

ORDINANCE #66134
Board Bill No. 360
Committee Substitute

An ordinance authorizing and directing the Mayor and the Comptroller, upon recommendation of the Board of Estimate and Apportionment, to enter into a Memorandum of Agreement with the Bi-State Development Agency of the Missouri-Illinois Metropolitan District (doing business as "Metro") for the purpose of borrowing ONE MILLION DOLLARS (\$1,000,000.00) to provide for the appropriation of the City's local match to replace the Lansdowne Bridge over River Des Peres from Wabash to River Des Peres and authorizing the repayment to Metro, subject to appropriation, from the Capital Fund No. 1217 and containing an emergency clause.

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

SECTION ONE. The Mayor and the Comptroller are hereby authorized and directed, upon recommendation by the Board of Estimate and Apportionment, to enter into a Memorandum of Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated by reference herein as if fully set out, with the Bi-State Development Agency of the Missouri-Illinois Metropolitan District (doing business as "Metro") for the purpose of borrowing ONE MILLION DOLLARS (\$1,000,000.00) to provide for the appropriation of the City's local match to replace the Lansdowne Bridge over River Des Peres from Wabash to River Des Peres.

SECTION TWO. Repayment by the City to Metro, subject to appropriation, will come from the Capital Fund, Fund No. 1217.

SECTION THREE. Emergency clause for a public work. This being an ordinance providing for public works and improvements, it is hereby declared to be an emergency measure and shall become effective upon approval by the Mayor.

MEMORANDUM OF AGREEMENT

By and Between

**THE BI-STATE DEVELOPMENT AGENCY
OF THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT
DOING BUSINESS AS METRO**

and

THE CITY OF ST. LOUIS, MISSOURI

Dated as of _____

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (the "Agreement") is dated as of _____, 200____, by and between THE CITY OF ST. LOUIS, MISSOURI, (the "City"), a constitutional charter city and political subdivision of the State of Missouri created pursuant to Article VI, § 19 of the Missouri Constitution upon the adoption of the Charter of the City of St. Louis (the "Charter"), and THE BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT doing business as Metro (the "Agency"), 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").

WITNESSETH:

WHEREAS, the City is authorized pursuant to the Charter and the Constitution and the laws of the State of Missouri to enter into contracts with the Agency and others; to incur debts by borrowing money or otherwise and to give any appropriate evidence thereof; to expend the money of the City for all lawful purposes; to acquire or receive and hold, maintain and improve real and personal property; to establish, open, relocate, vacate, alter, widen, extend, grade, improve, repair, construct, reconstruct, maintain, light, sprinkle and clean streets and bridges; to acquire, provide for, construct, regulate and maintain and do all things relating to all kinds of public buildings, structures, markets, places, works and improvements; and to exercise all powers granted or not prohibited to it by law or which it would be competent for the Charter to enumerate;

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 disburse funds for its lawful activities; and to perform all other necessary and incidental functions;

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 and approved a route 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 EWGACC adopted the 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;

WHEREAS, the City, the County of St. Louis, Missouri, 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 Cross-County MetroLink Segment I, outlined the project management system, and established the roles and responsibilities of the parties relating to design, construction, equipping, financing and operation;

WHEREAS, the Agency has proceeded with the design and engineering of and has taken steps to further implement the construction of the Cross-County MetroLink Segment I;

WHEREAS, the prompt acquisition, planning, construction, equipping, and improvement of the Lansdowne Bridge at River Des Peres from Wabash to River Des Peres Drive (the “Project” as defined herein) is essential to the timely completion of the Cross-County MetroLink Segment I;

WHEREAS, the City has proceeded with the design and engineering of and has taken steps to further implement the Project, bids for the Project have been submitted, and the Project is expected to be completed within 18 months from its initiation;

WHEREAS, the City has notified the Agency that funds will not be available to fund the Project until fiscal year 2005;

WHEREAS, in order to maintain the schedule required by EWGCC, and in order to begin revenue service by April 2006; the Project must be completed by February 2006;

WHEREAS, The Agency is willing to advance to the City the funds needed to acquire, plan, construct, equip and improve the Project (the “Project Costs” as defined herein); and

WHEREAS, the Agency and the City are entering into this Agreement to provide for the advance by the Agency to the City of the Project Costs and to provide a source of the repayment of the advance by the City to the Agency.

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 doing business as Metro, 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 Advance**” means the advance described in Section 3.1.

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

“**Agreement Term**” means the term of this Agreement as provided in Section 8.6.

“**Authorized Agency Representative**” means the President and Chief Executive Officer 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 containing the specimen signature of such person and signed on behalf of the Agency by the President and Chief Executive Officer. 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 President of the Board of Public Service 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 containing the specimen signature of such person and signed on behalf of the City by the President of the Board of Public Service. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized City Representative.

“**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 Payment**” means the payment 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.

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

“**Ordinance**” means Ordinance _____ and other ordinances to be adopted by the City to provide for the authorization of this Agreement and the appropriation and disbursement to the Agency of the City Payment.

“**Project**” means the Replacement of Lansdowne Bridge over River Des Peres from Wabash to the River Des Peres.

“**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.

“**Resolution**” means one or more resolutions to be adopted by the Agency to provide for the authorization of this Agreement and the appropriation and payment of the Agency Advance.

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 the 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 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) No further actions or approvals by the Board of Commissioners are necessary in connection with this Agreement, except with respect to the appropriation and disbursement of the Agency Advance as provided herein.

(d) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, including the appropriation and disbursement of the Agency Advance and the expenditure thereby for the purposes provided in this Agreement, 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 City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a constitutional charter city and political subdivision 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 this Agreement, except with respect to the appropriation of the City Payment as provided herein.

(d) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, including the appropriation by the Board of Aldermen of the City's revenues to fund the City Payment 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.

ARTICLE III**FINANCING OF THE PROJECT****Section 3.1. Agency Advance.**

(a) The Agency covenants and agrees to pay to the City on the tenth day after the effective date of the Ordinance authorizing this Agreement in immediately available funds a sum not to exceed \$1 million (the "Agency Advance").

(b) The obligations of the Agency under this Agreement to make the Agency Advance on or before the date specified in paragraph (a) of this Section, 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, and the Agency 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 Agency therefrom.

Section 3.2. City Payment.

(a) The City covenants and agrees to pay to the Agency on December 31, 2006, in immediately available funds the amounts specified in Section 3.1(a) of this Agreement (the "City Payment").

(b) Except as provided in paragraph (c) of this Section, the obligations of the City under this Agreement to make the City Payment on or before the date the same becomes 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 Agency hereunder, 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 City is only obligated to pay the City Payment hereunder and such payment shall be made from funds budgeted and appropriated for that purpose. The obligation of the City to make the City Payment under this Agreement is subject to annual appropriation as provided herein.

(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 the City Payment).

(e) The City currently intends to make the City Payment when due. It is the City's intention that the City Payment shall provide sufficient funds to repay the Agency Advance. The City reasonably believes that legally available funds in an amount sufficient to make the City Payment 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 Payment may be made, including making provision for such payment to the extent necessary 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 the City Payment 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 Fiscal Years 2005 and 2006, a request for the City Payment. Such requests for appropriations shall be made so that the City Payment to be paid during Fiscal Year 2006 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 Fiscal Years 2005 and 2006 of the City, appropriate funds for the City Payment so that the City Payment to be paid during Fiscal Year 2006 will be available for such purposes. The City shall furnish the Agency with copies of its annual budget and a certificate stating whether it has appropriated the City Payment for such Fiscal Years promptly after the budget is adopted and in no event later than July 15, 2004 and 2005.

ARTICLE IV

CONSTRUCTION, MAINTENANCE AND USE OF THE PROJECT

Section 4.1. Design, Construction and Implementation of the Project. The City shall proceed with the acquisition, planning, construction, equipping, and improvement of the Project.

Section 4.2. Project Schedule and Agreement to Complete.

(a) The City agrees to cause the acquisition, planning, construction, equipping and improvement 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 City to operate such Project for the purpose for which it was acquired and to carry out the purposes of the Project and the City shall provide from legally available moneys, if any, all moneys necessary to complete the Project substantially in accordance with the Project Documents (as hereinafter defined).

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

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

(a) The proceeds of the Agency Advance shall only be applied to pay the Project Costs.

(b) The City will assume responsibility for the completion of the acquisition, planning, construction, equipping, and improvement of the Project prior to February 2006.

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

(a) All preliminary and final plans and specifications for the Project (the City 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, equipping and improvement 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 City against all delays in completion of all Construction Contracts, against failure to timely 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 City may make, authorize or permit such changes or amendments to the Project and the Project Documents as the City may reasonably determine necessary or desirable, provided that all such changes or amendments do not adversely impact the timely completion of the Project or the future and the City shall notify the Agency of such changes and amendments to the Project.

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 City. The City 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) Pursuant to the Charter, the City has the authority to establish, open, relocate, vacate, alter, widen, extend, grade, improve, repair, construct, reconstruct, maintain, light, sprinkle and clean streets and bridges; and to acquire, provide for, construct, regulate and maintain and do all things relating to all kinds of public buildings, structures, markets, places, works and improvements. The City, through its Department of Streets, has charge of the repairing, cleaning and maintenance of all streets and bridges.

ARTICLE V

SPECIAL COVENANTS

Section 5.1. Records and Audits. The City 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 Project in accordance with generally accepted accounting principles consistently applied, and will furnish to the Agency such information as it may reasonably request concerning the Project, in order to enable the Agency to determine whether the covenants, terms and provisions of this Agreement have been complied with.

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 appropriation and disbursement of the Agency Advance;
- (b) Default in the due and punctual appropriation and disbursement of the City Payment;
- (c) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Agreement on the City's part to be observed or performed, and the continuance of such default for 60 days after the Agency has given to the City written notice specifying such default, or such longer period as shall be reasonably required to cure such default, provided that (i) the City has commenced such cure within said 60-day period, and (ii) the City diligently prosecutes such cure to completion; or
- (d) The City (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 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 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 or the City may, at such party's election, 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 City or the Agency, as applicable, and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Agreement;
- (b) cause the City Payment to become due and payable, as provided in Section 6.3; or
- (c) 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 in the appropriation and disbursement of the City Payment and is continuing, the Agency may, by written notice delivered to the City, declare the City Payment immediately due and payable. Upon such declaration, the City Payment shall be immediately due and payable as if all such amount was originally stipulated to be paid on the accelerated payment date.

(b) If, at any time after such declaration, the Event of Default which gave rise to the acceleration is cured, then the Agency shall rescind such declaration and annul the Event of Default in its entirety.

(c) In case of any rescission, the Agency 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 and the City 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 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 City of any covenant, agreement or undertaking by the City, as applicable, the Agency may nevertheless accept from the City 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 City which were in existence at the time when such payment or payments were accepted by the Agency.

ARTICLE VII**ASSIGNMENTS**

Section 7.1. No Assignment. Neither party to this Agreement shall assign the Agreement as a whole or part without the written consent of the other, nor shall either party assign any monies due or to become due hereunder without the previous written consent of the other party.

Section 7.2. Third Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either expressed or implied) is intended to confer upon any other person or entity any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

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, Missouri 63102
Attention: President and Chief Executive Officer

with a copy to:

General Counsel

Bi-State Development Agency of the
Missouri-Illinois Metropolitan District
707 North First Street
St. Louis, Missouri 63102

(b) To the City:

City of St. Louis, Missouri
Room 301 City Hall
Tucker and Market Streets
St. Louis, Missouri 63103
Attention: President of the Board of Public Service

with a copy to:

City Counselor
Room 314 City Hall
Tucker and Market Streets
St. Louis, MO 6310
Attention: Patricia A. Hageman

All notices given by first class, certified or registered mail shall be deemed duly given three business days following the date they are so mailed. The Agency and the City may from time to time designate, by notice given hereunder to the other party, another address to which subsequent notices or other communications shall be sent.

Section 8.2. Immunity of Officers, Employees and Members of the City and the Agency. No recourse shall be had for the appropriation and disbursement of the Agency Advance or the City Payment 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 City or the Agency, or, respectively, of any successor public or private corporation thereto, as such, either directly or through 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. Amendments and Modifications. Any amendment or modification of this Agreement, or any consent required pursuant to the provisions of this Agreement, shall be authorized solely by the requisite vote of the governing body or department head of the City or the Agency granting such consent or, in the case of amendments or modifications by the governing body or department head of the party or by the officers authorized by governing such body or department head.

Section 8.4. Partial Invalidity. All provisions of this Agreement are material and substantive and therefore, if any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held void or invalid, then the entire Agreement shall be held invalid and of no force and effect.

Section 8.5. 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 8.6. 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 City Payment has been received by the Agency.

Section 8.7. Execution in Counterparts. This Agreement may be executed simultaneously in 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 _____, 200_____.

THE BI-STATE DEVELOPMENT AGENCY OF THE
MISSOURI-ILLINOIS METROPOLITAN DISTRICT
DOING BUSINESS AS METRO

[SEAL]

[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 City on _____, 200_____.

THE CITY OF ST. LOUIS, MISSOURI

By _____
Mayor

Comptroller

Approved as to form only:

City Counselor

ATTEST:

Register

[Remainder of page left intentionally blank]

Approved: February 4, 2004