

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT, made and entered into by and between the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), agencies of the United States Department of Transportation (USDOT), the Missouri Highway and Transportation Commission (Commission), and the Missouri Transportation Finance Corporation (Corporation), a Missouri nonprofit corporation created under the Missouri Nonprofit Corporation Act;

WITNESSETH:

WHEREAS, the National Highway System Designation Act of 1995, P.L. 104-59, 23 U.S.C. Section 101 note, (the NHS Act) established a State Infrastructure Bank (SIB) Pilot Program which authorized the Secretary of the USDOT (the Secretary) to enter into Cooperative Agreements with up to ten states for the establishment of a SIB by each of those states; and

WHEREAS, on June 21, 1996, the Secretary announced that the State of Missouri (State) was one of the ten states designated to participate in the SIB Pilot Program; and

WHEREAS, the Commission is duly organized and existing under the laws of the State, including particularly Article IV, Sections 29, 30(b) and 30(c) of the Missouri Constitution and Chapter 226 of the Revised Statutes of Missouri, as amended, pursuant to which the Commission is vested with authority over all State transportation programs and facilities and is authorized to enter into this Cooperative Agreement on behalf of the State; and

WHEREAS, in order to provide the legal structure for the establishment of the SIB, the Commission authorized its Chief Engineer to proceed with the formation of a nonprofit corporation under the provision of Chapter 355 of the Revised Statutes of Missouri, as amended, (the "Missouri Nonprofit Corporation Act");

WHEREAS, on August 23, 1996, the Secretary of State for the State issued a Certificate of Incorporation certifying and declaring that the Missouri Transportation Finance Corporation had been duly organized under the laws of the State and was entitled to all rights and privileges granted corporations organized under the Missouri Nonprofit Corporation Act; and

WHEREAS, pursuant to the NHS Act, the Commission and the Corporation must enter into a Cooperative Agreement with the FHWA and the FTA regarding the establishment, funding and operation of the SIB in accordance with the NHS Act;

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

ARTICLE I
ESTABLISHMENT OF STATE INFRASTRUCTURE BANK

Section 1.1 Designation of Entities. The Commission and the Corporation, 105 West Capitol, P.O. Box 270, Jefferson City, MO 65102 are the designated entities for the administration of the SIB program for the State and are lawfully authorized to administer the SIB in accordance with the requirements of the NHS Act, the applicable guidelines, policies and procedures issued and adopted thereunder from time to time by FHWA/FTA (collectively, the NHS SIB Guidelines), and Article IV of the Missouri Constitution and Chapters 226 and 355 of the Revised Statutes of Missouri, as amended, copies of which are attached as Exhibit A of this Cooperative Agreement.

Section 1.2 Authority. The Commission and the Corporation represent and warrant that they have the legal, managerial, technical and operational capabilities to administer the SIB. The Commission and the Corporation hereby certify that the State law, and the powers it confers on the Commission and nonprofit corporations such as the Corporation are consistent with the Constitution of the State and that the State, acting through the Commission and the Corporation, may legally bind itself to the terms of the Cooperative Agreement.

Section 1.3 Creation of Accounts. The Corporation agrees to create within the SIB a separate account to be designated as the Highway Account, a separate account to be designated as the Transit Account and a separate account to be designated as the Second Generation Account, each of which shall be dedicated solely to providing loans and other forms of financial assistance consistent with the NHS Act and permitted under the State's law. (The Highway Account, the Transit Account and the Second Generation Account are sometimes hereinafter referred to individually as an Account and, collectively, as the Accounts.) Amounts on deposit in the Accounts shall be invested in accordance with the provisions of subsection 350(e) of the NHS Act and the NHS SIB Guidelines. Earnings on amounts deposited in the Accounts shall be applied in accordance with the provisions of subsection 350 (e) of the NHS Act and the NHS SIB Guidelines.

ARTICLE II
FUNDING OF STATE INFRASTRUCTURE BANK

Section 2.1 FHWA/FTA Payments. FHWA agrees to make payments to the Commission for deposit in the SIB upon receipt of a properly completed request transmitted on the FHWA form within Exhibit B. Similarly, FTA agrees to make payments to the Commission for deposit in the SIB upon receipt of a properly completed request transmitted on the FTA form within Exhibit B. The Commission shall promptly transfer such funds to the Corporation and the Corporation shall deposit such funds into the appropriate SIB Account. Federal payments made under this Cooperative Agreement shall not exceed amounts authorized by subsection 350(b)(2) of the NHS Act or other legislation that may authorize such payment. The timing of deposits of Federal funds obligated pursuant to subsection 350(b)(2) and requested in the appropriate FHWA or FTA form of Exhibit B may be established by the Secretary in order to ensure compliance with

the requirements of subsection 350 (g)(1) of the NHS Act relating to the historic disbursement rates of the Federal-aid highway program and the Federal transit program.

Section 2.2. State Matching Requirement. As required by subsection 350(e)(1) of the NHS Act, on or before the date on which the Commission receives a Federal payment, the Commission shall deposit matching share funds (from non-Federal sources) into the Highway Account or the Transit Account, as applicable, of the Corporation in an amount equal to, or greater than, 25 percent of the amount of Federal payment, unless such matching share may be at a lower percentage as otherwise provided in subsection 350(e)(1) of the NHS Act.

ARTICLE III FINANCIAL ASSISTANCE

Section 3.1. Timely Employment of Funds. The Corporation agrees to employ funds deposited in the SIB in an expeditious and timely manner.

Section 3.2. Use of Funds. The Corporation agrees to provide only such financial assistance through the SIB that is authorized under section 350 of the NHS Act, the NHS SIB Guidelines, and applicable State law. If the financial assistance is not in the form listed in subsection 350(c) or subsections 350(l)(3)(A) through 350(l)(3)(F) of the NHS Act, then the Corporation shall request specific approval from FHWA or FTA, or both, as applicable of the form of assistance consistent with subsection 350(l)(3)(G) of the NHS Act.

Section 3.3. Special Rule for Urbanized Areas. The Commission and the Corporation agree, as required by subsection 350(a)(4) of the NHS Act, that the Highway Account will be capitalized with Federal funds otherwise apportioned or allocated to the State under subsection 104(b)(3) or section 160 of Title 23, United States Code, or under subsection 1013(c) or section 1015 of the Intermodal Surface Transportation Efficiency Act of 1991, and attributed to urbanized areas of over 200,000 in population, only if the metropolitan planning organization concurs, in writing, with the provision of such assistance.

Section 3.4. Administrative: Direct and Indirect Costs. The Commission and the Corporation may use up to 2 percent of the aggregate amount of disbursements made in each of Federal fiscal years 1996 and 1997 to cover program administration costs of the SIB for each such Federal fiscal year. These monies will be used for the reasonable costs of administering the SIB, as described in subsection 350(j) of the NHS Act. To the extent permitted by the NHS Act, program administration funds may also be used for the costs of servicing loans, federally capitalized SIB program start-up costs, financial, management and legal consulting fees, and reimbursement of costs for SIB related support services from other State agencies to the extent such costs and services relate to the SIB.

Section 3.5. Leveraging. As authorized by subsection 350(1)(3) of the NHS Act, the Corporation may implement a program to leverage deposits. The Federal funds and the associated State matching share from non-Federal sources may be used as a source of security for

bonds issued by the Corporation to finance or refinance loans made by the Corporation (or interests or participation therein) provided such activities comply with the NHS Act and the NHS SIB Guidelines.

Section 3.6. Project Agreements with Recipients. Before providing financial assistance for a project, the Corporation agrees to enter into a written project agreement (Project Agreement) to provide financial assistance through the SIB, which financial assistance shall be in a form permitted by subsection 350(c) of the NHS Act and shall be for a qualified project, as defined in subsection 350(d) of the NHS Act. The Project Agreement shall include interest rates, if applicable, repayment terms, a disbursement schedule, and any other fees, compensation, or other collateral offered by the recipient of the assistance and such other terms and provisions in accordance with the provisions of subsection 350(e) of the NHS Act and the NHS SIB Guidelines issued thereunder.

Section 3.7. Disbursements. The Corporation agrees to disburse funds from the SIB as project costs are refinanced or incurred, as set forth in the Project Agreement.

Section 3.8. Federal Authorities. The Commission and the Corporation agree that they and all recipients of financial assistance directly made available to the SIB pursuant to the provisions of the NHS Act will comply with all applicable Federal laws and regulations.

(a) **Special Requirements for FTA Projects.** For projects financed through the SIB's Transit Account, the Commission and the Corporation agree that they and all recipients of financial assistance directly made available to the SIB pursuant to the provisions of the NHS Act will also comply with all applicable requirements of the FTA Master Agreement for the fiscal year in which financial assistance is made, except that any requirement of the NHS SIB Guidelines, including current or future requirements of the Guidelines, or any Special Condition or Special Requirement to this Cooperative Agreement imposed by FTA that conflicts with a requirement of the FTA Master Agreement supersedes the conflicting requirement of the FTA Master Agreement.

Section 3.9. Use of Repayment Proceeds. The Corporation agrees that repayment proceeds and fees, compensation, or other collateral associated with SIB financial assistance derived from the Highway Account shall be used consistent with subsection 129(a)(7) of Title 23, United States Code, except to the extent the FHWA determines that such provisions are inconsistent with such requirements as provided by subsection 350(e)(4) of the NHS Act. FTA reserves the right to establish appropriate conditions concerning repayment proceeds and fees, compensation, or other collateral associated with SIB financial assistance derived from the Transit Account, consistent with the requirements of subsection 350(e)(4) of the NHS Act.

ARTICLE IV
ACCOUNTING AND AUDIT PROCEDURES

Section 4.1. Accounting and Audit Procedures. The Corporation agrees to establish fiscal controls and accounting procedures sufficient to assure proper accounting for payments received and disbursements made through the SIB, and to provide SIB balances at the beginning and end of the accounting period and to demonstrate compliance with this Cooperative Agreement. The Corporation further agrees to use accounting, audit and fiscal procedures conforming to generally accepted accounting principals as promulgated by the Governmental Accounting Standards Board.

Section 4.2. SIB Assistance Recipient Accounting and Audit Procedures. The Corporation agrees that the Project Agreement will require each recipient to maintain project accounts in accordance with generally accepted accounting standards.

Section 4.3. Annual Compliance Audit. The Corporation agrees to conduct an annual independent financial and compliance audit of the SIB and the operations of the SIB. This audit may be conducted in accordance with the Single Audit Act of 1984 (See Office of Management and Budget Circular A-128, "Audits of State and Local Governments"). The Corporation agrees to complete the audit report within one year of the appropriate accounting period and submit it to both the FHWA and FTA Administrator at the Regional Office administering the project, with a copy sent to USDOT's Office of the Inspector General within 30 days of completion. FHWA or FTA will notify the Corporation within 90 days as to the technical adequacy of the audit report and its findings.

Section 4.4. Annual Report. The Commission and the Corporation agree to submit an Annual Report to the FHWA and FTA Administrator at the Regional Office administering the project, and make such report available to recipients of SIB financial assistance no later than 90 days after the end of the federal fiscal year. This report shall identify recipients of financial assistance, amounts of financial assistance, financial assistance interest and repayment terms, and project categories, with emphasis on how the state has met the goals set forth in its application and the financial condition of the Highway Account and the Transit Account.

Section 4.5. Other Documents. In addition to the Annual Report and Annual Audit, the Commission and the Corporation agree to provide promptly to FHWA, FTA, USDOT, or the Comptroller General of the United States (or representative thereof) any other records they may reasonably require.

Section 4.6. Records Retention. The Commission and the Corporation agree to maintain and retain all official project files relating to the SIB until all financial assistance has been repaid and necessary audits have been performed. Retention and ultimate disposition of SIB projects files shall be in accordance with State laws unless such period for retention conflicts with

the requirement above or the 3 year minimum requirement of 49 C.F.R. § 18.42, in which event, the later period of retention shall prevail.

ARTICLE V SANCTIONS AND COMPLIANCE

Section 5.1. Corrective Actions. If either FHWA or FTA determines that the Commission or the Corporation have not complied with the terms of this Cooperative Agreement, the requirements of the NHS Act or the NHS SIB Guidelines, FHWA or FTA (as applicable) will notify the Commission and the Corporation of the noncompliance and of the requested corrective action. The Commission and/or the Corporation agree to take appropriate corrective action or submit a compliance plan to both FHWA and FTA within 60 days.

Section 5.2. Remedies for Failure to Comply with this Cooperative Agreement. If the Commission or the Corporation fail to take corrective action, or provide an acceptable plan to correct any noncompliance, FHWA or FTA (as applicable) may withhold from future grant moneys available to the state under the provisions of Titles 23 or 49 of the United States Code and the Regulations promulgated thereunder, an amount equal to the total amount in dispute until the corrective action is taken or an acceptable plan provided.

ARTICLE VI EXECUTION, AMENDMENT, AND TERM OF AGREEMENT

Section 6.1 Designated Signatories. The following officials are authorized to enter into amendments to this Cooperative Agreement:

- (a) For the Commission: Joe Mickes, Chief Engineer
- (b) For the Corporation: H. Mark Preyer, President
- (c) For FHWA: Rodney E. Slater, Administrator
- (d) For FTA: Gordon J. Linton, Administrator

Section 6.2. Amendment. This Cooperative Agreement may be amended at any time by mutual agreement between the designated signatories in writing. Amendments shall be submitted in writing to all parties unless waived by any party. The receiving parties shall respond within 30 days approving such change or with written suggested changes. Items not significantly altering this Cooperative Agreement but changing implementation or review procedures, may be implemented through the agreement of the Chief Engineer of the Commission, the President of the Corporation and the Administrator of either FHWA or FTA, as applicable, or their designee.

Section 6.3. Effective Date. This Cooperative Agreement shall be in effect from and after its execution by all of the parties hereto.

Section 6.4. Termination. This Cooperative Agreement is prepared and executed in four (4) original counterparts and shall remain in effect until terminated in writing by the parties hereto.

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

Executed by the Commission on the 23rd day of September, 1996.

**MISSOURI HIGHWAY AND
TRANSPORTATION COMMISSION**

ATTEST:

Mari Ann Hunter
Commission Secretary

By Joe Mikes
Joe Mikes, Chief Engineer

Approved as to Form:

Mark D. Wheatley
Commission Counsel

Executed by the Federal Highway Administration on this _____ day of September, 1996.

**FEDERAL HIGHWAY
ADMINISTRATION**

By Rodney E. Slater
Rodney E. Slater, Administrator

Executed by the Corporation on the 19th day of September 1996.

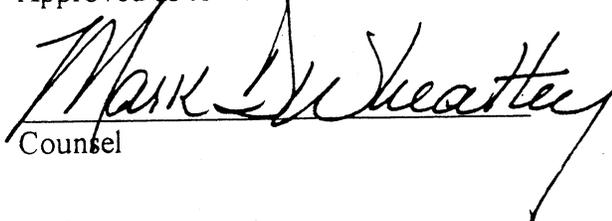
**MISSOURI TRANSPORTATION
FINANCE CORPORATION**

ATTEST:

By 
H. Mark Preyer, President

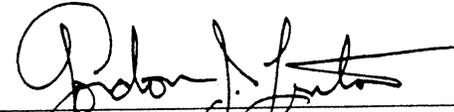

Corporation Secretary

Approved as to Form:


Counsel

Executed by the Federal Transit Administration on this 3 day of ~~September~~ ^{SEP}, 1996.

**FEDERAL TRANSIT
ADMINISTRATION**

By 
Gordon J. Linton, Administrator

09/17/96
MDW

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