

## TEA 21 COOPERATIVE AGREEMENT

**THIS COOPERATIVE AGREEMENT**, made and entered into by and between the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Railroad Administration (FRA), agencies of the United States Department of Transportation (USDOT), the Missouri Highway and Transportation Commission (Commission), and the Missouri Transportation Finance Corporation (Corporation) 105 West Capitol Avenue, P. O. Box 270, Jefferson City, MO 65102, a Missouri nonprofit corporation created under the Missouri Nonprofit Corporation Act;

### WITNESSETH:

**WHEREAS**, Section 350 of the National Highway System Designation Act of 1995, P.L. 104-59, 23 U.S.C. 101 note (the NHS Act), established a state infrastructure bank 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 state infrastructure bank (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, 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 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"); and

**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 entered into a Cooperative Agreement (the NHS Cooperative Agreement) with the FHWA and the FTA regarding the establishment, funding and operation of the SIB in accordance with the NHS Act; and

**WHEREAS**, since the effective date of the NHS Cooperative Agreement, the Commission and the Corporation have operated the SIB in accordance with the NHS Act; and

**WHEREAS**, Section 1511(h)(2) of the Transportation Equity Act for the 21st Century (TEA 21) requires the Secretary to revise cooperative Agreements entered into with states under Section 350 of the NHS Act to comply with the requirements of Section 1511; and

**WHEREAS**, the parties hereto now desire to supersede the NHS Cooperative Agreement and enter into this Cooperative Agreement regarding the establishment, funding and operation of Missouri's SIB pursuant to Section 1511 of TEA 21;

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

**ARTICLE I  
STRUCTURE OF STATE INFRASTRUCTURE BANK**

**Section 1.1 Designation of Entities.** The Commission and the Corporation 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 TEA 21, the applicable guidelines, policies and procedures issued and adopted thereunder from time to time by FHWA, FTA and FRA (collectively, the SIB Guidance), Article IV of the Missouri Constitution and Chapters 226 and 355 of the Revised Statutes of Missouri, as amended.

**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 this Cooperative Agreement.

**Section 1.3 Effect on Prior NHS Cooperative Agreement.** It is the intent of the parties hereto that, from and after the effective date of this Cooperative Agreement, the SIB operated by the Commission and the Corporation shall be funded and operated in accordance with this Cooperative Agreement and the applicable provisions of TEA 21. The NHS Cooperative Agreement previously entered into by the parties is hereby superseded by this Agreement.

**Section 1.4 Transportation Account.** The Corporation shall create within the SIB a separate account to be designated as the "Transportation Account". Funds credited to the Transportation Account shall be dedicated solely to providing loans and other forms of financial assistance consistent with TEA 21 and permitted under the State's law.

**Section 1.5 Highway Account.** The Corporation shall create within the SIB a separate account to be designated as the "Highway Account". Funds contributed to the SIB by the Commission from the State's State Road Fund shall be credited to the Highway Account and shall be dedicated solely to providing loans and other forms of financial assistance consistent

with TEA 21 for highway and bridge projects permitted under Article IV, Section 30(b) of the Missouri Constitution.

**Section 1.6 Interstate Maintenance Account.** In the event interstate maintenance funds apportioned to the State under 23 U.S.C. 104 (b)(4) are contributed by the Commission to the Corporation, the Corporation shall credit such funds to a separate account within the SIB to be designated as the "Interstate Maintenance Account." Funds credited to the Interstate Maintenance Account shall be dedicated solely to providing loans or other forms of financial assistance to projects eligible for assistance under 23 U.S.C. 104(b)(4) and section 1511 of TEA 21.

**Section 1.7 Rail Account.** In the event rail program funds made available to the State under subtitle V of title 49, United States Code, are contributed to the Corporation, the Corporation shall credit such funds to a separate account within the SIB which shall be designated as the "Rail Account". Funds credited to the Rail Account shall be used in a manner consistent with the law making the funds available to the State and section 1511 of TEA 21.

**Section 1.8 NHS Accounts.** The Transit Account and the Second Generation Account created under Section 1.3 of the NHS Cooperative Agreement shall be closed as of the effective date of this Cooperative Agreement and any funds on deposit in said accounts shall be transferred to the Transportation Account created under Section 1.4 of this Cooperative Agreement.

## **ARTICLE II FUNDING OF STATE INFRASTRUCTURE BANK**

**Section 2.1 FHWA/FTA/FRA Payments.** FHWA, FTA and FRA agree to make payments to the Commission from authorized, available funds for deposit in the SIB. The request for funds shall be made on properly completed requests as set forth in the SIB Guidance. 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 section 1511(h)(1) of TEA 21 or other legislation that may authorize such payment.

**Section 2.2. State Matching Requirement.** As required by section 1511(f)(1)(A) of TEA 21, 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 Transportation Account, the Highway Account, or other 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 section 1511(f)(1)(A) of TEA 21.

**Section 2.3 Investment of Funds.** Amounts on deposit in the Transportation Account, the Highway Account or other account as applicable, shall be invested in accordance with the provisions of section 1511(f)(1)(C) of TEA 21 and the SIB Guidance. Earnings on

amounts deposited in the Accounts shall be applied in accordance with the provisions of section 1511(f)(1)(C) and the SIB Guidance.

### ARTICLE III FINANCIAL ASSISTANCE

**Section 3.1. Use of Funds.** The Corporation agrees to provide only such loans or other assistance through the SIB that are authorized under section 1511 of TEA 21, the SIB Guidance, applicable State law, or for any other project related to surface transportation that the Secretary determines to be appropriate. If the financial assistance is not in the form listed in section 1511 of TEA 21, then the Corporation shall request specific approval from FHWA, FTA or FRA as applicable, of the form of assistance consistent with section 1511 of TEA 21.

**Section 3.2. Special Rule for Urbanized Areas.** The Commission and the Corporation agree, as required by section 1511(c)(3) of TEA 21, that none of the accounts created by the Corporation may be capitalized with Federal funds otherwise apportioned or allocated to the State under subsection 104(b)(3) of Title 23, United States Code, and attributed to urbanized areas of over 200,000 in population, unless the metropolitan planning organization designated for the area concurs, in writing, with the provision of such assistance.

**Section 3.3. Administrative Costs.** The Commission and the Corporation may use up to 2 percent of the Federal funds contributed to the SIB to cover program administrative costs of the SIB. These monies will be used for the reasonable costs of administering the SIB, as described in section 1511 (l) of TEA 21.

**Section 3.4. Leveraging.** 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 TEA 21 and the SIB Guidance.

**Section 3.5. 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 section 1511(d) of TEA 21 and shall be for a qualified project, as defined in section 1511(e) of TEA 21. 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 TEA 21 and the SIB Guidance issued thereunder.

**Section 3.6. Disbursements.** The Corporation agrees to disburse funds from the SIB as project costs are incurred or refinanced, as set forth in the Project Agreement.

**Section 3.7. Applicability of Federal Law.** The Commission and the Corporation agree that they and all recipients of SIB financial assistance will comply with all applicable Federal laws and regulations as set forth in Section 1511(i) of TEA 21.

**Section 3.8. Use of Repayment Proceeds.** The Corporation agrees that the requirements of titles 23 and 49, United States Code, shall apply to repayments from non-federal sources made to the SIB . All applicable federal and state requirements shall apply to the use of such repayments by the SIB .

#### **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 . 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 each Project Agreement will require the recipient or recipients 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 Amendments of 1996 (See Office of Management and Budget Circular A-133, "Audits of States, Local Governments and Nonprofit Organizations"). The Corporation agrees to complete the audit report within one year of the appropriate accounting period and submit it to the FHWA, FTA and FRA Administrators, with a copy sent to USDOT's Office of the Inspector General within 30 days of completion.

**Section 4.4. Biennial Report.** The Commission and the Corporation agree to submit a Biennial Report as required by section 1511(f)(1)(G) of TEA 21 to the FHWA, FTA and FRA Administrators no later than 90 days after the end of the federal fiscal year for which a Biennial Report is due. This report shall conform with the requirements of TEA 21 and the SIB Guidance adopted thereunder from time to time.

**Section 4.5. Other Documents.** In addition to the Biennial Report and Annual Audit, the Commission and the Corporation agree to provide promptly to FHWA, FTA, FRA, USDOT, and/or the Comptroller General of the United States (or representative thereof) any other records they or any of them 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 FHWA, FTA or FRA determines that the Commission or the Corporation has not complied with the terms of this Cooperative Agreement, the requirements of TEA 21 or the SIB Guidance, FHWA, FTA or FRA (as applicable) will notify the Commission, the Corporation and the other federal agencies 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 FHWA, FTA and FRA 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, FTA or FRA (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: the Director of the Missouri Department of Transportation;
- (b) For the Corporation: the President of the Missouri Transportation Finance Corporation;
- (c) For FHWA: the Administrator of the Federal Highway Administration;
- (d) For FTA: the Administrator of the Federal Transit Administration; and
- (e) For FRA: the Administrator of the Federal Railroad Administration.

**Section 6.2. Amendment.** This Cooperative Agreement may be amended at any time by mutual agreement between the designated signatories. Amendments shall be submitted in writing to all parties. 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 Director of the Commission, the President of the Corporation and the Administrator of FHWA, FTA and FRA or each one's 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 five (5) 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 9<sup>th</sup> day of April, 1999.

**MISSOURI HIGHWAY AND  
TRANSPORTATION COMMISSION**

ATTEST:

By [Signature]  
Vice Chairman

[Signature]  
Commission Secretary

Approved as to Form:

[Signature]  
Commission Counsel

Executed by the Corporation on the 9<sup>th</sup> day of April, 1999.

**MISSOURI TRANSPORTATION  
FINANCE CORPORATION**

ATTEST:

By [Signature]  
Vice President

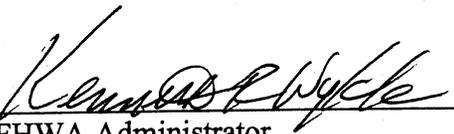
[Signature]  
Corporation Secretary

Approved as to Form:

[Signature]  
Counsel

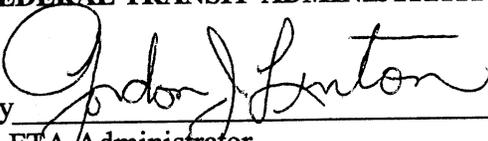
Executed by the Federal Highway Administration on the 7 day of May,  
1999.

**FEDERAL HIGHWAY ADMINISTRATION**

By   
FHWA Administrator

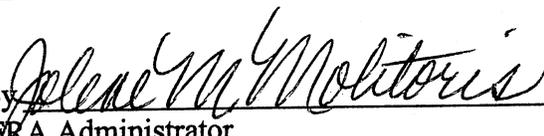
Executed by the Federal Transit Administration on the 19 day of May, 1999.

**FEDERAL TRANSIT ADMINISTRATION**

By   
FTA Administrator

Executed by the Federal Railroad Administration on the 24 day of May,  
1999.

**FEDERAL RAILROAD ADMINISTRATION**

By   
FRA Administrator

04/09/99

MDW

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