

**MEMORANDUM OF AGREEMENT**

**By and Between**

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

**and**

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

**Dated as of \_\_\_\_\_**

## **MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT (the “Agreement”) is dated as of \_\_\_\_\_, 2010, by and between THE CITY OF ST. LOUIS, MISSOURI, (the “City”), a constitutional charter city and political subdivision of the State of Missouri created pursuant to Article VI, § 19 of the Missouri Constitution upon the adoption of the Charter of the City of St. Louis (the “Charter”), and THE BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT doing business as Metro (“Metro”), an interstate transportation authority created by Section 70.370 et seq. of the Missouri Revised Statutes and Chapter 127, Section 63r-1 et seq. of the Illinois Compiled Statutes as a body politic and corporate (jointly referred to herein as the “Compact”).

### **WITNESSETH:**

WHEREAS, the City is authorized pursuant to the Charter and the Constitution and the laws of the State of Missouri to enter into contracts with Metro and others; to expend the money of the City for all lawful purposes; to acquire or receive and hold, maintain and improve real and personal property; to contract and be contracted with; to do all things whatsoever expedient for promoting or maintaining the comfort, education, morals, peace, government, health, welfare, trade, commerce or manufactures of the city or its inhabitants; and to exercise all powers granted or not prohibited to it by law or which it would be competent for the Charter to enumerate; and

WHEREAS, Metro is authorized to plan, construct, operate and maintain a public transportation system; to contract with municipal or other political subdivisions for the services or use of any facility owned or operated by Metro or owned or operated by such municipality or other political subdivision; to disburse funds for its lawful activities; to contract and be contracted with; and to perform all other necessary and incidental functions; and

WHEREAS, pursuant to such authority, Metro operates a fleet of MetroBuses that operate on City streets and that utilize a system of MetroBus stops (“bus stops”) throughout the City for the purpose of on-loading and off-loading passengers; and

WHEREAS, as part of its provision of municipal services, the City’s Street Department (“Street Department”) is responsible for maintaining the City’s streets in a safe and clean street condition; and

WHEREAS, Metro is aware that there is an accumulation of excessive trash at certain of its bus stops, Metro wishes to provide additional trash receptacles at or near designated bus stops and to have enhanced trash removal services at these bus stops in order to maintain them in a clean and healthful condition; and

WHEREAS, Metro has determined that it is cost effective and beneficial to outsource the purchase, maintenance and servicing of said trash receptacles to the Street Department, which

already provides, installs, and removes the trash from numerous other trash receptacles located adjacent to public streets throughout the City; and

WHEREAS, both Metro and the City have the authority to cooperate with one another for furtherance of their purposes;

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

## **ARTICLE I - Implementation and Services**

**Section 1.1. Enhanced Trash Removal.** The City shall provide all necessary activities required to purchase 500 new trash receptacles to be placed at designated active bus stops within the boundaries of the City.

**Section 1.2. Placement of Trash Receptacles.** The City will place the 500 new trash receptacles at bus stops on a priority basis to be determined by the City; and the City shall record the locations of these trash receptacles and shall provide periodic updates to Metro regarding their location, quantity, and condition of them.

**Section 1.3. Payment for Trash Receptacles.** Upon the delivery of the new trash receptacles to the City, and the City's presentation to Metro of an invoice and documentation supporting the purchase, Metro shall reimburse the City for the cost of said receptacles in a one-time payment of up to \$250,000.00.

**Section 1.4. Trash Removal Service Charges.** The City agrees that the Street Department will supply to provide an additional two-person work crew and all equipment necessary for the installation and maintenance of said trash receptacles, and for regular trash removal services sufficient to maintain their cleanliness.

**Section 1.5. Payment for Trash Removal Services.** Beginning in the month following the installation of the 500 new trash receptacles at the designated bus stops, the City will invoice Metro \$8333.33 per month, which is an annual rate of \$100,000.000, for the services provided under this Agreement.

**Section 1.6. Allocation of Responsibility.** The maintenance of the trash receptacles and the cleanliness of the public area around the bus stops at which the receptacles are located shall be the sole responsibility of the City. Metro shall have no responsibility to maintain the 500 trash receptacles or to provide for the regular removal of trash from or around them.

## ARTICLE II – TERM

**Section 2.1.** This Agreement shall be in effect from and after its date of execution by all parties involved and shall remain in effect unless either party gives notice as set forth in Section 2.2 of this Agreement.

**Section 2.2.** Either party may terminate the trash removal services provided under this Agreement by giving written notice of termination, sent certified mail, return receipt requested, to the other party at least 60 days prior to the requested date of termination.

The termination of this Agreement shall not affect any of the parties' rights or obligations, including any rights or obligations of a withdrawing party, that are expressly intended to survive termination.

## ARTICLE III - DEFAULT AND REMEDIES

**Section 3.1. Events of Default.** If any one or more of the following events occurs and is continuing, it is hereby defined as and declared to be and to constitute an Event of Default under this Agreement:

(a) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Agreement on the City's part to be observed or performed, and the continuance of such default for 15 days after Metro has given to the City written notice specifying such default, or such longer period as shall be reasonably required to cure such default, provided that (i) the City has commenced such cure within said 15-day period, and (ii) the City diligently prosecutes such cure to completion; or

(b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Agreement on Metro's part to be observed or performed, and the continuance of such default for 15 days after the City has given to Metro written notice specifying such default, or such longer period as shall be reasonably required to cure such default, provided that (i) Metro has commenced such cure within said 15-day period, and (ii) Metro diligently prosecutes such cure to completion.

**Section 3.2. Remedies on Default.** If any Event of Default has occurred and is continuing, then Metro or the City may, at such party's election, take any one or more of the following actions:

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

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

**Section 3.3. Rights and Remedies Cumulative.** The rights and remedies reserved by Metro and the City hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. Metro and the City shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 3.4. Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement.

#### ARTICLE IV - ASSIGNMENTS

**Section 4.1. No Assignment.** Neither party to this Agreement shall assign the Agreement as a whole or part without the written consent of the other, nor shall either party assign any monies due or to become due hereunder without the previous written consent of the other party.

**Section 4.2. Third Party Beneficiaries.** Notwithstanding anything contained in this Agreement to the contrary, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either expressed or implied) is intended to confer upon any other person or entity any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

#### ARTICLE V - MISCELLANEOUS PROVISIONS

**Section 5.1. Notices.** All notices or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid, addressed as follows:

(a) To Metro:

Bi-State Development Agency of the Missouri-Illinois Metropolitan District  
**Attention:** Raymond Friem, Chief Operating Officer, Transit Services  
707 North First Street  
St. Louis, Missouri 63102

(b) To the City:

City of St. Louis, Missouri  
**Attention:** Nick Yung, Refuse Commissioner  
1900 Hampton Avenue, Suite 1260  
St. Louis, Missouri 63139-2902

All notices given by first class, certified or registered mail shall be deemed duly given three business days following the date they are so mailed. Metro and the City may from time to time

designate, by notice given hereunder to the other party, another address to which subsequent notices or other communications shall be sent.

**Section 5.2. Immunity of Officers, Employees and Members of the City and Metro.**

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

**Section 5.3. Amendments and Modifications.**

Any amendment or modification of this Agreement, or any consent required pursuant to the provisions of this Agreement, shall be authorized solely by the requisite vote of the governing body or department head of the City or Metro granting such consent or, in the case of amendments or modifications by the governing body or department head of the party or by the officers authorized by governing such body or department head.

**Section 5.4. Partial Invalidity.**

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

**Section 5.5. Governing Law.**

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

**Section 5.6. Agreement Term.**

This Agreement shall be in effect from and after its execution by all the parties and shall remain in effect per Section 2.1.

**Section 7.7. Execution in Counterparts.**

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

[Remainder of page left intentionally blank]

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

Executed by Metro on \_\_\_\_\_, 2010.

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

[SEAL]

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

ATTEST:

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

[Remainder of page left intentionally blank]

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

Executed by the City on \_\_\_\_\_, 2009.

THE CITY OF ST. LOUIS, MISSOURI

[SEAL]

By \_\_\_\_\_

Name:

Title:

ATTEST:

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

Title: City Counselor

[Remainder of page left intentionally blank]