



Board of Commissioners - Special Meeting

Open Meeting

Friday, October 14, 2022 @ 8:30 AM

Virtual Meeting

211 North Broadway, 6th Floor

St. Louis, MO, 63102



Board of Commissioners - Special Meeting - October 14, 2022 @ 8:30 AM

Notice of Meeting and Agenda

- | | | |
|---|----------|------------------------|
| 1. Call to Order | Approval | Chair
Simmons |
| 2. Roll Call | Quorum | M. Bennett |
| 3. Implementation of a 457(f) Executive Deferred Compensation Plan
(Resolution #1228 and Resolution #1229) | Approval | D. Bentz / D.
Toben |
| A. Briefing Paper - 3 | | |
| B. 457(f) Plan Board Policy - 6 | | |
| C. 457(f) Deferred Compensation Plan Clean 10-14-2022 - 9 | | |
| D. 457(f) Executive Summary - 28 | | |
| E. 457(f) Salary Reduction Agreement - 30 | | |
| F. 457(f) Notice of Award - 31 | | |
| G. 457(f) Beneficiary Election Form - 33 | | |
| H. Resolution 1228 - Revision Board Policy Chapter 70 - 457(f) Deferred
Compensation Plan - 34 | | |
| I. Resolution 1229 - Adopt 457(f) Executive Deferred Compensation Plan
- 37 | | |
| 4. St. Clair County Operating Agreements & Lease & Bond Agreement
(Resolution #1230) | Approval | T. Fulbright |
| A. Briefing Paper - 40 | | |
| B. Lease and Bond Agreement - 42 | | |
| C. Rail Service and Maintenance Agreement - 46 | | |
| D. Bus Service and Maintenance Agreement - 54 | | |
| E. ATS Service and Maintenance Agreement - 62 | | |
| F. Resolution 1230 - SCCTD Agreements - 68 | | |
| 5. Adjournment | Approval | Chair
Simmons |

**Bi-State Development Agency
Board of Commissioners Special Meeting
Open Session Agenda Item
October 14, 2022**

From: Taulby Roach, President and CEO
Subject: **Implementation of a 457(f) Executive Deferred Compensation Plan**
Disposition: Approval
Presentation: Taulby Roach, President and CEO
Diana Bentz, Vice President – Talent Management
Barbara Enneking, General Counsel
Dave Toben, Director of Benefits

Objective:

To present to the Board of Commissioners, a request for approval, of a 457(f) Executive Deferred Compensation Plan program to recognize and retain top tier talent.

Background:

Organizations that do not have options for variable pay such as annual bonuses or stock options, can find it difficult to attract and retain key talent to accomplish long-term strategic objectives. Given Bi-State Development (BSD) is one of those organizations, the Talent Management and Benefits Departments reviewed options and recommended consideration of a 457(f) Plan.

At the February 18, 2022 Board meeting, the Board approved the creation and drafting of a 457(f) deferred compensation plan for Agency executive staff and authorized certain Agency staff to determine the parameters of the 457(f) plan design and implementation subject to Board approval. In accordance with Board instructions, the Vice President – Talent Management and Director of Benefits presented a proposed 457(f) Executive Deferred Compensation Plan program at the September 23, 2022 Board meeting.

A 457(f) Plan is a non-qualified plan, which allows any eligible participant to defer income on a pre-tax basis to supplement the limit that is currently provided by ERISA for a 401(k) plan. These limits generally are not sufficient for a highly compensated employee to save enough for retirement. A non-qualified plan has no compensation or monetary limits, however, the plan sponsor at its sole discretion determines the percentage of income that can be deferred into the plan.

Analysis:

The purpose of the Plan is to attract and retain key executives and recognize their contribution to the successful operation of BSD with elective salary deferrals and associated match and a discretionary contribution conditioned on the future performance of “substantial services” under Section 457(f)(3)(B) of the Code and requires a “substantial risk of forfeiture” regulated by a vesting period.

The proposed attached Board Policy, Section 70.060, provides that the Executive Committee of the Board is designated to assume the responsibilities of the Board concerning the Plan unless specifically directed otherwise by the Board.

Annually, the Board or its designee, the Executive Committee of the Board, will determine those employees who shall be eligible to participate in the Plan. As of the approved Effective Date of this Plan, BSD's President and Chief Executive Officer (CEO), and Executive Vice Presidents shall be eligible to participate in the Plan.

There are two (2) components of the proposed Plan: 1) Elective Salary Deferrals and Employer Match and 2) Discretionary Employer Contribution.

Elective Deferrals: Contributions made to the Plan at the election of a Participant via a Salary Reduction Agreement in lieu of receiving current cash compensation and subject to substantial risk of forfeiture. Maximum elective deferral amounts will be established by the Board or its designee, the Executive Committee of the Board.

Employer Matching Contributions: Periodic contributions made by the BSD on account of the Elective Deferrals made by Participants equal to a fixed percent of the Elective Deferrals for the Plan Year as determined at the sole discretion of the Board or its designee, the Executive Committee of the Board, in accordance with governing regulations that stipulate the match must be structured so that the present value of the amount to be paid due to the deferral plus match must be more than 125% of the present value of the amount of the salary deferral. This has been interpreted to require a match of more than 25%.

Employer Discretionary Contribution: This contribution amount would be determined at the discretion of the Board or its designee, the Executive Committee of the Board, based upon criteria satisfactory to the Board or its designee, the Executive Committee of the Board, and subject to a substantial risk of forfeiture. This would not require any elective deferral by the Participant to receive the Employer Discretionary Contribution.

Vesting of contributions shall be subject to a service requirement of two (2) continuous years of service. Accelerated vesting occurs upon Death, Disability or involuntary termination by BSD without cause.

The Board or its designee, the Executive Committee of the Board, shall determine 1) the total annual discretionary award contribution amount and 2) the allocation of the annual discretionary award contribution amount for the President and CEO during the calendar year for which the allocation is made. After the Board or its designee, the Executive Committee of the Board, makes these two determinations, any remaining BSD discretionary Plan contribution amount may be allocated among all other eligible executives as determined by the President and CEO consistent with the Plan and the attached proposed Board Policy.

The Board or its designee, the Executive Committee of the Board, has full discretion to determine: 1) the maximum salary deferral contribution amount any participant may make, 2) the matching percentage for the President and CEO, 3) the matching percentage for all other eligible

BSD executives, 4) the total annual discretionary award contribution, and 5) the discretionary award contribution for the President and CEO.

An administrative 457(f) Committee consisting of the General Counsel, Vice President – Talent Management, the Treasurer and the Director of Benefits provides recommendations to the Board Chair with input from Staff based upon Board Policy factors for: 1) maximum salary deferral amounts, 2) salary match percentage and 3) total amount of discretionary awards.

Board Action Requested:

It is requested that the Board of Commissioners approve a 457(f) Executive Deferred Compensation Plan program, including the 457(f) Deferred Compensation Plan Document and new Board Policy, Section 70.060, and waives tabling of the new Board Policy, Section 70.060, as provided in Article VI of the Bylaws so that it is effective upon Board approval.

Funding Source:

Board designated operational funds.

Attachments:

1. 457(f) Plan Board Policy, Section 70.060
2. BSD 457(f) Deferred Compensation Plan Document
3. BSD 457(f) Executive Summary of the Plan
4. BSD 457(f) Salary Reduction Agreement
5. BSD 457(f) Notice of Award
6. BSD 457(f) Beneficiary Election Form

Section 70.060 457(f) Deferred Compensation Plan (New X/X/22)

A. General. The Bi-State Development Agency sponsors a 457(f) Plan (the “457(f) Plan” or “Plan”), a discretionary, nonqualified, deferred compensation arrangement, pursuant to Section 457(f) of the Internal Revenue Code for select members of executive management of the Agency. The purpose of the Plan is to provide financial incentives in recruiting and maintaining highly qualified candidates for employment and encouraging existing qualified employees to continue to devote their best efforts to the Agency. It is the responsibility of the Board of Commissioners to:

1. Determine who is eligible for and who may participate in the Plan;
2. Administer and interpret the Plan, including making benefit determinations;
3. Retain agents to assist in the administration and management of the Plan and/or delegate duties to Agency staff or agents;
4. Determine the total annual amount of the discretionary contribution to the Plan, if any; and in connection therewith:
 - a. determine the amount, if any, to be allocated to the President and Chief Executive Officer and
 - b. determine the total amount, if any, to be allocated to all other eligible Agency Executives;
5. Determine the maximum amount that the President and Chief Executive Officer may defer under the Plan through salary reduction and determine the maximum amount all other eligible Agency Executives may defer under the under the Plan through salary reduction.
6. Determine the matching contribution percentage for salary deferrals made by the President and Chief Executive Officer.
7. Determine the matching contribution percentage for salary deferrals made by all other Agency Executives.
8. Make determinations as to the contribution credit date, vesting and earnings tracking, consistent with the Plan documents;
9. Approve Plan amendments; and
10. Review, adopt and amend Plan policies and procedures involved in administering the Plan.

The Executive Committee of the Board is designated to assume the above responsibilities of the Board unless specifically directed otherwise by the Board.

B. Eligible Executives. The 457(f) Plan is available to the Agency President and Chief Executive Officer and Executive Vice Presidents and such other executive management as the Board or its designee, the Executive Committee of the Board, may determine are appropriate in the future.

C. The 457(f) Plan Administrative Committee. The 457(f) Plan Administrative Committee (the “457(f) Committee” or “Committee”) is responsible for assisting in the administration of the Plan, including oversight for the process of determining the total annual amount that can be available for making award contributions for use in allocation to participants consistent with this Policy and the Plan and in setting the annual maximum salary deferral amounts and the matching contribution percentage for each participant. The 457(f) Committee shall consist

of four (4) members – the Vice President of Talent Management, the Treasurer, the Director of Benefits, and the General Counsel. The Chair of the Board of Commissioners shall oversee the Committee and its operation.

The 457(f) Committee shall meet from time to time on the call of any Committee member. The Committee shall also meet at least semi-annually to receive reports on the performance of investments held by the Agency to track earnings. The Committee may consult with the plan record-keeper and other consultants in fulfilling its duties. The Board Audit, Finance and Administration Committee shall receive semi-annual investment reports and an annual briefing summary regarding investment performance as well as an annual report on Plan administration. The Committee shall provide a report on the Plan to the full Board at the regularly scheduled Board of Commissioners meeting following the Board Audit, Finance and Administration Committee review.

D. Elective Deferral Contributions and 457(f) Plan Award Contributions (Matching and Discretionary). Agency award contributions may be allocated as a discretionary contribution and shall be allocated as a match of participant salary deferrals, if any deferrals are made.

The discretionary award contribution amount for the President and Executive Officer, the matching percentage for the President and Chief Executive Officer and the matching percentage for eligible Agency Executives is at the discretion of the Board or its designee, the Executive Committee of the Board, consistent with the Plan and this Policy, as it may be amended from time to time. The Plan provides that the matching contribution shall comply with Proposed Treasury Regulation Section 1.457-12 which provides in subsection (e)(2) that the match must be structured so that the present value of the amount to be paid due to the deferral plus match must be more than 125% of the present value of the amount of the salary deferral. This has been interpreted to require a match of more than 25% of the salary deferral.

The Board or its designee, the Executive Committee of the Board, within the preceding calendar year, shall determine for the following calendar year, 1) the maximum salary deferral contribution amount any participant may make, 2) the matching percentage for the President and Chief Executive Officer and 3) the matching percentage for eligible Agency Executives.

The Board or its designee, the Executive Committee of the Board, shall determine 1) the total annual discretionary award contribution amount and 2) the allocation of the annual discretionary award contribution amount for the President and Chief Executive Officer during the calendar year for which the allocation is made. After the Board or its designee, the Executive Committee of the Board, makes these two determinations, any remaining Agency discretionary Plan contribution amount may be allocated among all other eligible Agency Executives as determined by the President and Chief Executive Officer consistent with the Plan and this Policy, as it may be amended from time to time.

Although it is intended that the Agency Plan discretionary contribution be made annually, the availability of the necessary funding and other factors as to Agency operations will be considered by the Board or its designee, the Executive Committee of the Board, prior to a decision regarding any Plan contribution and/ or the amount of any Plan contribution. Similarly, the setting of the

maximum salary deferral amount and the matching percentages by the Board or its designee, the Executive Committee of the Board, shall be subject to the same Agency funding and other factors.

E. 457(f) Plan Investment Funds for Use in Tracking Earnings. Plan participants may designate investment options but the assets remain titled in the name of the Agency, or in a trust established by the Agency, to hold the Agency funds subject to use restrictions. Approved investment options will be selected by the 457(f) Committee taking into account the following factors: the types of investment options available under the current 401(k) plan, as discussed in Board Policy 70.050, and the investment horizon under the Plan.

D. Review and Revision of this Statement of Policy. The Board Audit, Finance and Administration Committee will periodically review this policy to ensure it is still reflective of the Agency's 457(f) Plan for executive management.

**BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS
METROPOLITAN DISTRICT
457(F) DEFERRED COMPENSATION PLAN**

**EFFECTIVE
JANUARY 1, 2023**

**BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS
METROPOLITAN DISTRICT
457(F) DEFERRED COMPENSATION PLAN**

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**BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS
METROPOLITAN DISTRICT
457(F) DEFERRED COMPENSATION PLAN**

WHEREAS, Bi-State Development Agency of the Missouri-Illinois Metropolitan District (hereinafter the “Employer”) is an interstate transportation authority created by Section 70.370 et seq. of the Missouri Revised Statutes and Chapter 45 100/1 et seq. of the Illinois Compiled Statutes as a body politic and corporate (jointly referred to herein as the “Compact”); and

WHEREAS, the Employer desires to attract and retain key executives and recognize their contribution to its successful operation by means of a discretionary defined contribution plan not subject to Code Section 412 for those employees who shall qualify as Participants hereunder; and

WHEREAS, the Employer intends to adopt and maintain this Plan as an “ineligible plan of deferred compensation” within the meaning of Section 457(f) of the Code and to satisfy the requirements of Section 409A of the Code; and

WHEREAS, this Bi-State Development Agency of the Missouri-Illinois Metropolitan District 457(f) Deferred Compensation Plan (the “Plan”), effective January 1, 2023, has been prepared for consideration of the Board of Commissioners to provide a tax deferred capital accumulation opportunity through the deferral of compensation in order to encourage the employees to maintain a long-term relationship with the Employer and provide flexibility to the employee in his or her financial planning.

NOW, THEREFORE, the Employer adopts this Plan document effective January 1, 2023, as a nonqualified deferred compensation program for the benefit of a select group of management or highly compensated employees of the Bi-State Development Agency of the Missouri-Illinois Metropolitan District.

ARTICLE I - ESTABLISHMENT OF PLAN

1.01 Establishment. The Employer hereby establishes this Plan effective as of January 1, 2023.

1.02 Name. Effective January 1, 2023, the Plan shall be known as the “Bi-State Development Agency of the Missouri-Illinois Metropolitan District 457(f) Deferred Compensation Plan”.

1.03 Purpose. The purpose of the Plan is to allow deferred compensation incentives to be credited to the Plan for the benefit of the Participants, and such amounts shall be paid to the Participants (or their beneficiaries) as set forth herein, provided the amounts credited and any allocable Earnings hereunder shall be subject to a Substantial Risk of Forfeiture.

ARTICLE II - DEFINITIONS

Whenever used in this Plan, the following words and phrases shall have the meanings set forth below unless the context plainly requires a different meaning.

2.01 Applicable Guidance. The term “Applicable Guidance” means as the context requires Code §83 and 409A, Treas. Reg. §1.83, Treas. Reg. §1.409A, or other written Treasury or IRS guidance regarding or affecting Code §83 or 409A, including, as applicable, any Code §409A guidance in effect prior to January 1, 2023.

2.02 Award. The term “Award” means Elective Deferrals, Employer Matching Contributions, and Employer Discretionary Contributions and any allocated Earnings on such contributions that are credited to a Participant’s Deferred Compensation Account.

2.03 Beneficiary. The term “Beneficiary” means any person, entity, or any combination thereof designated by a Participant to receive benefits under this Plan in the event of the Participant’s death, or in the absence of any such designation, his or her spouse, and if the Participant is not survived by his or her spouse, to his or her estate. The term “Beneficiary” shall include one or more Beneficiaries, including all contingent Beneficiaries designated.

2.04 Board. The term “Board” shall refer to the Board of Commissioners of the Bi-State Development Agency of the Missouri-Illinois Metropolitan District.

2.05 Code. The term “Code” shall mean the Internal Revenue Code of 1986, as amended.

2.06 Deferred Compensation Account. The term “Deferred Compensation Account” shall have the meaning set forth in Article 7 of this Plan.

2.07 Disability. The term “Disability” means a condition of a Participant who by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months: (i) is unable to engage in any substantial gainful activity; or (ii) is receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering Employees. The Employer will determine whether a Participant has incurred a Disability based on its own good faith determination and may require a Participant to submit to reasonable physical and mental examinations for this purpose. A Participant will be deemed to have incurred a Disability if: (i) the Social Security Administration or Railroad Retirement Board determines the Participant is totally disabled; or (ii) the applicable insurance company providing disability insurance to the Participant under an Employer sponsored disability program determines a Participant is disabled under the insurance contract definition of disability, provided such definition complies with the definition in this Section.

2.08 Earnings. The term “Earnings” shall have the meaning set forth in Article 6 of this Plan.

2.09 Effective Date. The term “Effective Date” shall mean January 1, 2023.

2.10 Elective Deferrals. The term “Elective Deferrals” shall mean the contributions made to the Plan at the election of a Participant via a Salary Reduction Agreement in lieu of receiving current cash compensation as described in Section 4.01.

2.11 Eligible Employee. The term “Eligible Employee” shall mean an Employee who is designated by the Board to participate in the Plan pursuant to Article 3.

2.12 Employee. The term “Employee” shall mean an employee of the Employer.

2.13 Employer. The term “Employer” shall mean Bi-State Development Agency of the Missouri-Illinois Metropolitan District and any successor which shall maintain this Plan. The Employer is an interstate transportation authority created by Section 70.370 et seq. of the Missouri Revised Statutes and Chapter 45 100/1 et seq. of the Illinois Compiled Statutes as a body politic and corporate (jointly referred to herein as the “Compact”). The Employer includes all persons and any business or legal entity with whom the Employer would be considered a single employer under Code §§414(b) or (c).

2.14 Employer Discretionary Contributions. The term “Employer Discretionary Contributions” shall mean the periodic contributions made by the Employer at the discretion of the Board as set forth in Section 4.03 of this Plan.

2.15 Employer Matching Contributions. The term “Employer Matching Contributions” shall mean the periodic contributions made by the Employer on account of the Elective Deferrals made by Participants. The Matching Contribution shall be equal to a fixed percent of the Elective Deferrals for the Plan Year as determined at the sole discretion of the Board as further described in Section 4.02 of this Plan.

2.16 Participant. The term “Participant” shall mean an Employee who has been designated by the Board to participate in this Plan and who is accruing benefits under the Plan.

2.17 Plan Year. The term “Plan Year” shall refer to the twelve (12) months ending December 31, or the calendar year.

2.18 Plan. The term “Plan” shall mean this Bi-State Development 457(f) Deferred Compensation Plan which includes this Plan document, and all notices, forms, elections and other written documentation to which the Plan refers, as applicable.

2.19 Separation from Service. The term “Separation from Service” shall mean the Employee’s termination of employment with the Employer whether on account of death, retirement, Disability or otherwise.

2.20 Salary Reduction Agreement. The term “Salary Reduction Agreement” shall mean the written agreement between the Participant and the Employer to reduce the Participant’s regular base salary for the purpose of pre-tax Elective Deferrals to the Plan. The Salary Reduction Agreement shall specify the Participant’s Elective Deferral, Employer Matching Contribution, and the future service and/ or performance criteria required to vest in the Elective Deferrals and Employer Matching Contributions for the specified Plan Year,

2.21 Substantial Risk of Forfeiture. The term “Substantial Risk of Forfeiture” shall mean a risk a Participant will not satisfy a condition hereunder that must be satisfied in order to receive the Awards made by the Employer hereunder, and which constitutes a “substantial risk of forfeiture” under Code Sections 409A and 457(f) or any successor corresponding provision.

2.22 Substantial Services. The term “Substantial Services” shall mean the level of services by a Participant required in order for the receipt of benefit to be conditioned on the future performance of “substantial services” under Section 457(f)(3)(B) of the Code or any successor corresponding provision.

2.23 Termination for Cause. The term “Termination for Cause” shall mean the termination by the Employer of the Participant’s employment with the Employer for cause. For purposes of this Plan, the term “for cause” shall refer to a termination of employment based upon the Employer’s determination that the Participant is guilty of dishonesty, gross neglect of duty, willful misconduct, willful failure or refusal to discharge employment duties, or willful acts that violate the Employer’s written policies or directives, or other act or omission which substantially impairs the Employer’s ability to conduct its ordinary business in its usual manner; or that the Participant has been criminally convicted for any act that would constitute a felony (other than a traffic offense), or any act regarding moral turpitude.

2.24 Valuation Date. The term “Valuation Date” means the last day of each Plan Year, and such other dates as the Employer may determine.

2.25 Vesting Period. The term “Vesting Period” means the Substantial Services period specified for a given Participant during which a Substantial Risk of Forfeiture exists.

2.26 Notice of Award. The term “Notice of Award” means the written document provided by the Employer to the Participant detailing the amount of the Employer Discretionary Contribution, the credit date, and the future service and/ or performance criteria required to vest in the Employer Discretionary Contribution.

ARTICLE III - ELIGIBILITY AND PARTICIPATION

3.01 Participant Designation. Each year, the Board will determine those Employees who shall be eligible to participate in this Plan, (“Eligible Employees”). As of the Effective Date of this Plan, the Employer’s President and Chief Executive Officer, and Executive Vice Presidents shall be eligible to participate in the Plan.

3.02 Participation in this Plan. An Eligible Employee who is designated to participate in the Plan shall commence participation in the Plan as of the date designated by the Board. The fact a Participant is eligible to participate in one Plan Year, does not guarantee the Participant the right to participate in any other Plan Year. The Board may terminate or suspend the participation of any Eligible Employee at any time.

ARTICLE IV – ELECTIVE DEFERRALS AND CONTRIBUTIONS

4.01 Elective Deferrals. During the period in which a Participant is eligible to participate in the Plan, he or she may make an initial election to defer the right to vesting and payment of all or a specified portion of his or her regular base salary by entering into a Salary Reduction Agreement with the Employer.

To be effective, the Salary Reduction Agreement must be made in writing before the beginning of the calendar year in which any services giving rise to the compensation are performed. Such election shall only apply to the Plan Year for which it is made and shall become irrevocable as of December 31 immediately preceding the Plan year for which the election relates. The Board shall determine the maximum Elective Deferrals per Participant per Plan Year. These determinations will be reflected in the Salary Reduction Agreement and need not be the same for any two Participants.

The extent to which a Participant is vested in any Elective Deferral made to his or her Account shall be determined in accordance with Article 5.

4.02 Employer Matching Contributions. The Employer shall determine the rate of Employer Matching Contributions it will make with respect to the Participant's Elective Deferrals. The Employer Matching Contribution shall equal a percentage of the Participant's Elective Deferrals and shall be determined by the Board in accordance with Prop. Regs. Sec. 1.457-12 which provides in subsection (e)(2) that the match must be structured so that the present value of the amount to be paid due to the deferral plus match must be more than 125% of the present value of the amount of the salary deferral. This has been interpreted to require a match of more than 25%. The purpose of this is to ensure the present value of the amount to be paid upon the lapse of the Substantial Risk of Forfeiture with respect to the Participant's Elective Deferrals will be materially greater than the amount the Participant otherwise would be paid in the absence of the Substantial Risk of Forfeiture.

The extent to which a Participant is vested in any Employer Matching Contributions made to his or her Account shall be determined in accordance with Article 5.

4.03 Employer Discretionary Contributions. During the term of this Plan, the Board may defer additional amounts for the benefit of a Participant. The amount and frequency of such Employer Contributions shall be determined by the Board in its complete and sole discretion, will not require any deferral by the Participant to receive the Employer Discretionary Contribution, and need not be the same for any two Participants. In any Plan Year, the Employer may defer amounts for one or more Participants; may not defer amounts for other Participants; may defer different amounts for different Participants and may choose to not defer any amounts for any Participants.

At the time of awarding an Employer Discretionary Contribution, the Board shall designate in writing the terms and conditions of the Employer Discretionary Contribution. The Employer shall credit the Employer Discretionary Contribution as of January 1 of the Plan Year, or such other dates as determined in the sole discretion of the Board. For the First Plan Year the Employer shall credit the Employer Contribution as of January 1, 2023.

The extent to which a Participant is vested in any Employer Discretionary Contribution made to his or her Account shall be determined in accordance with Article 5.

ARTICLE V – VESTING PERIOD

5.01 Vesting. A Participant shall be vested and no longer subject to a Substantial Risk of Forfeiture upon reaching the Vesting Date specified in the Salary Reduction Agreement or Notice of Award for a given Plan Year. Generally, a Participant will be required to perform future substantial services for a period of two (2) continuous years of service measured from the first day of the Plan Year for which the Award relates. The Board may, in its complete and sole discretion, designate a longer service period requirement but in no event shall the service period requirement be less than two (2) years.

5.02 Acceleration of Vesting Period. In the event of the Participant's Separation from Service with the Employer due to the death, Disability of the Participant, or an involuntary termination of employment that is not a Termination for Cause before the Vesting Period is completed, the Vesting Period shall be deemed completed and the Participant shall become fully vested as of the date of the Participant's Separation from Service due to death or Disability, or an involuntary termination of employment that is not a Termination for Cause. Notwithstanding the above, the Board, in its complete and absolute discretion, may accelerate the Vesting Period for any Participant for any reason prior to Amounts Deferred being forfeited pursuant to Section 5.03.

5.03 Forfeiture of Amounts Credited. Notwithstanding any other provision herein, a Participant shall forfeit all rights hereunder to Awards upon a Termination for Cause as defined in Article 2 of this Plan or Separation from Service before completion of the Vesting Period for any reason other than the Participant's death, Disability, or an involuntary termination of employment that is not a Termination for Cause.

ARTICLE VI – EARNINGS

6.01 Establishment of Investment Funds to Track Earnings. In addition to the Employer Contributions credited to the Participant's Deferred Compensation Account, the Employer shall also adjust the Participant's Deferred Compensation Account by an amount equal to the amount that would have been earned (or lost) in instruments designated by the Participant under a list of approved investments issued by the Employer from time to time, in the manner designated by the Employer (such amounts shall be referred to herein as "Earnings"). In the case of a designation of a mutual fund or other investment, (a) the amount deemed invested will be equal to the Participant's Deferred Compensation Account (under Article 7 hereof), or a portion thereof as designated, and shall be treated as if such amounts had been paid into such investment, as appropriate, and (b) as if the charges and expenses associated with such an investment had been incurred, which will decrease the Participant's Deferred Compensation Account balance.

The decision to determine Earnings by tying the return to various investments, and the methods or principles and accounting period used for allocation of Earnings, shall be at the sole discretion of the Employer, and the Employer may change the methodology from time to time. If any Earnings calculation method is changed, Earnings previously allocated to the Participant's Deferred Compensation Account shall not retroactively be restated; the revised Earnings calculation method shall only be applied prospectively.

If the Employer elects to determine Earnings in a manner which permits Participants to direct investment, each Participant will be permitted to direct the investment of all amounts credited to the Plan on his or her behalf. In such an event, a Participant will exercise this right in accordance with the terms of this Plan, pursuant to any limitations or restrictions established by the Employer, and under any governing federal or state law. If the Employer elects to determine Earnings in the manner specified in this Section, the right set forth herein shall be strictly limited to investment directions and no Participant shall be entitled to a distribution of any Deferred Compensation Account asset except as otherwise provided in the Plan.

6.02 Accrual of Earnings. Earnings shall accrue on the balance in the Participant's Deferred Compensation Account until the entire balance of the Participant's Deferred Compensation Account has been paid to the Participant or the Participant's Beneficiary. The Employer shall not be responsible for the investment or performance results, or the expenses, of such investments. All Earnings shall be subject to a Substantial Risk of Forfeiture and the amount of any Earnings may decrease because of investment losses, investment expenses, or similar reasons in later periods.

6.03 Establishing a Rabbi Trust. The Employer, in its sole and absolute discretion, may acquire any investment product or any other instrument, establish a grantor trust as hereinafter described, or otherwise invest any amount to provide the funds from which it can satisfy its obligation to make benefit payments under this Plan; however, the Employer is under no obligation to do so. In its sole discretion, the Employer may establish a grantor trust, sometimes referred to as a "Rabbi Trust", for the purpose of creating a reserve account to meet the liabilities of this Plan. Any such Rabbi Trust will be based on any model trust document provided by the IRS and may

be established as an irrevocable trust that will not allow return of trust assets to the Employer until plan liabilities are satisfied but must allow for payment of claims by creditors of Employer in the event of Employer insolvency or bankruptcy. Any investment product or other similar item so acquired for the convenience of the Employer shall be the sole and exclusive property of the Employer with the Employer named as owner and beneficiary thereof. To the extent the Participant or the Participant's Beneficiary acquires a right to receive payments from the Employer under the provisions herein, such right shall be no greater than the right of any unsecured general creditor of the Employer.

6.04 Restriction on Trust Assets. Any Rabbi Trust and the trust assets must be located in and remain within the United States. The Rabbi Trust may not contain any provision limiting the assets to the payment of Plan benefits upon a "Change in the Employer's Financial Health" as that term is described in Applicable Guidance, even if the assets remain subject to claims of the Employer's general creditors.

ARTICLE VII - DEFERRED COMPENSATION ACCOUNT

7.01 Deferred Compensation Account. The Employer shall establish for each Participant a recordkeeping account, referred to as the “Deferred Compensation Account”, to account for the Employer’s obligation to each Participant under the Plan. The Employer shall record in each Participant’s Deferred Compensation Account the amount equal to (i) Elective Deferrals, Employer Matching Contributions, and Employer Discretionary Contributions on the date or dates credited to the Participant, as specified in Article 4, and (ii) allocated Earnings from time to time, as described in Article 7. A Participant’s Deferred Compensation Account shall at all times remain a liability of the Employer. Any assets the Employer may “ earmark”, reserve, or otherwise set aside to meet the benefit obligations of the Plan shall remain part of the general assets of the Employer or be part of a trust as described in Section 6.03 with respect to which the Employer is the beneficial owner.

7.02 Plan to Remain Unfunded. The Employer intends this Plan to be an unfunded plan that is exempt from the Employee Retirement Income Security Act of 1974 (ERISA). No Participant, Beneficiary, or successor thereto has any legal or equitable right, interest or claim to any property or assets of the Employer including assets held in any Deferred Compensation Account under the Plan except as the Plan otherwise permits. The Employer’s obligation to pay Plan benefits is an unsecured promise to pay. Nothing in this Plan shall preclude the Employer from establishing a trust, as described in Section 6.03 that will operate as a reserve to meet the liabilities of this Plan. If the Employer elects to establish such a trust, as described in Section 6.03, in respect of its obligations under this Plan, the trustee will pay Plan benefits in accordance with the terms of this Plan or upon the Employer’s direction consistent with terms of this Plan and any applicable provision of a controlling trust agreement. If no such trust is created, the Employer may make notional contributions in lieu of actual contributions to the Plan and the Employer shall retain the discretion whether to invest any actual Plan contributions.

ARTICLE VIII – DISTRIBUTION OF BENEFITS

8.01 Payment Events. The benefits under this Plan (the “Award”) will be paid to the Participant, or in the event of death, to the Participant’s Beneficiary, following the earliest of the Participant’s Separation from Service due to Disability, death, or the last day of the Vesting Period specified by the Board in accordance with Sections 4.02 and 5.01. Payment will commence in the time and form specified below.

1) End of Vesting Period. At the end of the Vesting Period, if the Participant has satisfied the applicable requirements to provide Substantial Services as set forth in Article 5 herein, and has not had a Termination for Cause or Separated from Service other than by death, Disability, or an involuntary termination of employment that is not a Termination for Cause, an amount equal to the Award for the specified Plan Year, less any applicable taxes required to be withheld, shall be distributed to the Participant in one lump sum payment within the sixty (60) day period beginning with the last day of the Vesting Period and no later than March 15 of the calendar year following the year in which the Award is no longer subject to a Substantial Risk of Forfeiture.

2) Death Before Vesting Period Completed. In the event of the death of the Participant prior to completion of the Vesting Period, the Participant’s Deferred Compensation Account shall be deemed fully vested in accordance with Section 5.02. The Employer shall distribute an amount equal to the value of the Participant’s Deferred Compensation Account, less any applicable taxes required to be withheld, to the Participant’s Beneficiary in one lump sum payment within the sixty (60) day period beginning with the date of the Participant’s death and no later than March 15 of the calendar year following the year in which the Deferred Compensation Account is no longer subject to a Substantial Risk of Forfeiture.

3) Separation from Service due to Disability Before Vesting Period Completed. In the event the Participant Separates from Service prior to completion of the Vesting Period due to Disability, the Participant’s Deferred Compensation Account shall be deemed fully vested in accordance with Section 5.02. The Employer shall distribute an amount equal to the value of the Participant’s Deferred Compensation Account, less any applicable taxes required to be withheld, to the Participant in one lump sum payment within the ninety (90) day period beginning with the date of the Participant’s Separation from Service due to Disability and no later than March 15 of the calendar year following the year in which the Deferred Compensation Account is no longer subject to a Substantial Risk of Forfeiture.

4) Other Acceleration of Vesting Period. In the event of the acceleration of the Vesting Period due to an involuntary termination of employment that is not a Termination for Cause or at the complete and sole discretion of the Board pursuant to Section 5.02 prior to completion of the Vesting Period, the Employer shall distribute an amount equal to the value of the vested Award, less any applicable taxes required to be withheld, to the Participant in one lump sum payment within the sixty (60) day period beginning with the date the Award is deemed fully vested in accordance with Section 5.02 and no later than March 15 of the calendar year following the year in which the Award is no longer subject to a Substantial Risk of Forfeiture.

8.02 Payment in the Event of Tax Liability. In the event any Participant or Beneficiary is required to include as income any Amount Deferred (or any benefit payable) under this Plan before such amount is actually paid to the Participant or Beneficiary, the Employer shall pay to such Participant or Beneficiary an amount equal to the amount included in the Participant's or Beneficiary's taxable income. Any amount payable hereunder shall reduce the balance of the Participant's Deferred Compensation Account and shall reduce future benefit payments accordingly. A payment under this Section 8.02 shall only be permitted to the extent permitting such a payment is permissible under Code §457 or any other applicable tax rule.

8.03 Payment Only from Employer Assets. Any payment of benefits to a Participant or his or her Beneficiary shall be made from assets which shall continue, for all purposes, to be a part of the general assets of the Employer; no person shall have or acquire any interest in such assets by virtue of the provisions of this Plan. To the extent a Participant or his or her Beneficiary acquires a right to receive payments from the Employer under the provisions hereof, such right shall be no greater than the right of any unsecured general creditor of the Employer.

8.04 Withholding. The Employer will withhold from any payment made under the Plan all applicable taxes and any and all other amounts required to be withheld under Applicable Guidance.

The benefits that accrue under the Plan are subject to FICA taxes (which includes the Old-Age, Survivors and Disability Insurance tax and/or Medicare tax, as the case may be) which may become due before the benefits are actually paid as provided under Section 3121(v)(2) of the Code and related IRS regulations.

To ensure proper compliance with these regulations, the Employer will calculate the amount of FICA tax when it becomes due and will deduct the Participant's share of the FICA tax on amounts credited to the Participant's Account from other taxable compensation payable to the Participant by the Employer. If the Participant has insufficient other taxable compensation from the Employer from which to deduct such tax, then the Employer will remit the remaining portion of the Participant's share of the tax to the IRS and arrange for the collection of that amount from the Participant. The Participant will be solely liable for his or her share of FICA taxes on benefits accrued under the Plan.

8.05 Beneficiary Designation. A Participant may designate a Beneficiary (including one or more primary and contingent Beneficiaries) to receive payment of the Participant's Deferred Compensation Account at death. The Employer will provide each Participant with a form, which may be electronic, for this purpose and no designation will be effective unless made on that form and delivered to the Employer or its agent. A Participant may modify or revoke an existing designation of Beneficiary by executing and delivering a new designation to the Employer or its agent. In the absence of a properly designated Beneficiary, the Employer will pay a deceased Participant's Deferred Compensation Account to the Participant's surviving spouse and if none, to the Participant's then living lineal descendants, by right of representation, and if none, to the Participant's estate. If a Beneficiary is a minor or otherwise is a person whom the Employer reasonably determines to be legally incompetent, the Employer may cause the Plan or trust to pay the Participant's Deferred Compensation Account to a guardian, trustee or other proper legal representative of the Beneficiary. The Plan's or trust's payment of the deceased Participant's Deferred Compensation Account to the Beneficiary or proper legal representative of the Beneficiary completely discharges the Employer, the Plan and Trust of all further obligations under the Plan with respect to that payment.

ARTICLE IX – AMENDMENT AND TERMINATION

9.01 Amendment. Employer reserves the right to amend the Plan at any time to comply with Applicable Guidance or for any other purpose, provided such amendment will not without the consent of the Participant, affect such Participant's rights with respect to Awards previously vested by him. Except as the Plan and Applicable Guidance otherwise may require, the Employer may make any such amendments effective immediately.

9.02 Cessation of Future Awards. Employer may elect at any time to amend the Plan to cease future Employer Contributions as of a specified date. In such event, the Plan remains in effect (except those provisions permitting the frozen award type) until all balances are paid in accordance with the Plan terms, or, if earlier, upon the Employer's termination of the Plan.

9.03 Termination and Closure. The Employer reserves the right to terminate the Plan at any time. If the Plan is terminated, all outstanding Awards shall be deemed Vested and no longer subject to a Substantial Risk of Forfeiture. The Participant's Account shall be valued as of the Valuation Date immediately preceding the Plan's termination and distributed to the Participant in a single lump sum no later than two and one half (2 ½) months following the termination of the Plan and no later than March 15 of the calendar year following the year in which the Award is no longer subject to a Substantial Risk of Forfeiture.

ARTICLE X. - GENERAL PROVISIONS

10.01 No Assignment. No Participant or Beneficiary has the right to anticipate, alienate, assign, pledge, encumber, sell, transfer, mortgage or otherwise in any manner convey in advance of actual receipt, the Participant's Deferred Compensation Account. Prior to actual payment, a Participant's Deferred Compensation Account is not subject to the debts, judgments or other obligations of the Participant or Beneficiary and is not subject to attachment, seizure, garnishment or other process applicable to the Participant or Beneficiary.

10.02 Not an Employment Contract. This Plan is not a contract for employment between the Employer and any Employee who is a Participant. This Plan does not entitle any Participant to continued employment with the Employer, and benefits under the Plan are limited to payment of a Participant's benefit in accordance with the terms of the Plan.

10.03 Fair Construction. The Employer, Participants and Beneficiaries intend this Plan in form and in operation to be exempt from Code Section 409A, the regulations thereunder, and all other present and future Applicable Guidance as described under the short-term deferral rule provided in 26 C.F.R Section 1.409A-1(b)(4)(i).

10.04 Notice and Elections. Any notice given or election made under the Plan must be in writing and must be hand delivered or mailed by certified mail, to the Employer or to the Participant or Beneficiary as appropriate. Employer will prescribe the form of any Plan notice or election to be given to or made by Participants. Any notice or election will be deemed given or made as of the date of delivery, or if given or made by certified mail, as of 3 business days after mailing.

10.05 Administration. The Employer and Board will administer and interpret the Plan, including making a determination of the benefit due any Participant or Beneficiary under the Plan. As a condition of receiving any Plan benefit to which a Participant or Beneficiary otherwise may be entitled, a Participant or Beneficiary will provide such information and will perform such other acts as Employer reasonably may request. The Employer and Board may retain agents to assist in the administration of the Plan and may delegate to agents such duties as it sees fit. The decision of the Board or its designee concerning the administration of the Plan is final and is binding upon all persons having any interest in the Plan.

10.06 Accounting. The Employer will maintain for each Participant as is necessary for proper administration of the Plan sub-accounts for tracking Awards by Plan Year.

10.07 Account Statements. The Employer from time to time will provide each Participant with a statement of the Participant's Deferred Compensation Account as of the most recent Valuation Date. The Employer will also provide statements to any Beneficiary of a deceased Participant with a benefit remaining in the Plan.

10.08 Costs and Expenses. Investment charges will be borne by the Participant's Deferred Compensation Account to which they pertain. The Employer will pay the other costs, expenses

and fees associated with the operation of the Plan, excluding those incurred by Participants or Beneficiaries. The Employer will pay costs, expenses or fees charged by or incurred by the trustee only as provided in the trust or other agreement between the Employer and the trustee.

10.09 Reporting. The Employer will report deferred compensation for Employee Participants on Form W-2 in accordance with Applicable Guidance.

10.10 Applicable Law. All questions pertaining to the construction, validity and effect of the Plan shall be determined in accordance with the laws of the United States and to the extent not preempted by such laws, by the laws of the States of Missouri.

10.11 Gender and Number. Where the context permits, words denoting the masculine gender shall include the feminine gender, the singular shall include the plural, and the plural shall include the singular.

10.12 Statutory References. All references to the Code include reference to any comparable or succeeding provisions of any legislation which amends, supplements or replaces such section or subsection.

10.13 Headings. Section headings and titles are for reference only. In the event of a conflict between a title and the content of a section, the content of the section shall control.

10.14 Action by the Employer. Any action to be performed by Employer under the Plan shall be by resolution of its Board or by a person or persons authorized by Board resolution or Board approved Board Policy.

IN WITNESS WHEREOF, Bi-State Development Agency of the Missouri-Illinois Metropolitan District has executed this Plan this _____ day of _____, 20__.

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

Date: _____

By: _____

Witness: _____

Name: _____

Title: _____

**BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS
METROPOLITAN DISTRICT
457(F) DEFERRED COMPENSATION PLAN**

EXECUTIVE SUMMARY	
Plan Sponsor	Bi-State Development Agency of the Missouri-Illinois Metropolitan District
Employer	Bi-State Development Agency of the Missouri-Illinois Metropolitan District and any successor which shall maintain this Plan. The Employer is an interstate transportation authority created by Section 70.370 et seq. of the Missouri Revised Statutes and Chapter 45 100/1 et seq. of the Illinois Compiled Statutes as a body politic and corporate (jointly referred to herein as the “Compact”). The Employer includes all persons and any business or legal entity with whom the Employer would be considered a single employer under Code §§414(b) or (c).
Plan Type	IRC Section 457(f) and subject to IRC Section 409A
Effective Date	January 1, 2023
Purpose	The purpose of the Plan is to attract and retain key executives and recognize their contribution to the successful operation of the Employer with a discretionary contribution conditioned on the future performance of “substantial services” under Section 457(f)(3)(B) of the Code.
Plan Year	January 1 through December 31, the calendar year.
Eligibility Conditions	Annually, the Board will determine those Employees who shall be eligible to participate in the Plan. As of the Effective Date of this Plan, the Employer’s President and Chief Executive Officer, and Executive Vice Presidents shall be eligible to participate in the Plan
Time of Participation	Employees chosen to participate in the Plan shall begin participation in the Plan as of the date designated by the Board.
Elective Deferrals & Employer Matching Contributions	<p><u>Elective Deferrals</u>: Contributions made to the Plan at the election of a Participant via a Salary Reduction Agreement in lieu of receiving current cash compensation and subject to substantial risk of forfeiture.</p> <p><u>Employer Matching Contributions</u>: Periodic contributions made by the Employer on account of the Elective Deferrals made by Participants equal to a fixed percent of the Elective Deferrals for the Plan Year as determined at the sole discretion of the Board in accordance with Prop. Regs. Sec. 1.457-12, which provides in subsection (e)(2) that the match must be structured so that the present value of the amount to be paid due to the deferral plus match must be more than 125% of the present value of the amount of the salary deferral. This has been interpreted to require a match of more than 25%.</p>

EXECUTIVE SUMMARY

Employer Discretionary Contributions	Additional amounts determined at the discretion of the Board based upon criteria satisfactory to the Board and subject to a substantial risk of forfeiture. Board will not require any elective deferral by the Participant to receive the Employer Discretionary Contribution.
Vesting and Substantial Risk of Forfeiture	Vesting of contributions shall be subject to a separate future service requirement of two (2) continuous years of service. For example, to vest in contribution deferred during 2023, the Participant must remain employed through December 31, 2025 to vest in Elective Deferrals and Employer Contributions.
Accelerated Vesting	Death, Disability or involuntary termination by Employer without Cause
Forfeiture Event	Unvested amounts are forfeited upon Termination for Cause or Separation from Service before completion of Vesting Period for reasons other than death, Disability, or involuntary termination without Cause.
Payments	Vested amounts distributed to Participant, or in case of death, to the Participant's designated Beneficiary within 60 days following Vesting. In no event shall Vested amounts be distributed to a Participant later than March 15 of calendar year following the year in which the Award is no longer subject to a Substantial Risk of Forfeiture
Taxation and withholding	The Employer will withhold from any payment made under the Plan all applicable taxes and any and all amounts required to be withheld.
Funding	Unfunded plan subject to the claims of the Employer's general creditors. Rabbi Trust may be established for the purpose of creating a reserve account to meet the liabilities of the Plan.
Investments	Participant directs deemed investment of Awards pursuant to any limitations or restrictions established by the Employer.
Amendment and Termination	Employer reserves the right to amend the Plan at any time provided such amendment will not, without consent of the Participant, affect Participant's rights with respect to Awards previously granted. Employer may choose at any time to amend the Plan to cease future Employer Contributions as of specified date. In such event, the Plan stays in effect until all balances are paid in accordance with the Plan terms or, if earlier, upon Employer's Termination of the Plan. Employer reserves the right to stop the Plan at any time. If the Plan is ended, all outstanding unvested Awards are deemed Vested and no longer subject to a Subject to a Substantial Risk of Forfeiture.
Action by the Employer	Any action performed by the Employer under the Plan shall be by resolution of its Board or by a person or persons authorized by Board resolution or Board approved Board Policy. A Board Policy has been drafted to cover plan administration.

**BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS
METROPOLITAN DISTRICT
457(F) DEFERRED COMPENSATION PLAN**

Salary Reduction Agreement

[2023 Plan Year]

I. Personal Information

Name: _____ SSN/ ID: _____

You are receiving this form because you are eligible to make Elective Deferrals to the Bi-State Development Agency of the Missouri-Illinois Metropolitan District 457(f) Deferred Compensation Plan (the "Plan") and receive an Employer Matching Contributions equal to *[Match Percent]* of your Elective Deferrals for the Plan Year.

II. Vesting Year

The Elective Deferrals and Employer Matching Contributions deferred in this Plan Year *[January 1, 2023 through December 31, 2023]* (including Earnings thereon) shall be subject to a substantial risk of forfeiture, such that you will not be entitled to receive the Elective Deferrals or Employer Matching or Earnings thereon unless you continue to provide substantial services to Employer through *[Vesting Date]*, or, if earlier, upon your death, Disability, or involuntary termination of employment that is not a Termination for Cause.

III. Elective Deferrals

If you wish to make Elective Deferrals to the Plan effective with respect to amounts paid or otherwise made available on or after *[January 1, 2023]* and receive an Employer Matching Contribution equal to *[Match Percent]*, please enter a fixed dollar or percent of salary not to exceed *[\$ Maximum Deferrals]* below:

\$ _____ or _____ % of my regular base salary.

IV. Acknowledgements

By signing this Agreement, I acknowledge that:

- A. This Salary Deferral Agreement shall remain in effect until *[December 31, 2023]*. A new Election must be made each year.
- B. The Elective Deferrals and Employer Matching Contributions will be subject to a substantial risk of forfeiture.
- C. I have received a written explanation of the Plan and may review a copy of the Plan document and any amendments upon request.
- D. I understand and acknowledge that this Agreement shall be legally binding and irrevocable for both me and Employer with respect to amounts paid or otherwise made available with the Agreement is in Effect.
- E. This Plan does not constitute a contract of employment, and participation in the Plan will not give me the right to be retained as an employee of the Employer, or any right or claim to any benefit under the Plan, unless such right or claim has accrued and vested under the terms of the Plan.
- F. I may not assign, transfer, or alienate benefits under this Plan in any way, except as may be required by law.
- G. Plan may be amended, suspended, or terminated by the Employer at any time.

**Participant's
Signature**

Date

**BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS
METROPOLITAN DISTRICT
457(F) DEFERRED COMPENSATION PLAN**

NOTICE OF AWARD

This NOTICE OF AWARD (the "Notice"), made this ____ day of _____, ____ but to be effective as of [Grant Date], between Bi-State Development Agency of the Missouri-Illinois Metropolitan District (the "Employer"), and [Participant Name] ("Participant").

This Notice of Award is made under the terms of the Bi-State Development Agency of the Missouri-Illinois Metropolitan District 457(f) Deferred Compensation Plan, as may be amended from time to time (the "Plan"). The Plan, as it may hereafter be amended and continued, is incorporated herein by reference and made a part of this Notice and shall control the rights and obligations of the Employer and the Participant under this Notice. Except as otherwise provided, terms used herein shall have the meaning provided in the Plan.

WITNESSETH

WHEREAS, the Employer maintains the Bi-State Development Agency of the Missouri-Illinois Metropolitan District 457(f) Deferred Compensation Plan as it may hereafter be amended and continued in order to attract and retain key executives and recognize their contribution to its successful operation and long-term growth; and

WHEREAS, the Participant is employed by Employer in a position which the Employer deems to be a key position with the Employer, and has been selected to participate in the Plan; and

WHEREAS, the Employer has granted Participant a discretionary employer contribution in the form of deferred compensation (the "Award") as permitted and defined under the Plan, and desires by this Notice to set forth certain provisions of such Award as required under the Plan.

NOW, THEREFORE, subject to the terms, restrictions, and other conditions of this Notice and the Plan, the Employer hereby grants an Award to the Participant as follows:

1. Credit Date.
The Credit Date for the Award is [Credit Date].
2. Employer Contribution.
The Employer hereby credits to Participant an Employer Contribution in the amount of [Contribution Amount], subject to the terms and conditions of the Plan and this Notice.
3. Substantial Risk of Forfeiture.
Participant's rights to the Award credited under this Agreement (including any Earnings thereon) shall be subject to a substantial risk of forfeiture, such that Participant will not be entitled to receive the Employer Contribution credited under this Notice or Earnings thereon unless Participant continues to provide substantial services to Employer through [Vesting Date], or, if earlier, upon Participant's death, Disability, or involuntary termination of employment that is not a Termination for Cause.
4. Payment Date.
The Award will be paid in a single cash payment within sixty (60) days following the Vesting Date.

5. Acknowledgments.

By signing this Notice, the Participant acknowledges that:

- A. Participant has received a written explanation of the Plan and may review a copy of the Plan document and any amendments upon request.
- B. This Plan does not constitute a contract of employment, and participation in the Plan will not give Participant the right to be retained as an employee of the Employer, or any right or claim to any benefit under the Plan, unless such right or claim has accrued and vested under the terms of the Plan.
- C. Participant may not assign, transfer, or alienate benefits under this Plan in any way, except as may be required by law.
- D. Plan may be amended, suspended, or terminated by the Employer at any time.

IN WITNESS WHEREOF, the parties have executed this Notice of Award as of the date first set forth above.

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

PARTICIPANT ACKNOWLEDGMENT

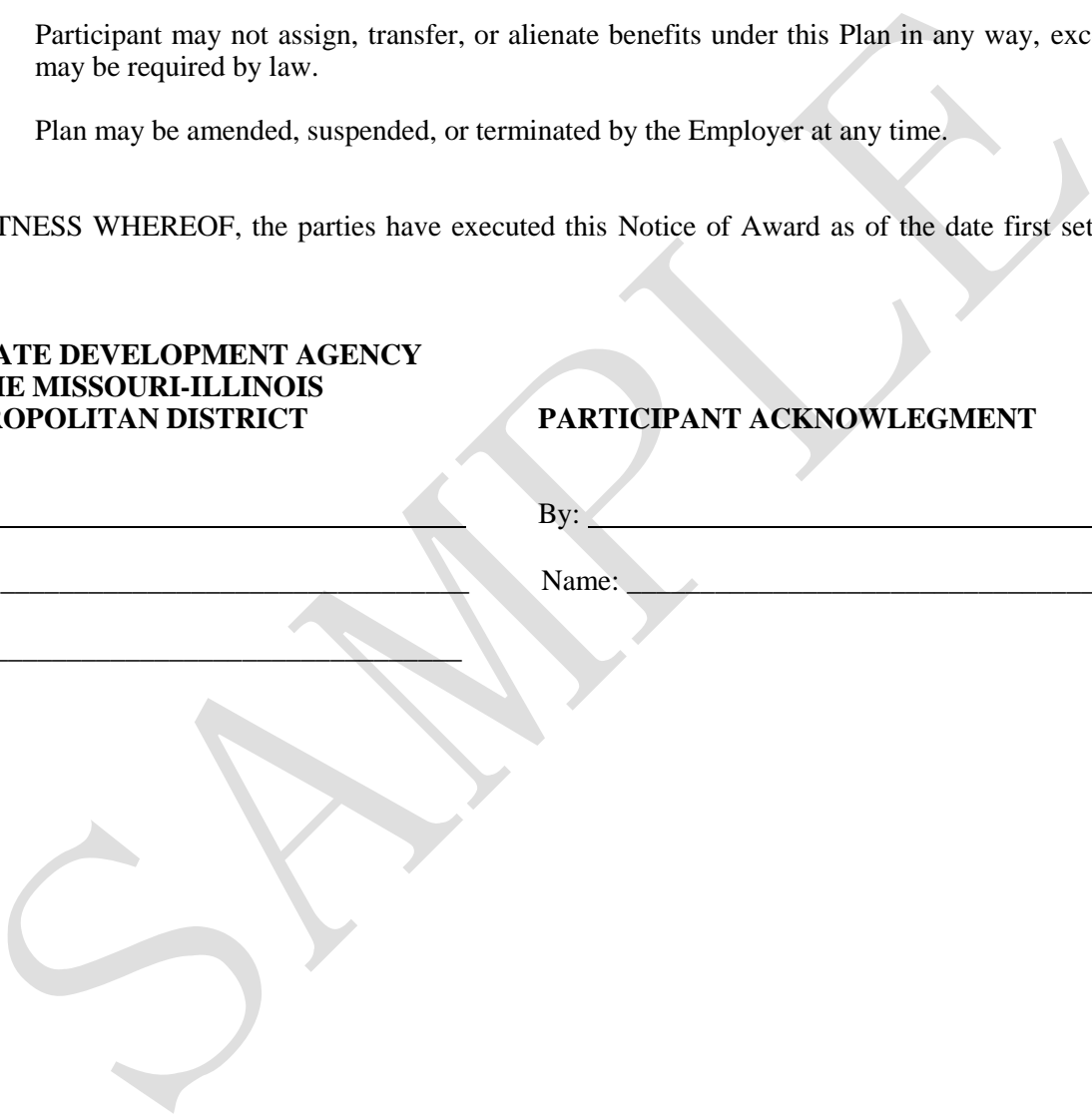
By: _____

By: _____

Name: _____

Name: _____

Title: _____



**BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS
METROPOLITAN DISTRICT
457(F) DEFERRED COMPENSATION PLAN**

Beneficiary Election Form

I. Personal Information

Name: _____ SSN/ ID: _____

II. Beneficiary Designation

If I die before I receive my benefit from the Plan, I hereby designate the following person(s) to receive my account balance(s). I understand that unless I indicate otherwise, if I designate more than one beneficiary, any benefit will be paid to them (or their survivors) in equal shares. I understand that death benefits will be paid to my beneficiary(ies) as soon as practicable following my death. I understand that this designation supersedes all previous designations.

Primary Beneficiary(ies):

Name: _____ Relationship: _____
(First) (Middle Initial) (Last)

Address: _____ Percent: _____

Name: _____ Relationship: _____
(First) (Middle Initial) (Last)

Address: _____ Percent: _____

Contingent Beneficiary(ies):

Name: _____ Relationship: _____
(First) (Middle Initial) (Last)

Address: _____ Percent: _____

Name: _____ Relationship: _____
(First) (Middle Initial) (Last)

Address: _____ Percent: _____

I revoke any beneficiary designation previously made by me with respect to this Plan. I understand that I may change the designations above at any time by filing a new designation with the Company and that such designation shall be effective upon receipt by the Company.

I understand that in the event I am married and have designated no other beneficiary (or if the designated beneficiary has predeceased me in death), my Beneficiary shall mean my spouse. In the event I am not married at death and I have designated no beneficiary (or if the designated beneficiary has predeceased me), Beneficiary shall mean my estate

Participant's Signature

Date

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE BI-STATE DEVELOPMENT AGENCY OF
THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT
TO APPROVE REVISIONS TO BOARD POLICY,
CHAPTER 70 – PERSONNEL, WITH THE ADDITION OF
A NEW SECTION 70.060 – 457(f) DEFERRED COMPENSATION PLAN**

PREAMBLES:

Whereas, the Bi-State Development Agency of the Missouri-Illinois Metropolitan District (the "Agency"/ "BSD") is a body corporate and politic, created by an interstate compact between the states of Missouri and Illinois, acting by and through its Board of Commissioners (the "Board"); and

Whereas, the Agency is authorized by Mo. Rev. Stat. §§ 70.370 et seq. and 45 Ill. Comp. Stat. 100/1 et seq. jointly referred to herein as the "Compact"; to make suitable rules and regulations consistent with its mission and not inconsistent with the constitution or laws of either state, or any political subdivision thereof; and

Whereas, Article VI of the Bylaws – Board Policies of the Agency, provides that any action by the Board establishing policy, administrative, business, or otherwise, shall be known as "Board Policies" and that the Board may adopt, amend or repeal, in whole or in part, the Board Policies at any meeting of the Board, except that unless otherwise designated by the Chair, all Board Policies shall be tabled for a period of one month and shall become effective upon adoption by the Board; and

Whereas, the February 18, 2022 Board of Commissioners Meeting, the Board approved the creation and drafting of a 457(f) deferred compensation plan for Agency executive staff and authorized certain Agency staff to determine the parameters of the 457(f) plan design and implementation subject to Board approval, and preliminary documents were submitted for review at the September 23, 2022 Board of Commissioners meeting, including a new Board Policy, "Section 70.060 – 457(f) Deferred Compensation Plan"; and

Whereas, the new addition to the Agency Board Policies, "Section 70.060 - 457(f) Deferred Compensation Plan" is provided in the Attachments to the Briefing Paper; and

Whereas, staff has recommended that this measure be implemented as soon as approved; therefore, requiring the Board to waive tabling the new Policy as provided in Article VI of the Bylaws, so that it is effective upon Board approval; and

Whereas, it is feasible, necessary and in the public interest for the Board of Commissioners to approve and adopt an addition to Board Policy, Chapter 70 – Personnel, by the creation of a new Section 70.060 - 457(f) Deferred Compensation Plan, in accordance with the terms and conditions described herein.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Resolution #1228
Bi-State Development Agency Board of Commissioners
October 14, 2022
Revision to Board Policy, Chapter 70 – Personnel, adding Section 70.060 - 457(f) Deferred Compensation Plan
Page 1

Section 1. Findings. The Board of Commissioners hereby finds and determines those matters set forth in the preambles as fully and completely as if set out in full in this Section 1.

Section 2. Approval of Board Policy Revisions. The Board of Commissioners hereby approves and adopts an addition to Board Policy, Chapter 70 – Personnel, by the creation of a new Section 70.060 - 457(f) Deferred Compensation Plan, as provided in Article VI of the Bylaws, so that it is effective upon Board approval, under and pursuant to this Resolution and the Compact for the authorized Agency purposes set forth in the preambles hereof and subject to the conditions hereinafter provided.

Section 3. Form of the Board Policy, Chapter 70 - Personnel. The form of the Chapter 70 – Personnel, by the creation of a new Section 70.060 - 457(f) Deferred Compensation Plan (as provided in the Attachments to the Briefing Paper and made a part hereof), substantially in the form presented to this meeting is hereby approved, and officers of the Agency, including without limitation, the President and CEO, are hereby authorized and directed to execute and deliver and attest, respectively, the Chapter 70 – Personnel addition, with such changes, modifications, insertions and omissions as may be deemed necessary or desirable to affect the Chapter 70 – Personnel addition with the necessity and desirability of such changes, modifications, insertions and omissions conclusively evidenced by their execution thereof.

Section 4. Actions of Officers Authorized. The officers of the Agency, including, without limitation, the President and CEO, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and the execution of such documents or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 5. Severability. It is hereby declared to be the intention of the Board of Commissioners that each and every part, section and subsection of this Resolution shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Commissioners intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Resolution shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the intent of this Resolution.

Section 6. Rights Under Resolution Limited. No rights shall be conferred by this Resolution upon any person or entity other than the Agency, officers and employees.

Section 7. Governing Law. The laws of the State of Missouri shall govern this Resolution.

Section 8. No Personal Liability. No member of the Board of Commissioners, officer, employee or agent of the Agency shall have any personal liability for acts taken in accordance with this Resolution.

Section 9. Payment of Expenses. The Executive Vice President and CFO is hereby authorized and directed to pay or cause to be paid all costs, expenses and fees incurred in connection with or incidental to this Resolution.

Section 10. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval.

ADOPTED by the Board of Commissioners of The Bi-State Development Agency of the Missouri-Illinois Metropolitan District this 14th day of October, 2022.

In Witness Whereof, the undersigned has hereto subscribed his signature and caused the Seal of the Agency to be affixed.

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

By _____

Its _____

[SEAL]

ATTEST:

By _____
Deputy Secretary to the Board of Commissioners

Resolution #1228
Bi-State Development Agency Board of Commissioners
October 14, 2022
Revision to Board Policy, Chapter 70 – Personnel, adding Section 70.060 - 457(f) Deferred Compensation Plan
Page 3

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE BI-STATE DEVELOPMENT AGENCY OF
THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT
AUTHORIZING THE CREATION OF A
457(f) DEFERRED COMPENSATION PLAN**

PREAMBLES:

Whereas, the Bi-State Development Agency of the Missouri-Illinois Metropolitan District (the “Agency”/ “BSD”) is a body corporate and politic, created by an interstate compact (“Compact”) between the states of Missouri and Illinois, acting by and through its Board of Commissioners (the “Board”); and

Whereas, the Agency is authorized under Article III of the Compact to perform all functions necessary and incidental to its powers and authority, including the establishment by the Board of Bylaws and Board Policies; and

Whereas, Chapter 70 of the Collected Board Policies defines the Board’s authority with regard to personnel matters within the Agency. Board Policy 70.020 Compensation (A) Policy, provides that it is the policy of the Agency to maintain a compensation package, including both salary and benefits, to attract and retain outstanding employees; and

Whereas, organizations that do not have options for variable pay such as annual bonuses or stock options, can find it difficult to attract and retain key talent to accomplish long-term strategic objectives. Given that (BSD) is one of those organizations, the Talent Management and Benefits Departments reviewed options and recommended consideration of a 457(f) Executive Deferred Compensation Plan.

Whereas, a 457(f) Plan is a non-qualified plan, which allows any eligible participant to defer income on a pre-tax basis to supplement the limit that is currently provided by ERISA for a 401(k) plan; and

Whereas, at the February 18, 2022 Board meeting, the Board approved the creation and drafting of a 457(f) deferred compensation plan for Agency executive staff and authorized certain Agency staff to determine the parameters of the 457(f) plan design and implementation subject to Board approval. In accordance with Board instructions, the Vice President – Talent Management and Director of Benefits presented a proposed 457(f) Executive Deferred Compensation Plan program at the September 23, 2022 Board meeting, including a 457(f) Deferred Compensation Plan; and

Whereas, it is feasible, necessary and in the public interest for the Board of Commissioners to approve and adopt a 457(f) Executive Deferred Compensation Plan program and to authorize the President and CEO to execute the 457(f) Executive Deferred Compensation Plan and any documents that may be necessary to implement the 457(f) Executive Deferred Compensation Plan program, in accordance with the terms and conditions described herein.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Resolution #1229
Bi-State Development Agency Board of Commissioners
October 14, 2022
Creation of 457(f) Executive Deferred Compensation Plan
Page 1

Section 1. Findings. The Board of Commissioners hereby finds and determines those matters set forth in the preambles as fully and completely as if set out in full in this Section 1.

Section 2. Approval of 457(f) Executive Deferred Compensation Plan Program. The Board of Commissioners hereby approves and adopts a 457(f) Executive Deferred Compensation Plan program and to authorize the President and CEO to execute the 457(f) Executive Deferred Compensation Plan and any documents that may be necessary to implement the 457(f) Executive Deferred Compensation Plan program, under and pursuant to this Resolution and the Compact for the authorized Agency purposes set forth in the preambles hereof and subject to the conditions hereinafter provided.

Section 3. Form of the 457(f) Executive Deferred Compensation Plan. The form of the 457(f) Executive Deferred Compensation Plan (as provided in the Attachments to the Briefing Paper and made a part hereof), substantially in the form presented to this meeting is hereby approved, and officers of the Agency, including without limitation, the President and CEO, are hereby authorized and directed to execute and deliver and attest, respectively, the 457(f) Executive Deferred Compensation Plan, with such changes, modifications, insertions and omissions as may be deemed necessary or desirable to affect the 457(f) Executive Deferred Compensation Plan, with the necessity and desirability of such changes, modifications, insertions and omissions conclusively evidenced by their execution thereof.

Section 4. Actions of Officers Authorized. The officers of the Agency, including, without limitation, the President and CEO, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and the execution of such documents or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 5. Severability. It is hereby declared to be the intention of the Board of Commissioners that each and every part, section and subsection of this Resolution shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Commissioners intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Resolution shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the intent of this Resolution.

Section 6. Rights Under Resolution Limited. No rights shall be conferred by this Resolution upon any person or entity other than the Agency, officers and employees.

Section 7. Governing Law. The laws of the State of Missouri shall govern this Resolution.

Section 8. No Personal Liability. No member of the Board of Commissioners, officer, employee or agent of the Agency shall have any personal liability for acts taken in accordance with this Resolution.

Section 9. Payment of Expenses. The Executive Vice President and CFO is hereby authorized and directed to pay or cause to be paid all costs, expenses and fees incurred in connection with or incidental to this Resolution.

Section 10. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval.

ADOPTED by the Board of Commissioners of The Bi-State Development Agency of the Missouri-Illinois Metropolitan District this 14th day of October, 2022.

In Witness Whereof, the undersigned has hereto subscribed his signature and caused the Seal of the Agency to be affixed.

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

By _____
Title _____

[SEAL]

ATTEST:

By _____
Deputy Secretary to the Board of Commissioners

Resolution #1229
Bi-State Development Agency Board of Commissioners
October 14, 2022
Creation of 457(f) Executive Deferred Compensation Plan
Page 3

**Bi-State Development Agency
Board of Commissioners Special Meeting
Open Meeting Agenda Item
October 14, 2022**

From: Chuck Stewart, Executive Director of Metro Transit
Tammy Fulbright, Executive Vice President & Chief Financial Officer
Subject: **St. Clair County Transit District Operating Agreements & Lease & Bond Agreement**
Disposition: Approval
Presentation: Chuck Stewart, Executive Director of Mass Transit

Objective:

To present to the Board of Commissioners for approval, a request to enter into separate operating contracts for Rail, Bus, and ATS services and maintenance and a Lease and Bond Contract with St. Clair County Transit District.

Committee Disposition:

This item has not been presented to any Committee: however, due to the timing, the President and CEO has placed this item on the Agenda for the Board of Commissioners at the meeting on October 14, 2022.

Background:

Effective on July 1, 2006, St. Clair County Transit District (District) and the Bi-State Development Agency, as the regional public transportation authority for the metropolitan St. Louis area, entered in an Operating Agreement for Bus and Rail Service and ATS Maintenance Service.

The Agency, on behalf of itself and the District, entered into lease financing transactions dated as of August 30, 2001 (as amended in 2011, the “Lease Financing”) of rail equipment in which 70.6% of the net benefit of the transactions have been deposited into an account for the expansion of transportation assets in St. Clair County.

The District and the Agency entered into certain documents in connection with the Agency’s issuance of (i) \$39,155,000 original principal amount of St. Clair County MetroLink Extension Project Refunding Revenue Bonds, Series 2006 (Metro East Transit District of St. Clair County, Illinois, Sponsor) (the “Series 2006 Bonds”) and (ii) \$4,160,000 original principal amount of St. Clair County MetroLink Extension Project Refunding Revenue Bonds, Series 2014 (Metro East Transit District of St. Clair County, Illinois, Sponsor) (the “Series 2014 Bonds” and, together with the Series 2006 Bonds, the “Bonds”), in particular the Third Amended and Restated Project Financing, Construction and Operation Agreement dated as of December 1, 2014 (the “Series 2014 Agreement”).

On March 17, 2022, St. Clair County Transit District according to the provisions of Section XII of the July 1, 2006, Operating Agreement between the District and the Agency, gave the 90-day notice required to terminate the Operating Agreement for Bus and Rail Service and ATS Maintenance Service.

Analysis:

The four new proposed agreements (see Attachments below) with the St. Clair County Transit District include operating contracts for 1) Rail Service and Maintenance, 2) Bus Service and Maintenance, and 3) ATS Service and Maintenance, and a 4) Lease and Bond Agreement. The ATS Service and Maintenance Agreement is based on rates determined by services performed. The Bus and Rail contracts provide for a flat amount to be paid in twelve (12) equal, monthly payments. For Bus and Maintenance services, the annual cost for FY2023 is \$24,699,547 and is inclusive of security costs, Chestnut Health Services, the cost of a new Route 3 service, and \$500,000 to experiment with adding additional services designed to increase ridership and improve efficiency. For Rail and Maintenance services, the annual cost is \$35,255,453. The Rail and Maintenance Agreement provides that this Agreement will remain effective, unless specifically

superseded by a new operating agreement, at all times during which the Lease and Bond Agreement is effective. The Lease and Bond Agreement will remain in effect until the later of the maturity of the Lease Financing or the Bonds, or any bonds issued to refund the Bonds.

Board Action:

It is requested that the Board of Commissioners approve the following operating contracts with St. Clair County Transit District: Rail Service and Maintenance Agreement, Bus Service and Maintenance Agreement, and ATS Service and Maintenance Agreement and the Lease and Bond Agreement.

Attachments:

- Lease and Bond Agreement
- Rail Service and Maintenance Agreement
- Bus Service and Maintenance Agreement
- ATS Service and Maintenance Agreement

LEASE AND BOND AGREEMENT

This Agreement is made and entered into between **THE METRO-EAST TRANSIT DISTRICT OF ST. CLAIR COUNTY** (“District”) and **THE BI-STATE DEVELOPMENT AGENCY OF MISSOURI-ILLINOIS METROPOLITAN DISTRICT** (“Agency”).

RECITALS

The Agency, as the regional public transportation authority for the metropolitan St. Louis area, is currently providing light rail mass transportation. The District is the recipient of certain tax monies levied upon its residents to provide such services as well as grants from the Illinois Department of Transportation (“IDOT”). The parties are concurrently herewith entering into that certain Rail Service and Maintenance Agreement (the “Operating Agreement”) pursuant to which the parties have agreed to certain provisions regarding the operations of the light rail mass transportation system known as MetroLink.

The Agency, on behalf of itself and the District, entered into lease financing transactions dated as of August 30, 2001 (as amended in 2011, the “Lease Financing”) of rail equipment in which 70.6% of the net benefit of the transactions have been deposited into an account for the expansion of transportation assets in St. Clair County.

The District and the Agency entered into certain documents in connection with the Agency’s issuance of (i) \$39,155,000 original principal amount of St. Clair County MetroLink Extension Project Refunding Revenue Bonds, Series 2006 (Metro East Transit District of St. Clair County, Illinois, Sponsor) (the “Series 2006 Bonds”) and (ii) \$4,160,000 original principal amount of St. Clair County MetroLink Extension Project Refunding Revenue Bonds, Series 2014 (Metro East Transit District of St. Clair County, Illinois, Sponsor) (the “Series 2014 Bonds” and, together with the Series 2006 Bonds, the “Bonds”), in particular the Third Amended and Restated Project Financing, Construction and Operation Agreement dated as of December 1, 2014 (the “Series 2014 Agreement”).

NOW, THEREFORE, in consideration of the premises, mutual covenants, and undertakings herein expressed, the District and the Agency agree as follows:

I. TERM OF THE AGREEMENT.

The term of the Agreement shall be from the effective date hereof through the later of (a) the maturity of the Lease Financing or (b) the Bonds, or any bonds issued to refund the Bonds.

II. LEASE FINANCING.

The District shall reimburse the Agency for 70.6% of all costs and expenses incurred by the Agency with respect to the Lease Financing, to be paid within 30 days of receipt thereof.

In the event the Agency does not exercise the fixed price option provided in the Lease Financing, and the Equity Investors direct the Agency to arrange one or more service contracts, the District acknowledges that the Agency shall have the authority to contract with any municipal or private corporation to operate the leased assets; and the District agrees to pay supporting invoices or in

the alternative disburse sales tax revenues directly the Agency or any municipal or private corporation that is operating the leased assets in accordance with the terms hereof or the terms of any subsequent agreement negotiated between the parties.

III. BOND FINANCING.

The District shall be responsible for making payments with respect to the Bonds as provided in the Series 2014 Agreement and the other agreements related to the Bonds.

IV. GOVERNING LAW.

This Agreement shall be interpreted according to the laws of the State of Illinois. Both the District and the Agency are subject to various provisions of the Statutes of the United States and the State of Illinois.

To the degree that any provision in the Operating Agreement is in conflict with the provisions of the Lease Financing or the documents governing the Bonds, in particular the Series 2014 Agreement, the latter provisions shall govern.

V. INDEMNIFICATION.

The Agency, to the extent permitted by applicable law, agrees to indemnify and hold harmless the District and St. Clair County, Illinois against any loss, claim or suit hereinafter made or brought against such parties arising directly from an intentional wrong, negligence or carelessness of the Agency, its officers, agents or employees. The Agency further agrees to defend any such claim or suit at its own expense; provided, however, the District and St. Clair County, Illinois, may, at the option of such parties, defend any such claim or suit. If the District requests the Agency to defend the District and the Agency does not, the Agency will pay the reasonable attorneys' fees and costs of defense incurred by the District.

The District, to the extent permitted by applicable law, agrees to indemnify and hold harmless the Agency against any loss, claim or suit hereinafter made or brought against the Agency arising directly from an intentional wrong, negligence or carelessness of the District, its officers, agents or employees. The District further agrees to defend any such claim or suit at its own expense; provided, however, the Agency may, at its option, defend any such claim or suit. If the Agency requests the District to defend the Agency and the District does not, the District will pay the reasonable attorneys' fees and costs of defense incurred by the Agency.

VI. MODIFICATIONS.

This Agreement constitutes the entire agreement of the parties hereto and is not intended to alter any of the obligations referred to above for the issuance of Bonds and subsequent funding of them. Nothing in this document is to be interpreted to alter the calculation or process used by the Agency in calculating the amount paid to or owed by the District in the annual LRV collateral payments.

Modifications shall be made to this Agreement only in writing and signed by the parties hereto. In the event that either party desires modification of this Agreement, the party desiring same shall notify the other party in writing of the desired modifications. Within thirty (30) days of such written notice, negotiations shall commence between the parties to modify the Agreement.

VII. NOTICE.

Notice hereunder shall be given by depositing same in the first-class mail, postage prepaid, return receipt requested directed to the President and Chief Executive Officer, c/o The Bi-State Development Agency, 211 N. Broadway, Suite 700, St. Louis, Missouri, 63102, in the case of the Agency. In the case of the District, notice should be directed to the Chairperson of the District,_____.

SIGNATURE PAGE FOLLOWS

ENTERED INTO AS OF THIS _____ DAY OF _____ 2022.

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

**METRO-EAST TRANSIT DISTRICT
OF ST. CLAIR COUNTY**

Name
Title

Name
Title

RAIL SERVICE AND MAINTENANCE AGREEMENT

This Agreement is made and entered into between **THE METRO -EAST TRANSIT DISTRICT OF ST. CLAIR COUNTY** (“District”) and **THE BI-STATE DEVELOPMENT AGENCY OF MISSOURI-ILLINOIS METROPOLITAN DISTRICT** (“Agency”).

RECITALS

The Agency, as the regional public transportation authority for the metropolitan St. Louis area, is currently providing light rail mass transportation. The District is the recipient of certain tax monies levied upon its residents to provide such services as well as grants from the Illinois Department of Transportation (“IDOT”).

NOW, THEREFORE, in consideration of the premises, mutual covenants, and undertakings herein expressed, the District and the Agency agree as follows:

I. TERM OF THE AGREEMENT.

The term of the Agreement shall be from June 20, 2022 through June 30, 2023, unless either party shall elect to terminate the same and give notice of such election as herein provided in accordance with Article XII below. In that event, notice shall be given no less than ninety (90) days prior to the proposed date of termination. The parties may mutually agree in writing no later than March 31st of each year to renew the Agreement for successive one (1) year terms. Notwithstanding anything herein to the contrary, the parties hereto agree that this Agreement will remain effective, unless specifically superseded by a new operating agreement for light rail mass transportation, at all times during which the Lease and Bond Agreement dated as of _____, 2022 entered into by the parties hereto is effective.

II. TERMINOLOGY AND DEFINITIONS.

A. Key Reporting Periods.

Fiscal Year or FY. The Agency maintains accounting records using a fiscal year. Currently, the fiscal year ends June 30 as determined by the Board of Commissioners.

B. Key Transportation Definitions.

System. Incorporates all transit service, for all modes of transportation, provided by the Agency in both Illinois and Missouri.

Mode of Transportation. At the inception of this Agreement, the Agency operates bus, rail and Missouri Paratransit service. Bus and rail services are operated under the service names of MetroBus and MetroLink, respectively.

C. Key Service and Statistical Definitions.

Regular Service. Routine transit service according to published schedules.

Boardings. Derived from the use of automated passenger counting (“APC Technology”), counting passenger boardings at the stations. Prior to APC technology, actual sample counts are used to determine boardings for the System and the Districts through which MetroLink passes.

III. SCOPE OF SERVICES – OPERATIONS AND MAINTENANCE.

A. Regular Service.

The Agency shall provide rail service in accordance with a schedule that the Agency shall adopt with the approval of the District and published from time to time. The District acknowledges that MetroLink is a fully integrated service within the States of Missouri and Illinois; therefore, the Agency shall maintain control of MetroLink scheduling. It is acknowledged by the Agency that the District shall be given significant input into MetroLink scheduling consistent with the level of service for which the District bears the burden of cost. The Agency shall retain all control over all employees of Agency including, but not limited to, hiring, firing, discipline, training, scheduling and any other function related to operation of the System notwithstanding anything contained herein. The Agency agrees to receive information from the District as to service issues that include functions provided by employee’s but those reports are for information only and confer no responsibility or obligation on the District.

Service Adjustments.

Annually, the Agency and the District shall consult with respect to significant alterations in any previously published schedule and agree that the purpose of regularly scheduled runs shall be to provide comfortable and frequent service consonant with a reasonable rate of farebox recovery. It is agreed and understood that the primary responsibility for determining the details of service including equipment assigned, frequency, fares, routes or other conditions of service operated shall be that of the Agency. Significant changes in service shall be made only with the written consent of the District, provided any additional service or changes to service requested by the District during any annual term of the Agreement will require renegotiation and an amendment to this Agreement unless such changes result in the same amount of service provided by the Agency. In an instance of emergency, or service interruption, the Agency shall notify the District or its representatives, at the earliest practicable time, of the conditions of the emergency, and the District’s approval of the projected service requirements during such emergency shall not be unreasonably withheld. This provision is not intended to in any way constrain the Agency from promptly dealing with unexpected emergencies. In the event that a service alteration is envisioned to extend beyond seventy-two (72) hours, the Agency shall

accompany any proposed alteration of the conditions of service with an estimate cost and revenue impact for the review and approval of the District, which shall not be unreasonably withheld.

B. Extra Rail Service.

It is understood that the extensive event schedule along the MetroLink alignment will require the assignment of extra equipment to accommodate anticipated patronage. Such assignments shall be at the discretion of the Agency. However, it is understood that the District will comment on situations in which the assignment of extra equipment appeared imprudent and the Agency will take into account such comments in future analogous situations.

C. Maintenance of Equipment and Property.

The Agency shall maintain its equipment and property in a manner consistent with standards as delineated on Exhibit A "Maintenance of Equipment and Property Standards".

D. On-Time Performance and Reliability of Performance.

The standard of reliability for trip completion relative to rail service is deemed to be 99% with respect to assigned trips; and the standard for on-time performance shall be 98%. The Agency acknowledges its responsibility to provide substitute equipment whenever such substitution is feasible. The Agency shall provide the District with monthly reports that shall report the on-time performance record.

E. Garaging and Maintenance.

The Agency shall provide the following services: Exterior and Interior Cleaning; Garaging; and Preventive Maintenance. Preventive maintenance shall be performed in accordance with the Agency's standard of maintenance provided at the Illinois Facility developed in accordance with the expertise and experience developed by Agency personnel. Repairs shall include the replacement of parts and assemblies that appear to be near failure or more effectively repaired when component systems are in partial disassembly.

IV. FINANCIAL TERMS.

A. Expense.

The District shall pay to the Agency \$35,255,453 in twelve (12) equal, monthly installments for all services described in this Agreement including security costs.

B. Invoicing.

An invoice shall be prepared by the Agency each month that states the costs due the Agency from the District. The invoice shall be prepared and submitted to the District on or before

the 5th day of the month for the prior month. The District shall render payment against such invoice within 30 days of receipt.

V. FINANCIAL STATEMENTS, MEETINGS, INFORMATION/DATA REQUESTS

A. Financial Statements/Performance Indicators.

The Agency shall provide the District with monthly reports indicating a broad measure of programmatic and financial performance for the St. Clair County portion of the Agency's System. These reports shall indicate Boardings by Mode of Transportation and by trip, costs by Mode of Transportation, revenue by Mode of Transportation, miles between road calls and accidents together with data affording the District a comparison with last year's data. Reports shall be organized to build up year-to-date statistics by Fiscal Year.

B. Monthly Meetings/District Board of Trustee Meetings.

The Agency shall conduct monthly meetings/briefings for the District to review service performance measures and other topics of mutual interest. The Agency shall send appropriate representatives to the monthly meeting of the District's Board of Trustees.

C. Information/Data or Special Requests.

Upon request by the District, the Agency shall provide such information and analysis of the St. Clair County operations as the District shall reasonably request.

VI. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT AND RELEVANT ADA REGULATIONS OF THE U.S. DEPARTMENT OF TRANSPORTATION AND IDOT.

The District and the Agency shall work cooperatively to meet the requirements of the Americans with Disabilities Act (the "Act"). Upon successful implementation of the Agreement, both the District and the Agency shall maintain compliance with all relevant regulations imposed by the United States Department of Transportation, the Federal Transit Administration and IDOT applicable to transit operations conducted in St. Clair County, provided that the Agency's obligations shall be limited to compliance with regulations that are applicable to the Agency's transit operations in St. Clair County. In connection with light-rail transportation in St. Clair County, the Agency will be responsible for meeting the obligations of the Act.

VII. BID ADVERTISEMENTS.

Upon request, the Agency shall provide the District with bid advertisements.

VIII. EMPLOYMENT APPLICATION FORMS/EMPLOYMENT ADVERTISEMENTS.

Upon request, the Agency shall provide the District with employment advertisements.

IX. GOVERNING LAW.

This Agreement shall be interpreted according to the laws of the State of Illinois. Both the District and the Agency are subject to various provisions of the Statutes of the United States and the State of Illinois.

X. INDEMNIFICATION.

The Agency, to the extent permitted by applicable law, agrees to indemnify and hold harmless the District and St. Clair County, Illinois against any loss, claim or suit hereinafter made or brought against such parties arising directly from an intentional wrong, negligence or carelessness of the Agency, its officers, agents or employees. The Agency further agrees to defend any such claim or suit at its own expense; provided, however, the District and St. Clair County, Illinois, may, at the option of such parties, defend any such claim or suit. If the District requests the Agency to defend the District and the Agency does not, the Agency will pay the reasonable attorneys' fees and costs of defense incurred by the District.

The District, to the extent permitted by applicable law, agrees to indemnify and hold harmless the Agency against any loss, claim or suit hereinafter made or brought against the Agency arising directly from an intentional wrong, negligence or carelessness of the District, its officers, agents or employees. The District further agrees to defend any such claim or suit at its own expense; provided, however, the Agency may, at its option, defend any such claim or suit. If the Agency requests the District to defend the Agency and the District does not, the District will pay the reasonable attorneys' fees and costs of defense incurred by the Agency.

XI. MODIFICATIONS.

This Agreement constitutes the entire agreement of the parties hereto and supersedes any and all prior or written understandings. Modifications shall be made to this Agreement only in writing and signed by the parties hereto. In the event that either party desires modification of this Agreement, the party desiring same shall notify the other party in writing of the desired modifications. Within thirty (30) days of such written notice, negotiations shall commence between the parties to modify the Agreement.

XII. TERMINATION.

This Agreement may be terminated by either party at any time by giving the other party a ninety (90) day written notice of such termination. Such notice shall be in the form as provided elsewhere in this Agreement pursuant to ARTICLE XIV. NOTICE. It is agreed and understood that in the event there is a notice of termination hereunder that the provisions of this Agreement shall remain in full force and effect for the period of notification.

XIII. DEFAULT.

In the event of a default by either party in the performance of any covenant or obligation hereunder, and there is a failure to cure such default after thirty (30) days written notice of

the same to the defaulting party, the non-defaulting party shall have the option to request a hearing before the governing board of the defaulting party.

XIV. NOTICE.

Notice hereunder shall be given by depositing same in the first class mail, postage prepaid, return receipt requested directed to the President and Chief Executive Officer, c/o The Bi-State Development Agency, 211 N. Broadway, Suite 700, St. Louis, Missouri, 63102, in the case of the Agency. In the case of the District, notice should be directed to the Chairperson of the District,_____.

SIGNATURE PAGE FOLLOWS

ENTERED INTO AS OF THIS _____ DAY OF _____ 2022.

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

**METRO-EAST TRANSIT DISTRICT
OF ST. CLAIR COUNTY**

Name
Title

Name
Title

EXHIBIT A

MAINTENANCE OF EQUIPMENT AND PROPERTY

The Agency, throughout the term of this Agreement, shall keep and maintain the vehicles and all parts thereof in good repair and operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof, and keep the vehicles and all parts thereof in safe condition and free from filth or conditions unreasonably increasing the danger of fire.

Equipment Maintenance Standards:

The following is a listing of standards for equipment maintenance to be adhered to by the Agency for all vehicles (including ATS) in Regular Service in the District:

1. All vehicles shall have their interiors cleaned daily, and, if conditions require, more frequently.
2. All vehicles shall receive a major cleaning of the entire interior every month, and if conditions require, more frequently. Such cleaning shall include a complete washing and/or cleaning of all interior surfaces, seats, windows, floors and all interior fittings.
3. Heating and air-conditioning of all vehicles shall be maintained to ensure proper operation. Repairs shall be made promptly.
4. The exterior of all vehicles shall be cleaned daily.
5. All vehicles shall be maintained in accordance with applicable standards or safety and maintenance of any agency of the federal government.
6. All vehicles to be used in lift equipped service shall have lifts cycled daily to insure that the lift mechanism is operable.

BUS SERVICE AND MAINTENANCE AGREEMENT

This Agreement is made and entered into between **THE METRO-EAST TRANSIT DISTRICT OF ST. CLAIR COUNTY** (“District”) and **THE BI-STATE DEVELOPMENT AGENCY OF MISSOURI-ILLINOIS METROPOLITAN DISTRICT** (“Agency”).

RECITALS

The Agency, as the regional public transportation authority for the metropolitan St. Louis area, is currently providing mass transportation bus services. The District is the recipient of certain tax monies levied upon its residents to provide such services as well as grants from the Illinois Department of Transportation (“IDOT”). The parties desire to continue their relationship, albeit on a modified basis for an approximately twelve (12) months beginning June 20, 2022 through June 30, 2023.

NOW, THEREFORE, in consideration of the premises, mutual covenants, and undertakings herein expressed, the District and the Agency agree as follows:

I. TERM OF THE AGREEMENT.

The term of the Agreement shall be from June 20, 2022 through June 30, 2023, unless either party shall elect to terminate the same and give notice of such election as herein provided in accordance with Article XII below. In that event, notice shall be given no less than ninety (90) days prior to the proposed date of termination. The parties may mutually agree in writing no later than March 31st of each year to renew the Agreement for successive one (1) year terms.

II. TERMINOLOGY AND DEFINITIONS.

A. Key Reporting Periods.

Fiscal Year or FY. The Agency maintains accounting records using a fiscal year. Currently, the fiscal year ends June 30 as determined by the Board of Commissioners.

B. Key Transportation Definitions.

System. Incorporates all transit service, for all modes of transportation, provided by the Agency in both Illinois and Missouri.

Mode of Transportation. At the inception of this Agreement, the Agency operates bus, rail and Missouri Paratransit service. Bus and rail services are operated under the service names of MetroBus and MetroLink, respectively.

C. Key Service and Statistical Definitions.

Regular Service. Routine transit service according to published schedules.

Boardings. Derived from the use of automated passenger counting (“APC Technology”), counting passenger boardings at the stations. MetroBus boardings shall be derived from the use of farebox information and special event hand sale counts.

District Boardings. District MetroBus boardings shall be the count of passenger boardings counted using farebox information and hand sales relating to special event ridership the District operates.

III. SCOPE OF SERVICES – OPERATIONS AND MAINTENANCE.

A. Regular Service.

The Agency shall provide bus service in accordance with a schedule that the Agency shall adopt with the approval of the District and published from time to time. The Agency shall retain all control over all employees of Agency including, but not limited to, hiring, firing, discipline, training, scheduling and any other function related to operation of the System notwithstanding anything contained herein. The Agency agrees to receive information from the District as to service issues that include functions provided by employee’s but those reports are for information only and confer no responsibility or obligation on the District.

B. Service Adjustments.

Annually, the Agency and the District shall consult with respect to significant alterations in any previously published schedule and agree that the purpose of regularly scheduled runs shall be to provide comfortable and frequent service consonant with a reasonable rate of farebox recovery. It is agreed and understood that the primary responsibility for determining the details of service including equipment assigned, frequency, fares, routes or other conditions of service operated shall be that of the Agency. Significant changes in service shall be made only with the written consent of the District, provided any additional service or changes to service requested by the District during any annual term of the Agreement will require renegotiation and an amendment to this Agreement unless such changes result in the same amount of service provided by the Agency. In an instance of emergency, or service interruption, the Agency shall notify the District or its representatives, at the earliest practicable time, of the conditions of the emergency, and the District’s approval of the projected service requirements during such emergency shall not be unreasonably withheld. This provision is not intended to in any way constrain the Agency from promptly dealing with unexpected emergencies. In the event that a service alteration is envisioned to extend beyond seventy-two (72) hours, the Agency shall accompany any proposed alteration of the conditions of service with an estimate cost and

revenue impact for the review and approval of the District, which shall not be unreasonably withheld.

C. Maintenance of Equipment and Property.

The Agency shall maintain its equipment and property in a manner consistent with standards as delineated on Exhibit A "Maintenance of Equipment and Property Standards".

D. On-Time Performance and Reliability of Performance.

The standard of reliability for trip completion relative to bus service is deemed to be 99% with respect to assigned trips; and the standard for on-time performance shall be 90%. The Agency acknowledges its responsibility to provide substitute equipment whenever such substitution is feasible. The Agency shall provide the District with monthly reports that shall report the on-time performance record.

E. Garaging and Maintenance of Buses.

The Agency shall provide the following services: Exterior and Interior Cleaning; Garaging; and Preventive Maintenance. Preventive maintenance shall be performed in accordance with the Agency's standard of maintenance provided at the Illinois Facility developed in accordance with the expertise and experience developed by Agency personnel. Repairs shall include the replacement of parts and assemblies that appear to be near failure or more effectively repaired when component systems are in partial disassembly.

IV. FINANCIAL TERMS.

A. Expense.

The District shall pay to the Agency \$24,699,547 in twelve (12) equal, monthly installments for all services described in this Agreement including security costs, Chestnut Health Services and the cost of a New Route 3 Service. This amount represents payment for all services in effect at the beginning of this contract period and the addition of the Route 3 Service. This amount will not be reduced by any service cuts initiated by the District during the period of the contract, but the District will be granted a service credit of \$500,000 to be taken at the discretion of the district during normal billing functions.

B. Monthly Invoice.

An invoice shall be prepared by the Agency each month that states the costs due the Agency from the District. The invoice shall be prepared and submitted to the District on or before the 5th day of the month for the prior month. The District shall render payment against such invoice within 30 days of receipt.

V. FINANCIAL STATEMENTS, MEETINGS, INFORMATION/DATA REQUESTS

A. Financial Statements/Performance Indicators.

The Agency shall provide the District with monthly reports indicating a broad measure of programmatic and financial performance for the St. Clair County portion of the Agency's System. These reports shall indicate Boardings by Mode of Transportation and by trip, costs by Mode of Transportation, revenue by Mode of Transportation, miles between road calls and accidents together with data affording the District a comparison with last year's data. Reports shall be organized to build up year-to-date statistics by Fiscal Year.

B. Monthly Meetings/District Board of Trustee Meetings.

The Agency shall conduct monthly meetings/briefings for the District to review service performance measures and other topics of mutual interest. The Agency shall send appropriate representatives to the monthly meeting of the District's Board of Trustees.

C. Information/Data or Special Requests.

Upon request by the District, the Agency shall provide such information and analysis of the St. Clair County operations as the District shall reasonably request.

VI. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT AND RELEVANT ADA REGULATIONS OF THE U.S. DEPARTMENT OF TRANSPORTATION AND IDOT.

The District and the Agency shall work cooperatively to meet the requirements of the Americans with Disabilities Act (the "Act"). Upon successful implementation of the Agreement, both the District and the Agency shall maintain compliance with all relevant regulations imposed by the United States Department of Transportation, the Federal Transit Administration and IDOT applicable to transit operations conducted in St. Clair County, provided that the Agency's obligations shall be limited to compliance with regulations that are applicable to the Agency's transit operations in St. Clair County. In connection with the bus transportation in St. Clair County, the District will be responsible for meeting the obligations of the Act. Notwithstanding the above, it is the Agency's responsibility to operate the bus System. Cooperation as mentioned above does not convey any responsibility for operational decision making, and liability for any Agency conduct constituting a violation of the Act remains with Agency.

VII. BID ADVERTISEMENTS.

Upon request, the Agency shall provide the District with bid advertisements.

VIII. EMPLOYMENT APPLICATION FORMS/EMPLOYMENT ADVERTISEMENTS.

Upon request, the Agency shall provide the District with employment advertisements.

IX. GOVERNING LAW.

This Agreement shall be interpreted according to the laws of the State of Illinois. Both the District and the Agency are subject to various provisions of the Statutes of the United States and the State of Illinois.

X. INDEMNIFICATION.

The Agency, to the extent permitted by applicable law, agrees to indemnify and hold harmless the District and St. Clair County, Illinois against any loss, claim or suit hereinafter made or brought against such parties arising directly from an intentional wrong, negligence or carelessness of the Agency, its officers, agents or employees. The Agency further agrees to defend any such claim or suit at its own expense; provided, however, the District and St. Clair County, Illinois, may, at the option of such parties, defend any such claim or suit. If the District requests the Agency to defend the District and the Agency does not, the Agency will pay the reasonable attorneys' fees and costs of defense incurred by the District.

The District, to the extent permitted by applicable law, agrees to indemnify and hold harmless the Agency against any loss, claim or suit hereinafter made or brought against the Agency arising directly from an intentional wrong, negligence or carelessness of the District, its officers, agents or employees. The District further agrees to defend any such claim or suit at its own expense; provided, however, the Agency may, at its option, defend any such claim or suit. If the Agency requests the District to defend the Agency and the District does not, the District will pay the reasonable attorneys' fees and costs of defense incurred by the Agency.

XI. MODIFICATIONS.

This Agreement constitutes the entire agreement of the parties hereto and supersedes any and all prior or written understandings. Modifications shall be made to this Agreement only in writing and signed by the parties hereto. In the event that either party desires modification of this Agreement, the party desiring same shall notify the other party in writing of the desired modifications. Within thirty (30) days of such written notice, negotiations shall commence between the parties to modify the Agreement.

XII. TERMINATION.

This Agreement may be terminated by either party at any time by giving the other party a ninety (90) day written notice of such termination. Such notice shall be in the form as provided elsewhere in this Agreement pursuant to ARTICLE XIV. NOTICE. It is agreed and understood that in the event there is a notice of termination hereunder that the provisions of this Agreement shall remain in full force and effect for the period of notification.

XIII. DEFAULT.

In the event of a default by either party in the performance of any covenant or obligation hereunder, and there is a failure to cure such default after thirty (30) days written notice of the same to the defaulting party, the non-defaulting party shall have the option to request a hearing before the governing board of the defaulting party.

XIV. NOTICE.

Notice hereunder shall be given by depositing same in the first class mail, postage prepaid, return receipt requested directed to the President and Chief Executive Officer, c/o The Bi-State Development Agency, 211 N. Broadway, Suite 700, St. Louis, Missouri, 63102, in the case of the Agency. In the case of the District, notice should be directed to the Chairperson of the District,_____.

SIGNATURE PAGE FOLLOWS

ENTERED INTO AS OF THIS _____ DAY OF _____ 2022.

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

**METRO-EAST TRANSIT DISTRICT
OF ST. CLAIR COUNTY**

Name
Title

Name
Title

EXHIBIT A

MAINTENANCE OF EQUIPMENT AND PROPERTY

The Agency, throughout the term of this Agreement, shall keep and maintain the vehicles and all parts thereof in good repair and operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof, and keep the vehicles and all parts thereof in safe condition and free from filth or conditions unreasonably increasing the danger of fire.

Equipment Maintenance Standards:

The following is a listing of standards for equipment maintenance to be adhered to by the Agency for all vehicles (including ATS) in Regular Service in the District:

1. All vehicles shall have their interiors cleaned daily, and, if conditions require, more frequently.
2. All vehicles shall receive a major cleaning of the entire interior every month, and if conditions require, more frequently. Such cleaning shall include a complete washing and/or cleaning of all interior surfaces, seats, windows, floors and all interior fittings.
3. Heating and air-conditioning of all vehicles shall be maintained to ensure proper operation. Repairs shall be made promptly.
4. The exterior of all vehicles shall be cleaned daily.
5. All vehicles shall be maintained in accordance with applicable standards or safety and maintenance of any agency of the federal government.
6. All vehicles to be used in lift equipped service shall have lifts cycled daily to insure that the lift mechanism is operable.

ATS SERVICE AND MAINTENANCE AGREEMENT

This Agreement is made and entered into between **THE METRO-EAST TRANSIT DISTRICT OF ST. CLAIR COUNTY** (“District”) and **THE BI-STATE DEVELOPMENT AGENCY OF MISSOURI-ILLINOIS METROPOLITAN DISTRICT** (“Agency”).

RECITALS

The Agency, as the regional public transportation authority for the metropolitan St. Louis area, is currently providing mass transportation services relating to the Alternative Transportation System ("ATS"). The District is the recipient of certain tax monies levied upon its residents to provide such services as well as grants from the Illinois Department of Transportation ("IDOT"). The parties desire to continue their relationship, albeit on a modified basis for an approximately twelve (12) months beginning June 20, 2022 through June 30, 2023.

NOW, THEREFORE, in consideration of the premises, mutual covenants, and undertakings herein expressed, the District and the Agency agree as follows:

I. TERM OF THE AGREEMENT.

The term of the Agreement shall be from June 20, 2022 through June 30, 2023, unless either party shall elect to terminate the same and give notice of such election as herein provided in accordance with Article XII below. In that event, notice shall be given no less than ninety (90) days prior to the proposed date of termination. The parties may mutually agree in writing no later than March 31st of each year to renew the Agreement for successive one (1) year terms.

SCOPE OF SERVICES.

A. ATS Garaging, Fueling and Maintenance.

The Agency shall provide the following services: Fueling; Exterior and Interior Cleaning; Garaging; Preventive Maintenance; ATS Telephone Service. Preventive maintenance shall be performed in accordance with the Agency's standard of maintenance provided at the Illinois Facility developed in accordance with the expertise and experience developed by Agency personnel. Repairs shall include the replacement of parts and assemblies that appear to be near failure or more effectively repaired when component systems are in partial disassembly.

B. Extraordinary Service to be Provided by Order.

Major repairs not contemplated in preventive maintenance such as engine and major component overhauls, body shop work, or repairs requiring the use of equipment or technical expertise not available at the Illinois Facility, are to be performed upon order by the District only after the estimated costs of repair has been submitted to the District. The estimated cost shall include a recommendation as to whether the repair should be

made, and alternatives should be discussed. Upon written approval of the District, the Agency shall accomplish the required repair. The repair costs shall be billed upon actual hours, parts utilized, and rates indicated herein below as they may be from time to time amended, rather than the estimate. The ATS is responsible for all shifting and transporting of vehicles for repairs performed outside of the Illinois Facility.

C. Maintenance of Equipment and Property.

The Agency shall maintain its equipment and property in a manner consistent with standards as delineated on Exhibit A "Maintenance of Equipment and Property Standards".

II. FINANCIAL TERMS.

A. Expense.

The standard rate to be charged will be based on the type of repair and inclusive of all actual expense per mile or per hour depending on the service provided. Labor (red rates, shift differentials, overtime and benefits, such as, fringe benefits and FICA) shall be charged in accordance with the ATU 788 bargaining unit contract. Supervisory expense will also be included in the rate. This rate will be inclusive of all labor and benefits for supervisory staff.

- i. Parts and labor shall be charged at the actual invoiced cost to the Agency including a 10% handling fee.
- ii. The exterior wash shall be charged at the current third-party contract rates plus 5% for supervision.
- iii. Fuel, lubricants, and antifreeze shall be billed on the basis of actual out-of-pocket costs.
- iv. Vehicle towing shall be billed based on actual out-of-pocket costs.
- v. The direct labor component of the invoice shall be subject to a 60% surcharge that shall be deemed to cover any additional insurance, inside parking and central office costs for administration and billing.
- vi. In addition to any charges for work performed at the main shop will be additional cartage charges for necessary towing or hosteling between the Illinois facility and the main repair facility or any other repair facility selected by the District.

B. Monthly Invoice.

An invoice shall be prepared by the Agency each month that states the cost due to the Agency by the District. The invoice shall be prepared and submitted to the District on or before the 25th day of the month for the prior month, and the District shall render payment against such invoice within 30 days of receipt.

III. INFORMATION/DATA OR SPECIAL REQUESTS.

Upon request by the District, the Agency shall provide such information and analysis of the St. Clair County operations as the District shall reasonably request.

VI. BID ADVERTISEMENTS.

Upon request, the Agency shall provide the District with bid advertisements.

VII. EMPLOYMENT APPLICATION FORMS/ EMPLOYMENT ADVERTISEMENTS.

Upon request, the Agency shall provide the District with employment advertisements.

VIII. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT AND RELEVANT ADA REGULATIONS OF THE U.S. DEPARTMENT OF TRANSPORTATION AND IDOT.

The District and the Agency shall work cooperatively to meet the requirements of the Americans with Disabilities Act. Upon successful implementation of the Agreement, both the District and the Agency shall maintain compliance with all relevant regulations imposed by the United States Department of Transportation, the Federal Transit Administration and IDOT applicable to transit operations conducted in St. Clair County, provided that the Agency's obligations shall be limited to compliance with regulations that are applicable to the Agency's transit operations in St. Clair County.

IX. GOVERNING LAW.

This Agreement shall be interpreted according to the laws of the State of Illinois. Both the District and the Agency are subject to various provisions of the Statutes of the United States and the State of Illinois.

X. INDEMNIFICATION.

The Agency, to the extent permitted by applicable law, agrees to indemnify and hold harmless the District and St. Clair County, Illinois against any loss, claim or suit hereinafter made or brought against such parties arising directly from an intentional wrong, negligence or carelessness of the Agency, its officers, agents or employees. The Agency further agrees to defend any such claim or suit at its own expense; provided, however, the District and St. Clair County, Illinois, may, at the option of such parties, defend any such claim or suit. If the District requests the Agency to defend the District and the Agency does not, the Agency will pay the reasonable attorneys' fees and costs of defense incurred by the District.

The District, to the extent permitted by applicable law, agrees to indemnify and hold harmless the Agency against any loss, claim or suit hereinafter made or brought against the Agency arising directly from an intentional wrong, negligence or carelessness of the District, its officers, agents or employees. The District further agrees to defend any such claim or suit at its own expense; provided, however, the Agency may, at its option, defend any such claim or suit. If the Agency requests the District to defend the Agency and the District does not, the District will pay the reasonable attorneys' fees and costs of defense incurred by the Agency.

XI. MODIFICATIONS.

This Agreement constitutes the entire agreement of the parties hereto and supersedes any and all prior or written understandings. Modifications shall be made to this Agreement only in writing and signed by the parties hereto. In the event that either party desires modification of this Agreement, the party desiring same shall notify the other party in writing of the desired modifications. Within thirty (30) days of such written notice, negotiations shall commence between the parties to modify the Agreement.

XII. TERMINATION.

This Agreement may be terminated by either party at any time by giving the other party a ninety (90) day written notice of such termination. Such notice shall be in the form as provided elsewhere in this Agreement pursuant to ARTICLE XIV. NOTICE. It is agreed and understood that in the event there is a notice of termination hereunder that the provisions of this Agreement shall remain in full force and effect for the period of notification.

XIII. DEFAULT.

In the event of a default by either party in the performance of any covenant or obligation hereunder, and there is a failure to cure such default after thirty (30) days written notice of the same to the defaulting party, the non-defaulting party shall have the option to request a hearing before the governing board of the defaulting party.

XIV. NOTICE.

Notice hereunder shall be given by depositing same in the first class mail, postage prepaid, return receipt requested directed to the President and Chief Executive Officer, c/o The Bi-State Development Agency, 211 N. Broadway, Suite 700, St. Louis, Missouri, 63102, in the case of the Agency. In the case of the District, notice should be directed to the Chairperson of the District_____.

SIGNATURE PAGE FOLLOWS

ENTERED INTO AS OF THIS _____ DAY OF _____ 2022.

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

**METRO-EAST TRANSIT DISTRICT OF
ST. CLAIR COUNTY**

Name
Title

Name
Title

EXHIBIT A

MAINTENANCE OF EQUIPMENT AND PROPERTY

The Agency, throughout the term of this Agreement, shall keep and maintain the vehicles and all parts thereof in good repair and operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof, and keep the vehicles and all parts thereof in safe condition and free from filth or conditions unreasonably increasing the danger of fire.

Equipment Maintenance Standards:

The following is a listing of standards for equipment maintenance to be adhered to by the Agency for all vehicles (including ATS) in regular service in the District:

1. All vehicles shall have their interiors cleaned daily, and, if conditions require, more frequently.
2. All vehicles shall receive a major cleaning of the entire interior every month, and if conditions require, more frequently. Such cleaning shall include a complete washing and/or cleaning of all interior surfaces, seats, windows, floors and all interior fittings.
3. Heating and air-conditioning of all vehicles shall be maintained to ensure proper operation. Repairs shall be made promptly.
4. The exterior of all vehicles shall be cleaned daily.
5. All vehicles shall be maintained in accordance with applicable standards or safety and maintenance of any agency of the federal government.
6. All vehicles to be used in lift equipped service shall have lifts cycled daily to insure that the left mechanism is operable.

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE BI-STATE DEVELOPMENT AGENCY OF THE
MISSOURI-ILLINOIS METROPOLITAN DISTRICT APPROVING
OPERATING AGREEMENTS AND A LEASE & BOND AGREEMENT
BETWEEN BI-STATE DEVELOPMENT AGENCY AND
ST. CLAIR COUNTY TRANSIT DISTRICT**

PREAMBLES:

Whereas, The Bi-State Development Agency of the Missouri-Illinois Metropolitan District (the “Agency”/”BSD”) is a body corporate and politic, created by an interstate compact between the States of Missouri and Illinois, acting by and through its Board of Commissioners (the “Board of Commissioners”); and

Whereas, the Agency is authorized by Mo. Rev. Stat. §§ 70.370 et seq. and 45 Ill. Comp. Stat. 100/1 et seq. (jointly referred to herein as the “Compact”) to purchase or lease, sell or otherwise dispose of, and to plan, construct, operate and maintain, or lease to others for operation and maintenance, passenger transportation facilities, and motor vehicle and other terminal or parking facilities; to contract with municipalities or other political subdivisions for the services or use of any facility owned or operated by the Agency, or owned or operated by any such municipality or other political subdivision; to contract and to be contracted with; and to perform all other necessary and incidental functions; and

Whereas, Section 5 of the “Intergovernmental Cooperation Act”, 5 Ill. Comp. State. 220/5 provides that any one or more public agencies may contract with any one or more public agencies to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract; and

Whereas, effective July 1, 2006, St. Clair County Transit District (District) and the Bi-State Development Agency, as the regional public transportation authority for the metropolitan St. Louis area, entered in an operating agreement for Bus and Rail Service and ATS Maintenance Service; and

Whereas, the Agency, on behalf of itself and the District, entered into lease financing transactions dated as of August 30, 2001 (as amended in 2011, the “Lease Financing”) of rail equipment in which 70.6% of the net benefit of the transactions have been deposited into an account for the expansion of transportation assets in St. Clair County; and

Whereas, the District and the Agency entered into certain documents in connection with the Agency’s issuance of (i) \$39,155,000 original principal amount of St. Clair County MetroLink Extension Project Refunding Revenue Bonds, Series 2006 (Metro East Transit District of St. Clair County, Illinois, Sponsor) (the “Series 2006 Bonds”) and (ii) \$4,160,000 original principal amount of St. Clair County MetroLink Extension Project Refunding Revenue Bonds, Series 2014 (Metro East Transit District of St. Clair County, Illinois, Sponsor) (the “Series 2014 Bonds” and, together with the Series 2006 Bonds, the “Bonds”), in particular the Third Amended and Restated Project Financing, Construction and Operation Agreement dated as of December 1, 2014 (the “Series 2014 Agreement”); and

Whereas, on March 17, 2022, St. Clair County Transit District, according to the provisions of Section XII of the July 1, 2006 Operating Agreement between the District and the Agency, gave the 90-day notice required to terminate the operating agreement for Bus and Rail Service and ATS Maintenance Service; and

Whereas, it is feasible, necessary and in the public interest for the Agency to authorize the President and CEO to enter into separate operating agreements with St. Clair County Transit District including: Rail Service and Maintenance Agreement, Bus Service Agreement, ATS Service and Maintenance Agreement, and the Lease and Bond Agreement, in accordance with the terms and conditions described herein.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Findings. The Board of Commissioners hereby finds and determines those matters set forth in the preambles hereof as fully and completely as if set out in full in this Section 1.

Section 2. Approval of Authorization to Execute Agreements. The Board of Commissioners hereby approves the authorization of the President and CEO to enter into separate operating agreements with St. Clair County Transit District including: Rail Service and Maintenance Agreement, Bus Service Agreement, ATS Service and Maintenance Agreement, and the Lease and Bond Agreement, under and pursuant to this Resolution and the Compact for the authorized Agency purposes set forth in the preambles hereof and subject to the conditions hereinafter provided.

Section 3. Form of the Agreements. The form of the Agreements (as provided in the Attachments to the Briefing Paper and made a part hereof), in substantially the form presented to this meeting are hereby approved, and officers of the Agency, including without limitation, the President and CEO, are hereby authorized and directed to execute and deliver and attest, respectively, the Agreements, with such changes, modifications, insertions and omissions as may be deemed necessary or desirable to effect the Agreements, with the necessity or desirability of such changes, modifications, insertions and omissions being conclusively evidenced by their execution thereof.

Section 4. Actions of Officers Authorized. The officers of the Agency, including, without limitation, the President and CEO, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and the execution of such documents or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 5. Severability. It is hereby declared to be the intention of the Board of Commissioners that each and every part, section and subsection of this Resolution shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Commissioners intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Resolution shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the intent of this Resolution.

Section 6. Payment of Expenses. The Executive Vice President and CFO is hereby authorized and directed to pay or cause to be paid all costs, expenses and fees incurred in connection with or incidental to this Resolution and the Agreements.

Section 7. Rights under Resolution Limited. No rights shall be conferred by this Resolution upon any person or entity other than the Agency and the St. Clair County Transit District.

Section 8. No Personal Liability. No member of the Board of Commissioners, officer, employee or agent of the Agency shall have any personal liability for acts taken in accordance with this Resolution.

Section 9. Governing Law. The laws of the State of Missouri shall govern this Resolution.

Section 10. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval.

ADOPTED by the Board of Commissioners of The Bi-State Development Agency of the Missouri-Illinois Metropolitan District this 14th day of October, 2022.

In Witness Whereof, the undersigned has hereto subscribed his signature and caused the Seal of the Agency to be affixed.

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

By _____
Title _____

[SEAL]

ATTEST:

By _____
Deputy Secretary to the Board of Commissioners