

**ORDINANCE #65613**  
**Board Bill No. 183**

An Ordinance authorizing the City of St. Louis, Missouri, to enter into a Memorandum of Agreement with the Bi-State Development Agency and St. Louis County, Missouri providing for the City's annual appropriation of the quarter-cent sales tax levied for public mass transportation purposes by Ordinance No. 63168 to the Agency for the purpose of providing funds to pay the costs of the acquisition, design, construction, equipping, operation, development and financing of a project including a light rail transit line, known as Segment I of the Cross-County Corridor, as well as improvements associated with the related upgrade and expansion in transit service, paying debt service on bonds to be issued by the Agency to finance such project costs, and funding other public transportation purposes of the Agency; authorizing the Agency to issue bonds payable from such appropriations and other available revenues of the Agency; authorizing the City to take other necessary actions in connection with such bonds and the project.

WHEREAS, the City is authorized to acquire, construct, own, operate and maintain mass transportation facilities for public service and to fund the operation thereof, to acquire private property which is necessary for the purposes of the City by eminent domain, and to contract for the provision of public mass transportation with the Bi-State Development Agency (the "Agency");

WHEREAS, in 1994, the Missouri General Assembly adopted Senate Bill 432, codified as Section 94.660 RSMo, as amended (the "Prop M Tax Act"), which authorized the City and St. Louis County, Missouri (the "County") to levy up to a one-half cent sales tax for public transportation purposes, on approval of the voters of both the City and the County of such tax;

WHEREAS, on August 2, 1994, a majority of the voters of both the City and the County, respectively, approved the imposition of a one-quarter cent sales tax, known as the Proposition M Sales Tax (the "Prop M Sales Tax"), for the purpose of providing a source of funds for public transportation purposes;

WHEREAS, pursuant to Ordinance No. 63168 the City imposed a City-wide sales tax of one quarter of one percent for public transportation purposes (the "City's Prop M Sales Tax");

WHEREAS, since 1994 the City and the County have annually appropriated funds received from the Prop M Sales Tax for transfer to the Agency for the purpose of funding the Agency's public transportation purposes;

WHEREAS, the Board of Aldermen of the City finds and determines that it is necessary and desirable that the Agency proceed with the construction of a project including a light rail transit line, known as Segment I of the Cross-County Corridor, as well as improvements associated with the related upgrade and expansion in transit service (the "Project"); and

WHEREAS, the Board of Aldermen of the City finds and determines that it is necessary and desirable that the Agency proceed with the issuance of bonds of the Agency to pay the costs of such Project and that the City enter into an agreement providing for the annual appropriation of the City's Prop M Sales Tax to the Agency for the purpose of funding the costs of such Project, paying debt service on bonds to be issued by the Agency for such purposes and funding other public transportation purposes of the Agency, and that the City take certain actions and approve the execution of certain documents in connection therewith as herein provided.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

**SECTION ONE.** Authorization of Memorandum of Agreement. The City is hereby authorized to enter into the Memorandum of Agreement, dated August 1, 2002, among the County, the Agency, and the City (the "Agreement"), in substantially the form filed in the office of the Registrar of the City, with such changes therein as shall be approved by the officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval and the City's approval thereof. The Agreement provides for the City's annual appropriation of the quarter-cent sales tax levies for public mass transportation purposes by Ordinance No. 63168 to the Agency for the purpose of providing funds to pay the costs of the acquisition, design, construction, equipping, operation, development and financing of a project including a light rail transit line, known as Segment I of the Cross-County Corridor, as well as improvements associated with the related upgrade and expansion in transit service (the "Project"), paying debt service on bonds to be issues by the Agency to finance such Project Costs and funding other public transportation purposes of the Agency.

**SECTION TWO.** Approval of Agency's Bonds. The Agency is hereby authorized to issue and sell its bonds (the "Cross County MetroLink Project Bonds") for the purpose of paying the costs of the Project. The Cross County MetroLink Project Bonds shall bear such dates, shall mature at such times and in the amounts, shall be in such denominations, shall bear interest at such rates, shall be in such forms, shall be subject to redemption, shall have such other terms and provisions, covenants and agreements, as approved by the Board of Commissioners of the Agency.

SECTION THREE. Limited Obligations. The Cross County MetroLink Project Bonds and the interest thereon shall be special, limited obligations of the Agency payable solely out of the funds annually appropriated by the City and the County from the Prop M Sales Tax pursuant to the Agreement and other funds of the Agency designated for the Project, and the Agency’s receipts from such funds shall be pledged and assigned to the owners of the Cross County MetroLink Project Bonds as security for the payment thereof. The Cross County MetroLink Project Bonds and the interest thereon shall not be a debt of the County, the City or the State of Missouri, and neither the County, the City, nor the State shall be liable thereon, and the Cross County MetroLink Project Bonds shall not constitute an indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction.

SECTION FOUR. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, to fund the costs of the Project, and to carry out, comply with and perform the duties of the City pursuant to the Agreement and with respect to the Cross County MetroLink Project Bonds. The Mayor, Comptroller, President of the Board of Aldermen, and other officials of the City are hereby authorized, through the term of the Agreement, to execute all documents on behalf of the City as may be required to carry out and comply with the intent of this Ordinance and the Agreement.

SECTION FIVE. This Ordinance shall be in full force and effect from and after the date of its passage and adoption.

**MEMORANDUM OF AGREEMENT  
By and Among  
BI-STATE DEVELOPMENT AGENCY  
OF THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT,  
ST. LOUIS COUNTY, MISSOURI,  
And  
THE CITY OF ST. LOUIS, MISSOURI  
Dated as of August 1, 2002**

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**MEMORANDUM OF AGREEMENT**

**THIS MEMORANDUM OF AGREEMENT** (the “Agreement”), dated as of August 1, 2002, by and among **THE CITY OF ST. LOUIS, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri (the “City”), **ST. LOUIS COUNTY, MISSOURI**, a constitutional charter county and political subdivision of the State of Missouri (the “County”), and the **BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT**, an interstate transportation authority created by Section 70.370 et seq. of the Missouri Revised Statutes and Chapter 127, Section 63r-1 et seq. of the Illinois Compiled Statutes as a body politic and corporate (jointly referred to herein as the “Compact”) (the “Agency”);

**WITNESSETH:**

WHEREAS, the Agency is authorized to acquire by gift, purchase or lease and to plan, construct, operate and maintain passenger transportation facilities and rail terminal facilities; to contract with municipal or other political subdivisions for the services or use of any facility owned or operated by the Agency or owned or operated by such municipality or other political subdivision; to condemn any and all rights or property necessary for the purposes of the Agency; to receive for its lawful activities any contributions or moneys appropriated by municipalities, counties, states or other political subdivisions or agencies, or by the federal government or any agency or officer thereof; and to perform all other necessary and incidental functions;

WHEREAS, the City is authorized to fund the operation of mass transportation facilities for public service, to acquire private property which is necessary for the purposes of the City by eminent domain, and to contract for the provision of public mass transportation with the Agency;

WHEREAS, the County is authorized to acquire, construct, own, operate and maintain mass transportation facilities for public service and to fund the operation thereof, to acquire private property which is necessary for the purposes of the County by

eminent domain, and to contract for the provision of public mass transportation with the Agency;

WHEREAS, in 1994, the Missouri General Assembly adopted Senate Bill 432, codified as Section 94.660 RSMo, as amended (the "Prop M Tax Act"), which authorized the City and County to levy up to a one-half cent sales tax for public transportation purposes, on approval of the voters of both the City and the County of such tax;

WHEREAS, on August 2, 1994, a majority of the voters of both the City and the County, respectively, approved the imposition of a one-quarter cent sales tax, known as the Proposition M Sales Tax (the "Prop M Sales Tax"), for the purpose of providing a source of funds for public transportation purposes;

WHEREAS, since 1994 the City and the County have annually appropriated funds from the Prop M Sales Tax for transfer to the Agency for the purpose of funding the Agency's public transportation purposes;

WHEREAS, in 1995 the East-West Gateway Coordinating Council ("EWGCC"), in conjunction with the Missouri Department of Transportation and the Agency, authorized federally mandated studies of multimodal transportation improvements in a specified corridor of the region known as the Cross-County corridor;

WHEREAS, in 1997 EWGCC approved expansion of the Agency's light rail transit system known as MetroLink in the Cross-County corridor (the "Project", as hereinafter defined) and approved a route for the Project based on a report from the consulting firm of Gannett Fleming which evaluated alignment issues and funding options for the light rail expansion (Gannett Fleming, Cross-County Strategic Alignment Analysis, East-West Gateway Coordinating Council);

WHEREAS, in 1997 EWGCC adopted a *Business Plan* for the Project (Gannett Fleming, Cross-County MetroLink Segment I Business Plan, East-West Gateway Coordinating Council, December 10, 1997, the "Cross-County Business Plan") which set forth the organization and management of the planning and design work for the Cross County corridor and specified that revenues from the Prop M Sales Tax would be used as the exclusive funding source for the Project;

WHEREAS, in 1998 and 1999 consulting firms retained by EWGCC provided community engagement, design and demand estimation work, and other services relating to the Project;

WHEREAS, on June 30, 1999, EWGCC selected the preferred alternative conceptual design, including the preferred alignment and profile for the Project;

WHEREAS, the chief executive officers of the City, the County and the Agency have heretofore entered into a Memorandum of Understanding, dated December 1, 2000, which established the overall governance and authority structure for the Project, outlined the Project management system, and established the roles and responsibilities of the parties relating to the design, construction, equipping, financing and operation of the Project (the "Project Implementation Procedures", as herein defined);

WHEREAS, the Agency has proceeded with the design and engineering of and has taken steps to further implement the Project pursuant to the Project Implementation Procedures funded from revenues from the Prop M Sales Tax appropriated by the City and the County;

WHEREAS, funds are needed to acquire, plan, construct, equip and improve the Project, to fund reasonable reserves for such financing and for the Project and to fund the costs of issuance related to such financing;

WHEREAS, the City and County are desirous that the Agency issue its bonds pursuant to the Compact for the purpose of providing funds to finance the Project, all as more fully defined and described herein;

WHEREAS, the City and the County are authorized pursuant to their respective charters, and the Constitution and the laws of the State of Missouri to enter into contracts and agreements with each other, the Agency and others, to acquire, sell, convey, lease, sublease, own, operate, finance, develop or improve or any combination thereof the Project, including, without limitation, to agree to pay the City Payments and the County Payments (as defined herein), subject to annual appropriation;

WHEREAS, the Agency proposes to issue one or more series of bonds (the "Bonds") pursuant to one or more resolutions to be adopted by the Agency authorizing the issuance of and securing such Bonds, and one or more trust indentures (the "Indenture") by and between the Agency and a trustee bank or trust company to be named therein, as trustee (the "Trustee") in order to provide funds to finance a portion of the costs of the Project; and

WHEREAS, the Agency, the City and County are entering into this Agreement to provide for the application of the proceeds of the Bonds to pay the Project Costs (as defined herein) and to provide a source of the repayment of the Bonds.

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

## ARTICLE I DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** The words and terms as used in this Agreement shall have the following meanings:

“**Agency**” means the Bi-State Development Agency of the Missouri-Illinois Metropolitan District, an interstate transportation authority created by Section 70.370 et seq. of the Missouri Revised Statutes and Chapter 127, Section 63r-1 et seq. of the Illinois Compiled Statutes as a body corporate and politic, and its successors and assigns.

“**Agency Payments**” means the payments of the Agency described in **Section 3.4**.

“**Agreement**” means this Memorandum of Agreement, as from time to time amended in accordance with the terms hereof and of the Indenture.

“**Agreement Term**” means the term of this Agreement as provided in **Section 8.7**.

“**Authorized Agency Representative**” means the Executive Director or such other person at the time designated to act on behalf of the Agency as evidenced by a written certificate furnished to the parties hereto and the Trustee containing the specimen signature of such person and signed on behalf of the Agency by the Executive Director. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Agency Representative.

“**Authorized City Representative**” means the Mayor or such other person at the time designated to act on behalf of the City as evidenced by a written certificate furnished to the parties hereto and the Trustee containing the specimen signature of such person and signed on behalf of the City by the Mayor. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized City Representative.

“**Authorized County Representative**” means the County Executive or such other person at the time designated to act on behalf of the County as evidenced by a written certificate furnished to the parties hereto and the Trustee containing the specimen signature of such person and signed on behalf of the County by the County Executive. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized County Representative.

“**Bonds**” means one or more series of bonds to be issued by the Agency in accordance with the Compact, the Indenture and the Financing Resolution to provide financing for a portion of the costs of the Project.

“**City**” means The City of St. Louis, Missouri, a constitutional charter city and political subdivision of the State of Missouri, and its successors and assigns.

“**City Payments**” means the payments of the City described in **Section 3.2**.

“**Compact**” means the compact between the states of Missouri and Illinois pursuant to which the Agency was organized and created as a body politic and corporate authorized by Section 70.370 et seq. of the Missouri Revised Statutes and Chapter 127, Section 63r-1 et seq. of the Illinois Compiled Statutes and as ratified by the United States Congress.

“**County**” means St. Louis County, Missouri, a constitutional charter county and political subdivision of the State of Missouri, and its successors and assigns.

“**County Payments**” means the payments of the County described in **Section 3.3**.

“**Effective Date**” means the later of the dates of execution of this Agreement by the City, the County or the Agency.

“**Event of Default**” means any Event of Default as described in **Section 6.1**.

“**Financing Documents**” means the Indenture, the Financing Resolution, and this Agreement.

“**Financing Resolution**” means one or resolutions to be adopted by the Agency to provide for the issuance of and to secure the payment of the Bonds and to assign the City Payments and County Payments hereunder and the obligations of the City and the County hereunder to the Trustee for the benefit of the owners of the Bonds.

“**Indenture**” means one or more trust indentures to be entered into between the Agency and the Trustee pursuant to which the Bonds will be issued.

“**Issuance Costs**” means costs related to the issuance of the Bonds, including but not limited to the following costs:

- (a) underwriters’ fee (whether realized directly or derived through purchase of Bonds at a discount below the price at which they are expected to be sold to the public);
- (b) counsel fees (including bond counsel, underwriter’s counsel, disclosure counsel, issuer’s counsel, Trustee’s counsel as well as any other specialized counsel fees incurred in connection with the issuance of the Bonds);
- (c) financial advisor fees of any financial advisor to the Agency incurred in connection with the issuance of the Bonds;
- (d) rating agency fees;
- (e) Trustee and paying agent fees;
- (f) accountant fees related to issuance of the Bonds;
- (g) printing costs (for the Bonds and the preliminary and final official statement);
- (h) fees incurred in connection with obtaining bond insurance, letters of credit, or other surety, guarantee or credit enhancement for the Bonds;
- (i) any other costs incurred in connection with the issuance of the Bonds and approved by the Authorized Agency Representative, the Authorized City Representative and the Authorized County Representative.

“**MetroLink System**” means the Agency’s light rail transit system and any additions or extensions thereto.

“**Project**” means the acquisition of the necessary real property and the acquisition, design, construction, equipping, operation, development and financing of a project including a light rail transit line, known as Segment I of the Cross-County Corridor, as well as improvements associated with the related upgrade and expansion in transit service, as approved by the EWGCC on June 30, 1999, and modified from time to time by the Agency pursuant to the provisions of this Agreement.

“**Project Costs**” means all costs of planning, development, acquisition of right-of-way and other necessary property, construction, and equipping, and any other necessary or related costs of the Project.

“**Project Documents**” means the documents described in **Section 4.4**.

“**Project Implementation Procedures**” means the procedures established between the parties for input and decision making with respect to the Project as provided in **Exhibit B**.

“**Prop M Fund**” means the fund by that name of the Agency as provided in **Section 3.5**.

“**Prop M Sales Tax**” means the one-quarter percent (1/4%) sales tax authorized by Section 94.660 RSMo, as amended, as approved by the voters of the City on August 2, 1994, and authorized for imposition in the City pursuant to Ordinance 63168, and as approved by the voters of the County on August 2, 1994, and authorized for imposition in the County pursuant to Ordinance

17,153.

“**Prop M Tax Act**” means Section 94.660 RSMo, as amended.

“**Public Transportation Purposes**” means the purposes authorized by the Prop M Tax Act.

“**Trustee**” means such bank or trust company that at the time serves as trustee under the Indenture.

**Section 1.2. Rules of Interpretation.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context indicates otherwise, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(b) All references in this Agreement to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

**ARTICLE II  
REPRESENTATIONS**

**Section 2.1. Representations by the Agency.** The Agency makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Agency is an interstate transportation authority created by and pursuant to the Compact as a body corporate and politic.

(b) The Agency has lawful power and authority under its Compact to enter into the transactions contemplated by this Agreement, including the issuance of the Bonds, and to carry out its obligations hereunder. By proper action of its Board of Commissioners, the Agency has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Agreement by the Agency will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any restriction or any agreement or instrument to which the Agency is a party or by which it or any of its property is bound, or the Agency’s Compact or Bylaws or any order, rule or regulation applicable to the Agency or any of its property of any court or governmental body, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Agency under the terms of any instrument or agreement to which the Agency is a party.

**Section 2.2. Representations by the County.** The County makes the following representations as the basis for the undertakings on its part herein contained:

(a) The County is a political subdivision and body corporate, duly organized and existing under its charter and the constitution and laws of the State of Missouri.

(b) The County has lawful power and authority to enter into this Agreement and to carry out its obligations hereunder. By proper action of the County Council, the County has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(c) No further actions or approvals by the County Council are necessary in connection with the financing of the Project, except with respect to the appropriation of County Payments on an annual basis as provided herein.

(d) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, including the annual appropriation by the County Council of the County's revenues from its Prop M Sales Tax to fund the County Payments and the expenditure thereof for the purposes provided in this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the County will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the County is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the County or any of its property of any court or governmental body, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the County under the terms of any instrument or agreement to which the County is a party.

(e) The annual appropriation of the County's revenues from its Prop M Sales Tax to fund the County Payments and the expenditure thereof for the purposes provided in this Agreement is authorized by the Prop M Tax Act and the ordinances of the County relating to the County's Prop M Sales Tax, including Ordinance 17,153, and does not conflict with or result in a violation of the County's charter or ordinances.

**Section 2.3. Representations by the City.** The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a municipal corporation, political subdivision and body corporate, duly organized and existing under its charter and the constitution and laws of the State of Missouri.

(b) The City has lawful power and authority to enter into this Agreement and to carry out its obligations hereunder. By proper action of the Board of Aldermen, the City has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(c) No further actions or approvals by the Board of Aldermen are necessary in connection with the financing of the Project, except with respect to the appropriation of City Payments on an annual basis as provided herein.

(d) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, including the annual appropriation by the Board of Aldermen of the City's revenues from its Prop M Sales Tax to fund the City Payments and the expenditure thereof for the purposes provided in this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the City or any of its property of any court or governmental body, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

(e) The annual appropriation of the City's revenues from its Prop M Sales Tax to fund the City Payments and the expenditure thereof for the purposes provided in this Agreement is authorized by the Prop M Tax Act and the ordinances of the City relating to the City's Prop M Sales Tax, including Ordinance 63168, and does not conflict with or result in a violation of the City's charter or ordinances

### **ARTICLE III FINANCING OF THE PROJECT**

#### **Section 3.1. Issuance of Bonds.**

(a) The Agency shall issue one or more series of Bonds in an amount sufficient, together with a portion of the moneys held by the Agency in its Prop M Fund in such amount as provided in the Indenture and any other available funds designated for the Project, to provide the Agency with sufficient funds to enable the Agency to pay Project Costs, to fund required reserves for the Bonds and the Project, and to pay Issuance Costs. The Executive Director, Chief Financial Officer and other officers of the Agency are hereby authorized and directed to take further action to proceed with such financing, including working with the underwriters, bond counsel and other advisors retained by the Agency in connection with such financing.

(b) The officers of the Agency shall apply to rating agencies, including Standard & Poor's Rating Services, Moody's Investors Service, and Fitch Ratings for a rating relating to the Bonds.

(c) The officers of the Agency shall make applications for credit enhancement for the Bonds, including bond insurance, letters of credit, or other guaranty or surety guaranteeing the timely payment of the principal of and interest on the Bonds or bond reserves, and to enter into a commitment letter for such credit enhancement if it would result in overall debt service savings on the Bonds.

(d) The officers of the Agency shall, in conjunction with the financing advisors, prepare a Preliminary Official Statement relating to the Bonds and shall use such Preliminary Official Statement in connection with the sale of the Bonds on approval thereof by the Authorized Agency Representative, the Authorized City Representative and the Authorized County Representative. The Authorized Agency Representative, the Authorized City Representative and the Authorized County Representative are authorized to participate in the preparation of such Preliminary Official Statement, to provide necessary information and disclosure, and to review such Preliminary Official Statement to determine that it is true, correct and complete in all material respects as of the date thereof, on behalf of the City, County and Agency, respectively. The Authorized Agency Representative, the Authorized City Representative and the Authorized County Representative are further authorized to execute a certificate of approval thereof to evidence approval of the terms of the Bonds as set forth in such Preliminary Official Statement.

(e) For the purpose of enabling the original purchasers of the Bonds to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, the Authorized City Representative, the Authorized County Representative and the Authorized Agency Representative are authorized to execute customary certificates which deem the information contained in such Preliminary Official Statement to be "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1) and the appropriate officials of the City, the County and the Agency are hereby authorized, if requested, to take such further actions or execute such other documents as such officials in their reasonable judgment deem necessary to enable the original purchasers of the Bonds to comply with the requirements of such Rule.

(f) For the further purpose of enabling the original purchasers of the Bonds to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, the Authorized City Representative, the Authorized County Representative and the Authorized Agency Representative are authorized to execute customary continuing disclosure certificates or agreements relating to the ongoing disclosure requirements of such Rule and the appropriate officials of the City, the County and the Agency are hereby authorized, if requested, to take such further actions or execute such other documents as such officials in their reasonable judgment deem necessary to enable the original purchasers of the Bonds to comply with the requirements of such Rule.

(g) The terms of the proposed financing and the Bonds shall be as set forth in the Preliminary Official Statement and shall be reflected in the Financing Documents to be authorized by Resolution of the Agency's Board prior to the execution and delivery of the Bonds.

(h) The Executive Director and other officers and representatives of the Agency, the Authorized City Representative and the Authorized County Representative are hereby authorized to do all such acts and things and to execute, acknowledge and deliver all such documents as may in their discretion be deemed necessary or desirable in order to carry out or comply with the terms and provisions of this Agreement in connection with the issuance and sale of the Bonds. All of the acts and undertakings of such officers which are in conformity with the intent and purposes of this Agreement, whether heretofore or hereafter taken or done shall be and the same are hereby in all respects, ratified, confirmed and approved by the Agency.

(i) The Agency and the Trustee will enter into the Indenture, under which the Agency will assign and pledge the revenues and receipts receivable by it under this Agreement from the County and the City and all other rights hereunder to the Trustee for the benefit of the owners of the Bonds. The Trustee will have the right, but will not be obligated, to exercise any or all of the rights of the Agency hereunder. The County and the City hereby consent to such pledge and assignment. Such assignment and pledge is intended to be an absolute assignment from the Agency to the Trustee and not merely the passing of a security interest.

### **Section 3.2. City Payments.**

(a) The City covenants and agrees to pay to the Agency from its Prop M Sales Tax in immediately available funds the amounts specified to be paid by the City on the dates set forth on **Exhibit A** (the "City Payments"). Prior to the issuance of the Bonds, all City Payments shall be made to the Agency for deposit to the Agency's Prop M Fund. Upon the issuance of the Bonds, all City Payments due thereafter shall be paid to the Trustee to be applied as set forth in the Indenture.

(b) Except as provided in paragraph (c) of this Section, the obligations of the City under this Agreement to make City Payments on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder, shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim,

recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, and notwithstanding any default of the County hereunder or of the Agency hereunder or under the Indenture, and the City hereby waives the provisions of any ordinance, statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Agreement or which releases or purports to release the City therefrom.

(c) Notwithstanding any provision or covenant contained in this Agreement, the Indenture or the Bonds, the City is only obligated to pay the City Payments hereunder and such payments shall be made from funds budgeted and appropriated for that purpose. The obligations of the City to make the City Payments under this Agreement are subject to annual appropriation as provided herein. Neither the obligations of the City with respect to the City Payments nor the Bonds will constitute a debt or liability of the City, the County or of any agency or political subdivision of the State of Missouri within the meaning of any State of Missouri constitutional provision or statutory limitation and shall not, directly, indirectly or contingently, obligate the City, the County or any agency or political subdivision of the State of Missouri to levy any form of taxation therefor or to make any payments beyond those appropriated with respect to this Agreement for the then current Fiscal Year of the City or the County, respectively.

(d) Nothing in this Agreement shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the City of any rights or claims which the City may have against the Agency under this Agreement or otherwise, but any recovery upon such rights and claims shall be had from the Agency separately, it being the intent of this Agreement that the City shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Agreement (including the obligation to make City Payments) for the benefit of the owners of the Bonds, but only during the then current fiscal year of the City.

(e) The City currently intends to make all City Payments when due. It is the City's intention that the City Payments, together with the County Payments and the earnings thereon, shall provide sufficient funds to pay the principal of and interest on the Bonds and fund such other Project Costs and Public Transportation Purposes of the Agency as provided in the Indenture. The City reasonably believes that legally available funds in an amount sufficient to make all City Payments when due can be obtained. The City further currently intends to do all things lawfully within its power to obtain and maintain funds from which City Payments may be made, including making provision for such payments to the extent necessary in each annual budget submitted and adopted in accordance with applicable provisions of Missouri law, to have such portion of the budget approved and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds to make City Payments due after the end of the current fiscal year is solely within the discretion of the then current governing body of the City.

(f) The City covenants and agrees that the City's Budget Director, or any other officer at any time charged with responsibility of formulating budget proposals, is hereby directed to include in the budget proposals submitted to the Board of Estimate and Apportionment, and to the extent permitted by law, to the Board of Aldermen of the City, in any year during the Agreement Term, a request or requests for the City Payment as set forth on **Exhibit A** attached hereto. Such request has been submitted and appropriated under applicable law for the Fiscal Year of the City commencing July 1, 2002, and subsequent requests for appropriations shall be made in each Fiscal Year thereafter so that the City Payment to be paid during the succeeding Fiscal Year will be available for such purposes. It is the intention of the City that the decision to appropriate the City Payment pursuant to this Agreement shall be made solely by the Board of Aldermen and not by any other official of the City except subject to the power of the Mayor of the City to approve or disapprove ordinances. The City presently expects to, in each Fiscal Year of the City during the Agreement Term, appropriate funds for the City Payment so that the City Payment to be paid during the succeeding Fiscal Year will be available for such purposes. The City shall furnish the Trustee and the Agency with copies of its annual budget and a certificate stating whether it has appropriated the City Payment for such Fiscal Year promptly after the budget is adopted and in no event later than July 15 of each year.

(g) The City has established a segregated account in the funds of the City known as the "City Public Transit Sales Tax Trust Fund" pursuant to the provisions of the Prop M Tax Act and Ordinance 63168 of the City which fund is hereby ratified and confirmed. The City covenants and agrees to maintain such fund throughout the Agreement Term and to deposit to such fund all moneys received from the Director of Revenue of the State of Missouri from the City's Prop M Sales Tax.

(h) The City Payments shall be applied to payment of Project Costs, payment of the principal of and interest on the Bonds and for the funding of the Public Transportation Purposes of the Agency in the amounts and in the manner as provided in the Indenture.

**Section 3.3. County Payments.**

(a) The County covenants and agrees to pay to the Agency from its Prop M Sales Tax in immediately available funds the amounts specified to be paid by the County on the dates set forth on **Exhibit A** (the "County Payments"). Prior to the issuance of the Bonds, all County Payments shall be made to the Agency for deposit to the Agency's Prop M Fund. Upon the issuance of the Bonds, all County Payments due thereafter shall be paid to the Trustee to be applied as set forth in the Indenture.

(b) Except as provided in paragraph (c) of this Section, the obligations of the County under this Agreement to make County Payments on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder, shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, and notwithstanding any default of the City hereunder or of the Agency hereunder or under the Indenture, and the County hereby waives the provisions of any ordinance, statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Agreement or which releases or purports to release the County therefrom.

(c) Notwithstanding any provision or covenant contained in this Agreement, the Indenture or the Bonds, the County is only obligated to pay the County Payments hereunder and such payments shall be made from funds budgeted and appropriated for that purpose. The obligations of the County to make the County Payments under this Agreement are subject to annual appropriation as provided herein. Neither the obligations of the County with respect to the County Payments nor the Bonds will constitute a debt or liability of the City, the County or of any agency or political subdivision of the State of Missouri within the meaning of any State of Missouri constitutional provision or statutory limitation and shall not, directly, indirectly or contingently, obligate the City, the County or any agency or political subdivision of the State of Missouri to levy any form of taxation therefor or to make any payments beyond those appropriated with respect to this Agreement for the then current Fiscal Year of the City or the County, respectively.

(d) Nothing in this Agreement shall be construed to release the County from the performance of any agreement on its part herein contained or as a waiver by the County of any rights or claims which the County may have against the Agency under this Agreement or otherwise, but any recovery upon such rights and claims shall be had from the Agency separately, it being the intent of this Agreement that the County shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Agreement (including the obligation to make County Payments) for the benefit of the owners of the Bonds, but only during the then current fiscal year of the County.

(e) The County currently intends to make all County Payments when due. It is the County's intention that the County Payments, together with the City Payments and the earnings thereon, shall provide sufficient funds to pay the principal of and interest on the Bonds and fund such other Project Costs and Public Transportation Purposes of the Agency as provided in the Indenture. The County reasonably believes that legally available funds in an amount sufficient to make all County Payments when due can be obtained. The County further currently intends to do all things lawfully within its power to obtain and maintain funds from which County Payments may be made, including making provision for such payments to the extent necessary in each annual budget submitted and adopted in accordance with applicable provisions of Missouri law, to have such portion of the budget approved and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds to make County Payments due after the end of the current fiscal year is solely within the discretion of the then current governing body of the County.

(f) The County covenants and agrees that the County's Budget Director, or any other officer at any time charged with responsibility of formulating budget proposals, is hereby directed to include in the budget proposals submitted to the County Executive for recommendation to the County Council, in any year during the Agreement Term, a request or requests for the County Payment as set forth on **Exhibit A** attached hereto. Such request has been submitted and appropriated under applicable law for the Fiscal Year of the County commencing January 1, 2002, and subsequent requests for appropriations shall be made in each Fiscal Year thereafter so that the County Payment to be paid during the succeeding Fiscal Year will be available for such purposes. It is the intention of the County that the decision to appropriate the County Payment pursuant to this Agreement shall be made solely by the County Executive and the County Council in accordance with the County's charter and not by any other official of the County. The County presently expects to, in each Fiscal Year of the County during the Agreement Term, appropriate funds for the County Payment so that the County Payment to be paid during the succeeding Fiscal Year will be available for such purposes. The County shall furnish the Trustee and the Agency with copies of its annual budget and a certificate stating whether it has appropriated the County Payment for such Fiscal Year promptly after the budget is adopted and in no event later than January 15 of each year.

(g) The County has established a segregated account in the funds of the County known as the "Public Mass Transportation Tax Fund" pursuant to the provisions of the Prop M Tax Act and Ordinance 17,153 of the County which fund is hereby ratified and confirmed. The County covenants and agrees to maintain such fund throughout the Agreement Term and to deposit to such fund all moneys received from the Director of Revenue of the State of Missouri from the County's Prop M Sales Tax.

(h) The County Payments shall be applied to payment of Project Costs, payment of the principal of and interest on the Bonds and for the funding of the Public Transportation Purposes of the Agency in the amounts and in the manner as provided in the Indenture.

**Section 3.4. Agency Payments.** In connection with the issuance of the Bonds, the Agency shall transfer a portion of the moneys in its Prop M Fund to the Trustee for deposit into the funds and accounts established for the Project and the Bonds in the amounts and manner as provided in the Indenture. All remaining moneys in the Agency's Prop M Fund shall be applied to fund the Agency's Public Transportation Purposes as provided in the Indenture.

**Section 3.5. Covenants Regarding the Prop M Sales Tax.** The parties hereto represent, covenant and agree as follows:

(a) The Prop M Sales Tax has been imposed and collected by the City and the County in their respective jurisdictions since 1994 and is currently in full force and effect and has no termination or sunset date.

(b) The City currently intends to impose and collect the Prop M Sales Tax at a rate of not less than one-quarter cent during the Agreement Term.

(c) The County currently intends to impose and collect the Prop M Sales Tax at a rate of not less than one-quarter cent during the Agreement Term.

(d) The Agency has established a segregated account for the Prop M Sales Tax (the "Prop M Fund") on the books of the Agency which is hereby ratified and confirmed. The Agency has deposited and will continue to deposit the proceeds of the Prop M Sales Tax that are transferred to the Agency by the City and the County into the Prop M Fund and has applied and will continue to apply the moneys in the Prop M Fund to fund its Public Transportation Purposes.

#### **ARTICLE IV CONSTRUCTION, MAINTENANCE AND USE OF THE PROJECT**

**Section 4.1. Design, Construction and Implementation of the Project.** The parties hereto shall proceed with the Project pursuant to the governance and authority structure for the Project as described on **Exhibit B** (the "Project Implementation Procedures") attached hereto and incorporated herein by reference, which is hereby ratified and confirmed.

**Section 4.2. Project Schedule and Agreement to Complete.**

(a) The Agency agrees to cause the acquisition, construction and equipping of the Project to be diligently and continuously prosecuted and to be completed with reasonable dispatch, to obtain such title or interest in the Project as will enable the Agency to operate such Project for the purpose for which it was acquired and to carry out the purposes of the Project and to provide from the proceeds of the Bonds and from other legally available moneys, if any, all moneys necessary to complete the Project substantially in accordance with the Project Documents.

(b) In the event the Agency determines at any time that the moneys described in **Section 3.1 (a)** to be insufficient to pay for the completion of the acquisition, construction and equipping of the Project, the Agency shall immediately notify the Authorized County Representative and the Authorized City Representative. The parties agree to cooperate to either (i) modify the Project, pursuant to the Project Implementation Procedures, to include only those components and be of such design as can be completed with the aforesaid amounts, or (ii) cooperate and use their best efforts to issue additional bonds and/or obtain moneys from other lawfully available sources in an amount sufficient to pay the amount of such deficiency.

**Section 4.3. Use of Proceeds of the Bonds; Completion of the Project.**

(a) The proceeds of the Bonds shall be deposited and applied as provided in the Financing Documents to (1) pay the Project Costs, (2) fund necessary reserves for the Project and the Bonds, and (3) pay certain Issuance Costs.

(b) The Agency will assume responsibility for the performance of and payment for (using Bond proceeds and any other available funds designated for the Project) the acquisition, construction and equipping of the Project, including the following:

- (i) Preparation of detailed right-of-way and construction plans.
- (ii) Acquisition of right-of-way and other necessary property for the Project.
- (iii) Advertising for construction bids and awarding of contracts.
- (iv) Administration of contracts, including inspection of work performed by contractors.
- (v) Provision of relocation assistance, making relocation payments and performance of such other acts as are required to comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

**Section 4.4. Project Documents.** The Agency will maintain at its principal office copies of the following documents as and when the same are available:

(a) All preliminary and final plans and specifications for the Project (the Agency agrees to maintain the final versions of such preliminary plans and specifications as such final versions become available and in any event by such time as work is commenced on the portion of the Project to which such plans and specifications relate);

(b) Appropriate permits for the acquisition, construction and equipping of the Project, if required, from any other governmental agency as may be necessary for such work;

(c) All construction manager's and general contractor's contracts for the Project and all prime subcontractor's contracts and purchase orders for any equipment included in the Project (the "Construction Contracts"); and

(d) Performance and payment bonds insuring the Agency, the City and the County, as their respective interests may appear, against all delays in completion of all Construction Contracts, against failure timely to complete the Project in accordance with the plans and specifications, and against claims for payment to cover labor and material used or reasonably required for use in the performance of the Construction Contracts.

(Said documents referred to above in this Section being herein collectively called the "Project Documents")

**Section 4.5. Changes or Amendments to Project and Project Documents.** The Agency may make, authorize or permit such changes or amendments to the Project and the Project Documents as the Agency may reasonably determine necessary or desirable, provided that all such changes or amendments of a material nature shall be made in accordance with the Project Implementation Procedures.

**Section 4.6. Title to the Project and Maintenance.**

(a) Title to the Project and all real estate (or interests therein) upon which the Project is or will be located shall be vested in the name of the Agency. The Agency may mortgage, pledge or otherwise encumber the Project or any part thereof, and may sell, lease or otherwise dispose of the Project or any material part thereof.

(b) The Agency shall operate and maintain the Project as a part of the Agency's MetroLink System. The Agency intends to use a portion of the City Payments, the County Payments, and the Agency Payments to pay the cost of operation and maintenance of the Agency's MetroLink System, including the Project, and to fund other Public Transportation Purposes of the Agency. In the event the Agency at any time does not have sufficient moneys to provide for the operation and maintenance of the Agency's MetroLink System, including the Project, the Agency shall promptly notify the Authorized City Representative and the Authorized County Representative. The parties covenant and agree to cooperate and to use their best efforts to obtain moneys from other lawfully available sources in an amount sufficient to pay the amount of such deficiency to the Agency.

**ARTICLE V  
SPECIAL COVENANTS**

**Section 5.1. Tax and Indenture Covenants.** The parties covenant and agree that they will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any issue of the Bonds which are issued as “tax-exempt” under Section 103 of the Internal Revenue Code. The parties further covenant to use their best efforts to execute such certificates and agreements, adopt such ordinances and resolutions and to take such other actions as may be necessary to comply with (i) the covenants and obligations of the Indenture, and (ii) the Internal Revenue Code and other applicable future laws, regulations, published rulings and judicial decisions applicable to the exclusion from federal gross income of the interest on any issue of the Bonds which are issued as “tax-exempt” to the extent any such actions can be taken by the parties hereto.

**Section 5.2. Records and Audits.**

(a) The Agency covenants and agrees that it will keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Agency in accordance with generally accepted accounting principles consistently applied, and will furnish to the County, the City, and the Trustee as required under the Indenture, such information as they may reasonably request concerning the Agency, including such statistical and other operating information requested on a periodic basis, in order to enable such parties to determine whether the covenants, terms and provisions of this Agreement have been complied with.

(b) The parties hereto covenant and agree that during the Agreement Term, each party shall deliver to the Agency and the Trustee, within 180 days after the end of its Fiscal Year or as soon thereafter as available, a copy of such party’s annual audited financial statement. In addition, during the Agreement Term, each party shall from time to time provide the Trustee with such additional copies of its most recent annual audited financial statement or other documents or information as the Trustee shall request pursuant to the provisions of the Financing Documents.

**Section 5.3. Agency Covenants to the City and the County.** The Agency covenants that during the Agreement Term that it will comply with the covenants and agreements set forth in **Exhibit C** unless waived by the City or the County.

**ARTICLE VI  
DEFAULT AND REMEDIES**

**Section 6.1. Events of Default.** If any one or more of the following events occurs and is continuing, it is hereby defined as and declared to be and to constitute an Event of Default under this Agreement:

- (a) Default in the due and punctual payment of a County Payment or a City Payment;
- (b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Agreement on the County’s or the City’s part to be observed or performed, and the continuance of such default for 60 days after the Agency or the Trustee has given to the County or the City, as applicable, written notice specifying such default, or such longer period as shall be reasonably required to cure such default, provided that (i) the County or the City, as applicable, has commenced such cure within said 60-day period, and (ii) the County or the City, as applicable, diligently prosecutes such cure to completion; or
- (c) The City or the County (i) admits in writing its inability to pay its debts as they become due; or (ii) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or file a pleading asking for such relief; or (iii) makes an assignment for the benefit of its creditors; or (iv) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or shall fail to have vacated or set aside the appointment of any trustee, receiver or liquidator which was made without the City’s or the County’s consent or acquiescence; or (v) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) is subject to any proceeding or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a receiver, trustee or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the United States Bankruptcy Code, as now or in the future amended, which order or proceeding, if not the subject of the City’s or the County’s consent, is not dismissed, vacated, denied, set aside or stayed within 60 days after the day of entry or commencement; or (vii) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed or is not released within 60 days after the final

entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside.

**Section 6.2. Remedies on Default.** If any Event of Default has occurred and is continuing, then the Agency may, at the Agency's election, and shall, at the direction of the Trustee (subject, however, to any restrictions contained in the Indenture against acceleration of the maturity of the Bonds), take any one or more of the following actions:

(a) by mandamus or other suit, action or proceedings at law or in equity, to enforce its rights against the County or the City, as applicable, and their officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Agreement;

(b) cause the County Payments during the then current fiscal year of the County to become due and payable, as provided in **Section 6.3**;

(c) cause the City Payments during the then current fiscal year of the City to become due and payable, as provided in **Section 6.3**; or

(d) take any other action at law or in equity to enforce this Agreement.

**Section 6.3. Acceleration of Maturity in Event of Default.**

(a) If an Event of Default has occurred and is continuing, the Agency may, by written notice delivered to the County and the City, declare all County Payments for the then current fiscal year of the County, and all City Payments for the then current fiscal year of the City to become immediately due and payable. Upon such declaration, all such County Payments and City Payments shall be immediately due and payable as if all such amounts were originally stipulated to be paid on the accelerated payment date.

(b) If, at any time after such declaration but before the Bonds have matured by their terms, the Event of Default which gave rise to the acceleration is cured and all reasonable and proper expenses of the Trustee then due have been paid, then the Agency shall rescind such declaration and annul the Event of Default in its entirety.

(c) In case of any rescission, then the Agency, the County and the City shall be restored to their former position and rights hereunder, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

**Section 6.4. Rights and Remedies Cumulative.** The rights and remedies reserved by the Agency hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Agency, the County and the City shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 6.5. Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the County or the City of any covenant, agreement or undertaking by the County or the City, as applicable, the Agency may nevertheless accept from the County or the City, as applicable, any payment or payments hereunder without in any way waiving the Agency's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults of the County or the City which were in existence at the time when such payment or payments were accepted by the Agency.

**ARTICLE VII  
ASSIGNMENTS**

**Section 7.1. Assignment of Agency's Rights.** Under the Indenture, the Agency will, as security for the Bonds, pledge, assign, transfer and grant a security interest in certain of its rights under this Agreement to the Trustee. The County and the City agree that this Agreement and all of the rights, interests, powers, privileges and benefits accruing to or vested in the Agency hereunder may be assigned by the Agency to the Trustee as security for the Bonds and may be exercised, protected and enforced for or on behalf of the owners of the Bonds in conformity with this Agreement or the Indenture. The Trustee is hereby given the right to enforce, as assignee of the Agency, the performance of the obligations of the County and the City, and the County and the City

hereby consent to the same and agree that the Trustee may enforce such rights as provided herein. This Agreement recognizes that the Trustee will be a third-party creditor-beneficiary hereof.

**ARTICLE VIII  
MISCELLANEOUS PROVISIONS**

**Section 8.1. Notices.** All notices or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid, addressed as follows:

(a) To the Agency:

Bi-State Development Agency of the Missouri-Illinois Metropolitan District  
707 North First Street  
St. Louis, MO 63102  
Attention: Executive Director  
Facsimile Number:

(b) To the City:

City of St. Louis, Missouri  
City Hall  
Tucker and Market Streets  
St. Louis, MO 63103  
Attention: \_\_\_\_\_  
Facsimile Number:

(c) To the County:

St. Louis County, Missouri  
41 South Central  
Clayton, MO 63105  
Attention: \_\_\_\_\_  
Facsimile Number:

All notices given by first class, certified or registered mail as aforesaid shall be deemed duly given three (3) business days following the date they are so mailed. A duplicate copy of each notice or other communication given hereunder by any party hereto shall also be given to the other parties and to the Trustee. The Agency, the County, the City and the Trustee may from time to time designate, by notice given hereunder to the other such parties, another address to which subsequent notices or other communications shall be sent.

**Section 8.2. Immunity of Officers, Employees and Members of the County, the City and the Agency.** No recourse shall be had for the payment of the principal of or premium or interest on any Bonds or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement contained against any past, present or future officer, member, employee, director or agent of the County, the City or the Agency, or, respectively, of any successor public or private corporation thereto, as such, either directly or through the County, the City or the Agency, or respectively, any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

**Section 8.3. Reports.** The Agency agrees that upon receipt of any report relating to funds held by the Trustee under the Indenture, it will provide copies of such report to the County and the City.

**Section 8.4. Amendments.**

(a) Prior to the issuance of the Bonds, this Agreement may be amended from time to time by the mutual agreement of the parties hereto.

(b) After the issuance of the Bonds, this Agreement may be amended by the parties hereto in accordance with the provisions of the Indenture.

**Section 8.5. Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 8.6. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. In interpreting this Agreement, the provisions of the Compact shall prevail over any conflicting provisions of other Missouri laws.

**Section 8.7. Agreement Term.** This Agreement shall be in effect from and after its execution by all of the parties hereto and shall remain in effect until (a) the Project is completed, and (b) the Bonds are paid or their payment has been provided for under the Indenture.

**Section 8.8. Execution in Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

[Remainder of page left intentionally blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers or officials.

Executed by the Agency on \_\_\_\_\_, 2002.

**BI-STATE DEVELOPMENT AGENCY OF  
THE MISSOURI-ILLINOIS  
METROPOLITAN DISTRICT**

By: \_\_\_\_\_  
Name:  
Title:

[SEAL]

ATTEST:

Name: \_\_\_\_\_  
Title:

[Remainder of page left intentionally blank]

Executed by the City on \_\_\_\_\_, 2002.

**THE CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_  
Name:  
Title:

[SEAL]

ATTEST:

Name: \_\_\_\_\_  
Title:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

[Remainder of page left intentionally blank]

Executed by the County on \_\_\_\_\_, 2002.

ST. LOUIS COUNTY, MISSOURI

(Seal)

By: \_\_\_\_\_  
County Executive

ATTEST:

By: \_\_\_\_\_  
Administrative Director

Approved as to legal form:

By: \_\_\_\_\_  
County Counselor

Approved:

By: \_\_\_\_\_  
Accounting Officer

[Remainder of page left intentionally blank]

**Exhibit A**

**City Payments**

Monthly during the Agreement Term, the City shall transfer to the Agency or the Trustee, in immediately available funds, pursuant to the provisions of **Section 3.2** of this Agreement, all moneys on deposit in the City Public Transit Sales Tax Fund.

**County Payments**

Monthly during the Agreement Term, the County shall transfer to the Agency or the Trustee, in immediately available funds, pursuant to the provisions of **Section 3.3** of this Agreement, all moneys on deposit in the County’s Public Mass Transportation Tax Fund.

**Exhibit B**

**Project Implementation Procedures**

**Agency to Design, Construct and Operate.** The Agency shall be responsible for completing the design, engineering, construction, equipping and operation of the Project. The Executive Director of the Agency shall identify a Project Management Team (the “Agency’s Project Management Team”) consisting of Agency staff, which may include consultants and advisors retained by the Agency, and which shall be primarily responsible for the implementation of the design, engineering, and construction of the Project.

**Cross-County Committee.** There shall be a Project committee which shall review and advise the Agency on matters related to the Project which shall consist of an advisor to the St. Louis City Mayor to be designated by the Mayor, an advisor to the St. Louis County Executive to be designated by the County Executive, the Agency’s Executive Director, and may include the St. Louis County Municipal League Executive Director, and the East-West Gateway Coordinating Council Executive Director. The members of the committee shall meet with the Agency’s Cross-County MetroLink Policy Committee on matters related to the Project and shall serve as advisory, non-voting members of the Agency’s Cross-County MetroLink Policy Committee, on matters related to the Project.

**Project Management Plan.** The Agency shall carry out the design, engineering, construction and equipping of the Project in accordance with the Project Management Plan which has been approved by the Agency’s Board and sets forth the organization

and procedures by which the Project will be implemented.

**Project Management, Decision Making Process, and Control.** The Agency's Project Management Team shall make recommendations on matters related to the Project, as set forth in the Project Management Plan (the "Management Team Recommendations"). Prior to consideration by the Agency's Board, the Management Team Recommendations shall be provided to the Agency's Cross-County MetroLink Policy Committee for their review and recommendation to the Agency's Board. All final decisions regarding the Project are the responsibility of the Agency's Board.

**Mutual Cooperation and Cost Containment.** The Agency will implement the Project so that it is accomplished at a reasonable cost consistent with a high quality design and within the designated budget constraints. The Mayor and County Executive will use their best efforts to cause their respective departments, agencies and staff to cooperate with the Agency's Project Management Team in implementing the Project in a cost-effective manner. This cooperation shall include the provision of documents to the Agency upon its reasonable and lawful request, subject to any necessary approvals, and the City's or County's review and approval, if appropriate, of Project documents, approvals and permits.

### Exhibit C

**Agency Reports to the City and the County.** The Agency shall submit to the City's Board of Estimate and Apportionment and the County Council an annual evaluation report describing the use of the Prop M Sales Tax and the Public Transportation Purposes funded by the Agency. The receipt of any funds appropriated hereunder shall constitute consideration for the Agency's obligating itself to furnish the evaluation reports as required herein.

**Prevailing Wage.** The Agency agrees to include in all its contracts for construction of the Project the requirement that the contractor pay prevailing wages and benefits to its employees in performing such contractual work. For the purpose of this provision, "prevailing wages and benefits" shall mean the wages paid generally in the St. Louis metropolitan area to workers engaged in service work of similar character, and all benefits associated therewith. Prior to letting any bid for outside service work, the Agency shall establish prevailing wages and benefits associated therewith. Prior to letting any bid for outside service work, the Agency shall establish prevailing wages and benefits for service workers in the contract for which the bid will be let, which shall be attached to and made a part of each bid specification. In establishing wages and benefits, the Agency shall obtain from the Missouri Department of Labor and Industrial Relations, Division of Labor Standards, a list of prevailing wages for the job classifications that come closest in nature and character to the jobs to be performed in the service contract for which bids are to be let. In addition to such list, the Agency shall also base its established prevailing wages and benefits on information from the United States Department of Labor, Bureau of Labor Standards, to the greatest extent feasible.

**Use of Prop M Sales Tax by the Agency.** The Agency has established a segregated account for the Prop M Sales Tax (the "Prop M Fund") on the books of the Agency which is hereby ratified and confirmed. The Agency has deposited and will continue to deposit the proceeds of the Prop M Sales Tax that are transferred to the Agency by the City and the County into the Prop M Fund. The Agency will apply the moneys in the Prop M Fund to fund its Public Transportation Purposes, including, but not limited to, the planning, development, acquisition, construction, maintenance, equipping and operation of the Project and other public transit facilities and systems of the Agency other than highways, including extensions of the MetroLink System in the City and County of St. Louis; commuter rail service; engineering and design of a multi-modal complex; upgrade and modernization of existing and purchase of new transit equipment and facilities, transfer centers, stations and enhanced security systems; and necessary incidental operating expenses, including operation and maintenance of the other public transit facilities and systems of the Agency, Bond and loan repayment and financing expenses.

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