environmental conditions within active airport operations, are made in timely manner; and

WHEREAS, the City and the Department are executing the Reimbursement Agreement concurrently with this extension to the Original MOU and 2004 Extension.

NOW THEREFORE, in full consideration of the foregoing and of the mutual agreements herein contained, the Parties agree as follows:

The Department commits to participate with the City in resolving Airport related environmental, energy, historical and/or cultural matters associated with Airport operations;

The City, recognizing the additional burden placed upon the Department associated with the State's commitment, will continue to reimburse the Department's administrative, technical, engineering and legal costs associated with expedited review of proposals submitted by the Airport for actions as they may involve considerations of an environmental, energy, historical and/or cultural nature.

1. Statement of Basis and Purpose

Under the Original MOU and 2004 Extension, both Parties agreed to support environmental solutions that are technically and scientifically sound, and that adequately protect human health and the environment, while making use of risk-based decision-making consistent with the final use and character of the expanded airport.

To facilitate these solutions the Parties established and empowered a senior environmental management team within the Department, as advisors to the State and the City, with full decision-making authority on behalf of the Department, to be funded by the City consistent with Airport guidelines and limitations. The Parties prepared and executed a reimbursement agreement in that regard.

The Advisory Team was authorized to act within the existing regulatory framework and use creative solutions with existing programs currently provided for in either State or federal programs or practice. Such actions included the evaluation of innovative and flexible approaches, and the approval to use such approaches where they are adequate to protect human health and the environment. The Department agreed to move as quickly as possible in its review of documents and information submitted by the City.

The Advisory Team was limited in membership to those needed for securing proper authority and protecting the interests of the citizens of the State. The Advisory Team and the City acknowledged their responsibility to communicate with interested involved parties not having a representative on the team. The Advisory Team assigned a technical person as direct liaison with the City's technical consulting team.

This extension of the Original MOU, as contemplated in the Original MOU and 2004 Extension, continues the operation of the Advisory Team and City Team under the same terms as the Original MOU for ongoing Airport operations, including continued beneficial reuse of demolition materials, risk-based management of impacted soils and groundwater, NPDES permitting issues, including storm water permit, air emissions, including greenhouse gas emissions, energy proposals, environmental management systems and other environmental issues as they affect ongoing Airport operations which are subject to regulation by the Department.

2. The Advisory Team

The Advisory Team shall consist of Dan Schuette, Director of the Division of Environmental Quality and Scott Totten, Chief Ombudsman, with Scott Totten as the primary contact.

The Advisory Team shall continue to facilitate the timely finalization and execution of all plans and approval requests submitted by the City. The Advisory Team shall also bear the responsibility of communicating the status of the Department's environmental activities related to Airport operations to interested parties, ensuring that creative options are researched and reviewed as appropriate, and the facilitation of necessary permitting and schedules.

The Department's costs shall continue to be reimbursed consistent with the Department's existing practices as set forth in the Voluntary Cleanup Program (VCP). The Department shall be reimbursed for actual costs incurred as provided for in the Reimbursement Agreement, executed concurrently herewith. An accounting shall be conducted at the end of each budget cycle. The accounting reports shall be sent to the contacts listed in the Reimbursement Agreement for review and approval. Once the reports are approved by the City, payment shall be made to the Department.

3. The Airport Team

Complementing the Advisory Team shall be Cornell S. Mays, Deputy Airport Director, and Joletta Golik, Environmental/Health & Safety Manager, with Joletta Golik the primary contact person.

4. Miscellaneous

Both Parties acknowledge and agree that the signatories to this MOU shall not have any personal liability or obligation for performance of this MOU merely by virtue of having signed this MOU.

Each undersigned representative of the Parties to this MOU certifies that he or she is fully authorized to enter into the terms and conditions of this MOU.

This MOU shall remain in effect for three (3) years from the date of the signature of the last signatory to this MOU. However, it is the intent of the Parties to continue the MOU, as it may be renegotiated, beyond the initial three (3) year term as may be necessary and upon mutual written agreement by the Parties. It may be changed as necessary and upon mutual written agreement by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Understanding to be executed this ____ day of ____, 2009.

**THE CITY OF ST. LOUIS, MISSOURI, OPERATING
LAMBERT - ST. LOUIS INTERNATIONAL AIRPORT®:**

The foregoing Memorandum of Understanding was approved on this 2nd day of September 2009, by the Airport Commission.

BY: [Signature] 9-2-09
Commission Chairman and Date
Director of Airports

The foregoing Memorandum of Understanding was approved by the Board of Estimate and Apportionment at this meeting on 9-16, 2009.

BY: [Signature] 9-16-09
Secretary, Board of Estimate & Apportionment Date

APPROVED AS TO FORM BY:

COUNTERSIGNED BY:

[Signature] 9-3-09 [Signature] 9-21-09
City Counselor Date Comptroller Date

ATTESTED BY:

[Signature] OCT 01 2009
Register Date

MISSOURI DEPARTMENT OF NATURAL RESOURCES

59900

[Signature] 11-11-09
Director Date