

**AN ORDINANCE AUTHORIZING EXECUTION OF A DIRECT LOAN AGREEMENT AND PROMISSORY NOTE BETWEEN MISSOURI TRANSPORTATION FINANCE CORPORATION, THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION AND THE CITY OF WARRENTON, MISSOURI FOR THE PURPOSE OF CONSTRUCTING A NEW I-70 INTERCHANGE AND EXTENDING ROUTE MM TO THE NORTH ACROSS I-70 TO THE NORTH OUTER ROAD.**

WHEREAS, the Missouri Transportation Finance Corporation, and Missouri Highways and Transportation Commission requires passage of an ordinance authorizing execution of said Direct Load Agreement and Promissory Note for the purpose of constructing a new I-70 interchange and extending Route MM to the north across I-70 to the North Outer Road.

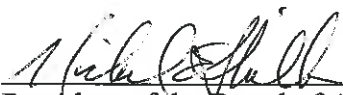
NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARRENTON, MISSOURI, AS FOLLOWS:

SECTION I. That the Mayor is hereby authorized to execute on behalf of the City of Warrenton a direct loan agreement and promissory note with Missouri Transportation Finance Corporation and the Missouri Highways and Transportation Commission for the purpose of constructing a new I-70 interchange and extending Route MM to the north across I-70 to the North Outer Road. A copy of the direct load agreement and promissory note is attached hereto as Exhibit "A" and made a part hereof by reference.

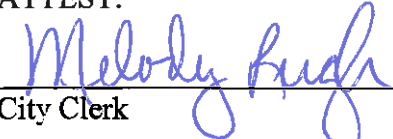
SECTION II. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION III. This Ordinance shall take effect and be in full force from and after passage and approval thereof.

READ TWO TIMES AND PASSED by the Board of Aldermen of the City of Warrenton, Missouri, this 1<sup>st</sup> day of November, 2016.

  
\_\_\_\_\_  
President of the Board of Aldermen

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED BY THE MAYOR of the City of Warrenton, Missouri, this 1<sup>st</sup> day of November, 2016.

E.W. Schleuter  
Mayor

ATTEST:

Melody Rugh  
City Clerk

CCO Form: FS03  
Approved: 06/10 (AR)  
Revised: 08/15 (AR)  
Modified:

Job Number J2I3160

**MISSOURI TRANSPORTATION FINANCE CORPORATION  
DIRECT LOAN AGREEMENT AND PROMISSORY NOTE**

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THIS DIRECT LOAN AGREEMENT AND PROMISSORY NOTE is entered into by the Missouri Transportation Finance Corporation (hereinafter, "MTFC"), the Missouri Highways and Transportation Commission (hereinafter, "the Commission"), and the City of Warrenton (hereafter, "City").

WITNESSETH:

WHEREAS, the City has applied to the MTFC for a direct loan ("Direct Loan") for the purpose of constructing a new I-70 interchange and extending Route MM to the north across I-70 to the North Outer Road; and

WHEREAS, the MTFC is willing to provide the City with the Direct Loan, which would be used by the City for the purpose stated herein; and

WHEREAS, the City agrees to repay the MTFC the Direct Loan amount as set forth in this Direct Loan Agreement (hereinafter, "Agreement") and also agrees to provide security for the loan.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and benefits stated herein, and in further consideration of the obligations, terms and conditions set forth and recited, the parties agree as follows:

(1) PURPOSE AND USE OF LOAN PROCEEDS: The purpose of this Agreement is to provide the terms and conditions of the Direct Loan from the MTFC to the City and for the City's repayment of the Direct Loan to the MTFC. The City's use of the Direct Loan shall be specifically for the constructing a new I-70 interchange and extending Route MM to the north across I-70 to the North Outer Road (hereinafter, referred to as "Project") and no other purposes whatsoever. Prior to the MTFC disbursing any portion of the loan proceeds to the City, the City agrees to provide to the MTFC the schedule of Project construction progress, outlining all actions to be taken by the City towards the construction of the Project and timeframes corresponding to the completion of certain milestones in the Project construction progress.

(2) REPRESENTATIONS BY THE CITY: The City makes the following representations as the basis for the undertakings contained in this Agreement:

(A) CITY Structure: The City is a municipal corporation, political subdivision and body corporate, duly organized and existing under the laws of the state of Missouri.

(B) Authority Granted: The City has lawful power and authority to enter into this Agreement and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(C) Approval Action Taken: The City has taken all necessary action to approve this Agreement. No further action or approvals by the City are necessary in connection with the construction or financing of the Project as defined in this Agreement, except with respect to the appropriation and budgeting of the City Payments on an annual basis as provided herein.

(D) Affirmation of No Breach of, Conflict with, or Default on Other Agreements: The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the City or any of its property of any court or governmental body, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

(E) Conflict of Interest Prohibited: No official or employee of the City has any significant or conflicting interest, financial or otherwise, in the Agreement or in the transactions contemplated hereby.

(3) LOAN AMOUNT: The MTFC will provide the City with a Direct Loan in the amount of fifteen million four hundred thousand dollars (\$15,400,000). The MTFC's Direct Loan will be provided to the City in the following manner: five disbursements in the amounts and on the dates specified in the amortization schedule in (7) (B). The first disbursement date of November 1, 2016 is the "Closing Date" of the loan.

(4) ACCOUNTING PRACTICES:

(A) Separate Accounting and Financial Summary Required: Loan proceeds disbursed to the City pursuant to this Agreement must be kept separate from any of the City's other assets. The City must develop and maintain a financial summary of the total funds expended from the proceeds of the loan at all times throughout the life of the project, and at specific times as requested by the MTFC. This information must be available at all reasonable times at no charge to the MTFC and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date the final payment is made on the loan and the loan is paid in full.

(B) Record Retention and Reporting: The City must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, banking records, etc. These records must be available at all reasonable times at no charge to the MTFC and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date the final payment is made on the loan and the loan is paid in full.

(5) CITY PAYMENT OF THE LOAN:

(A) Promise To Pay: For value received, the City hereby promises to pay to the order of the MTFC the principal sum of fifteen million four hundred thousand dollars (\$15,400,000), together with interest at the rate of 2.64% on the unpaid principal balance hereof, payable biannually beginning on October 31, 2017 and ending on March 31, 2037. Interest shall be computed on the basis of actual days in a year. Biannual payments shall be four hundred ninety five thousand three hundred fifty three dollars and sixty five cents (\$495,353.65) with a final payment of four hundred ninety five thousand three hundred fifty three dollars and forty four cents (\$495,353.44).

(B) Payment Schedule: The term "City Payments" shall refer to the payments to be made by the City to the MTFC. The City shall repay the Direct Loan to the MTFC on a biannual basis beginning in March 2017. City Payments will be made no later than March 31 and October 31 of each year, according to the amortization schedule below.

## Amortization Schedule of MTFC Loan

### for the City of Warrenton - Route MM and I-70 Interchange

Amount Borrowed: \$15,400,000.00

Interest Rate: 2.64%

Dates	Beginning Balance	Drawdown	Payment	Interest Accrued	Interest Payment	Principal Payment	Ending Balance
11/1/2016	\$0.00	\$850,000.00	\$0.00	\$0.00		\$0.00	\$850,000.00
1/4/2017	\$850,000.00	\$900,000.00	\$0.00	\$3,934.68		\$0.00	\$1,750,000.00
3/1/2017	\$1,750,000.00	\$198,000.00	\$0.00	\$7,088.22		\$0.00	\$1,948,000.00
6/1/2017	\$1,948,000.00	\$325,000.00	\$0.00	\$12,962.47		\$0.00	\$2,273,000.00
8/1/2017	\$2,273,000.00	\$13,127,000.00	\$0.00	\$10,028.60		\$0.00	\$15,400,000.00
10/31/2017	\$15,400,000.00		\$495,353.65	\$101,361.53	\$135,375.50	\$359,978.15	\$15,040,021.85
3/31/2018	\$15,040,021.85		\$495,353.65	\$164,261.76	\$164,261.76	\$331,091.89	\$14,708,929.96
10/31/2018	\$14,708,929.96		\$495,353.65	\$227,670.06	\$227,670.06	\$267,683.59	\$14,441,246.37
3/31/2019	\$14,441,246.37		\$495,353.65	\$157,722.15	\$157,722.15	\$337,631.50	\$14,103,614.87
10/31/2019	\$14,103,614.87		\$495,353.65	\$218,300.77	\$218,300.77	\$277,052.88	\$13,826,561.99
3/31/2020	\$13,826,561.99		\$495,353.65	\$152,008.84	\$152,008.84	\$343,344.81	\$13,483,217.18
10/31/2020	\$13,483,217.18		\$495,353.65	\$208,698.04	\$208,698.04	\$286,655.61	\$13,196,561.57
3/31/2021	\$13,196,561.57		\$495,353.65	\$144,128.15	\$144,128.15	\$351,225.50	\$12,845,336.07
10/31/2021	\$12,845,336.07		\$495,353.65	\$198,824.69	\$198,824.69	\$296,528.96	\$12,548,807.11
3/31/2022	\$12,548,807.11		\$495,353.65	\$137,053.60	\$137,053.60	\$358,300.05	\$12,190,507.06
10/31/2022	\$12,190,507.06		\$495,353.65	\$188,689.01	\$188,689.01	\$306,664.64	\$11,883,842.42
3/31/2023	\$11,883,842.42		\$495,353.65	\$129,791.09	\$129,791.09	\$365,562.56	\$11,518,279.86
10/31/2023	\$11,518,279.86		\$495,353.65	\$178,284.04	\$178,284.04	\$317,069.61	\$11,201,210.25
3/31/2024	\$11,201,210.25		\$495,353.65	\$123,145.80	\$123,145.80	\$372,207.85	\$10,829,002.40
10/31/2024	\$10,829,002.40		\$495,353.65	\$167,615.16	\$167,615.16	\$327,738.49	\$10,501,263.91
3/31/2025	\$10,501,263.91		\$495,353.65	\$114,691.06	\$114,691.06	\$380,662.59	\$10,120,601.32
10/31/2025	\$10,120,601.32		\$495,353.65	\$156,650.27	\$156,650.27	\$338,703.38	\$9,781,897.94
3/31/2026	\$9,781,897.94		\$495,353.65	\$106,834.41	\$106,834.41	\$388,519.24	\$9,393,378.70
10/31/2026	\$9,393,378.70		\$495,353.65	\$145,394.06	\$145,394.06	\$349,959.59	\$9,043,419.11
3/31/2027	\$9,043,419.11		\$495,353.65	\$98,769.00	\$98,769.00	\$396,584.65	\$8,646,834.46
10/31/2027	\$8,646,834.46		\$495,353.65	\$133,838.78	\$133,838.78	\$361,514.87	\$8,285,319.59
3/31/2028	\$8,285,319.59		\$495,353.65	\$91,088.58	\$91,088.58	\$404,265.07	\$7,881,054.52
10/31/2028	\$7,881,054.52		\$495,353.65	\$121,985.77	\$121,985.77	\$373,367.88	\$7,507,686.64
3/31/2029	\$7,507,686.64		\$495,353.65	\$81,996.28	\$81,996.28	\$413,357.37	\$7,094,329.27
10/31/2029	\$7,094,329.27		\$495,353.65	\$109,808.56	\$109,808.56	\$385,545.09	\$6,708,784.18
3/31/2030	\$6,708,784.18		\$495,353.65	\$73,270.95	\$73,270.95	\$422,082.70	\$6,286,701.48
10/31/2030	\$6,286,701.48		\$495,353.65	\$97,307.80	\$97,307.80	\$398,045.85	\$5,888,655.63
3/31/2031	\$5,888,655.63		\$495,353.65	\$64,313.80	\$64,313.80	\$431,039.85	\$5,457,615.78
10/31/2031	\$5,457,615.78		\$495,353.65	\$84,474.92	\$84,474.92	\$410,878.73	\$5,046,737.05
3/31/2032	\$5,046,737.05		\$495,353.65	\$55,483.69	\$55,483.69	\$439,869.96	\$4,606,867.09
10/31/2032	\$4,606,867.09		\$495,353.65	\$71,306.73	\$71,306.73	\$424,046.92	\$4,182,820.17
3/31/2033	\$4,182,820.17		\$495,353.65	\$45,683.27	\$45,683.27	\$449,670.38	\$3,733,149.79
10/31/2033	\$3,733,149.79		\$495,353.65	\$57,783.02	\$57,783.02	\$437,570.63	\$3,295,579.16
3/31/2034	\$3,295,579.16		\$495,353.65	\$35,993.14	\$35,993.14	\$459,380.51	\$2,836,218.65
10/31/2034	\$2,836,218.65		\$495,353.65	\$43,900.00	\$43,900.00	\$451,453.65	\$2,384,765.00
3/31/2035	\$2,384,765.00		\$495,353.65	\$26,045.55	\$26,045.55	\$469,308.10	\$1,915,456.90
10/31/2035	\$1,915,456.90		\$495,353.65	\$29,648.12	\$29,648.12	\$465,705.53	\$1,449,751.37
3/31/2036	\$1,449,751.37		\$495,353.65	\$15,938.53	\$15,938.53	\$479,415.12	\$970,336.25
10/31/2036	\$970,336.25		\$495,353.65	\$15,019.21	\$15,019.21	\$480,334.44	\$490,001.81
3/31/2037	\$490,001.81		\$495,353.44	\$5,351.63	\$5,351.63	\$490,001.81	\$0.00
		\$15,400,000.00	\$19,814,145.79	\$4,414,145.79	\$4,414,145.79	\$15,400,000.00	

(C) Payment Method: All payments made hereunder shall be made in lawful currency of the United States of America by an automated clearinghouse transaction to be initiated by the City.

(D) Interest Computation: Interest will accrue beginning on the Closing



Date of the Direct Loan. Interest on the outstanding loan balance shall be computed on the basis of actual days in a year. In the event that a scheduled disbursement is not made on the date specified in Paragraph (3) of this Agreement, or a City Payment is made on a different date than those due dates outlined in the Paragraph (5)(A) Payment Schedule above, or in the event the City makes payments exceeding the annual payment of principal and interest, as provided for in Paragraph (5)(E) below, the above payment schedule will be adjusted accordingly to reflect the new payment date, the new amount of future City Payments and remaining new balances. The City shall, upon receipt, comply with the revised terms in the revised payment schedule.

(E) Absolute Obligations: The City's obligations under this Agreement to make City Payments on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder, shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, and notwithstanding any default of the MTFC hereunder. The City waives the provisions of any statute or any other law now or hereunder in effect contrary to any of its obligations, covenants or agreements under this Agreement or which releases or purports to release the City therefrom. The City, for itself and for any guarantors, sureties, endorsers and/or person or persons now or hereafter liable hereon, if any, hereby waives demand of payment, presentment for payment, protest, notice of nonpayment or dishonor and any and all other notices and demands whatsoever, and any and all delays or lack of diligence in the collection hereof, and expressly consents and agrees to any and all extensions or postponements of the time of payment hereof from time to time or after maturity and any other indulgence and waives all notice thereof. The delay or failure to exercise any right hereunder shall not waive such right.

(F) Payment In Excess of Amount Due: The City shall have the right to provide payments that exceed the required biannual payments of principal and interest, which is due for a particular year. Additionally, the City shall have the right to prepay the entire loan amount, consisting of the principal, and any accrued interest as of the date of payment, to the MTFC at any time during the term of this Agreement. There will be no prepayment fees charged to the City.

(G) Late Fee: In the event any City payment is submitted to the MTFC more than fifteen days past the due date, a late fee of two percent (2%) of the amount of the past due payment will be assessed to the City.

(6) CITY'S OBLIGATION TO APPROPRIATE AND BUDGET REQUIRED CITY PAYMENTS: The City agrees to budget its payments to the MTFC under this Agreement by ordinance, subject to annual appropriation and to provide annual certification that current City revenues plus unexpended balances from prior years are sufficient to meet its obligation to pay the MTFC under this Agreement within 30 days after the approval of the budget. Notwithstanding anything to the contrary herein, the

City acknowledges and agrees, and MTFC acknowledges, that the payments hereunder shall constitute currently budgeted expenditures of the City, and shall not in any way be construed to be a general obligation or debt of the City in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the City. The City's obligations to make payments hereunder shall be from year to year only, and shall not constitute a mandatory payment obligation of the City in any ensuing fiscal year beyond the then current fiscal year.

(7) CITY'S SECURITY FOR DIRECT LOAN: In addition to the City's promise and agreement to carry out its obligation to repay the loan as provided for in Paragraph (5) and (6) above, the City agrees to:

(A) Local Revenues: Grant to the MTFC a security interest in its future revenue stream from the dedicated one-half cent capital improvements sales tax and the dedicated one-half cent economic development sales tax for the I-70 interchange.

(B) Federal and/or State Revenue: Grant to the MTFC a security interest in applicable federal or state funds due the City that pass through or are administered by the Commission or Missouri Department of Transportation.

(8) TAX COVENANTS:

(A) General: The Commission understands that MTFC is entering into the Loan and advancing the Loan Amount under this Agreement based on its understanding that interest on the Loan will be excluded from gross income for Federal income tax purposes and exempt from income taxation by the State of Missouri ("Tax-Exempt"). Each of the representations and covenants in this Agreement are made for the benefit of the MTFC and any other entity or person that shall later become the owner of the Loan Amount or who rely on the representations and covenants contained in this Agreement as a basis for treating interest on the Loan as Tax-Exempt when filing its Federal and State of Missouri income tax return. The Commission understands that Federal income tax laws impose requirements on the use of Loan proceeds, the use of assets financed by the Loan (the Project) and on the investment of proceeds of the Loan or amounts used to pay or secure the repayment of the Loan. The Commission agrees to take such steps as are necessary, including but not limited to those contained in this Agreement, for interest on the Loan to remain Tax-Exempt. Each of these covenants applies as long as any portion of the Loan remains outstanding. Violation of this Paragraph 7 is an Event of Default under this Agreement.

(B) Use of Project: The Project will be owned by the Commission or the State of Missouri, a political subdivision of the State or an instrumentality of the State or political subdivision (a "Governmental Person"). None of the Loan proceeds will be used in a manner that constitutes a "private business use". In making this covenant, the Commission acknowledges that: (1) the use of the Project is treated as the direct use of

the Loan proceeds and (2) the term “private business use” generally means ownership or lease by, or other use in the trade or business of, a person or entity other than a Governmental Person if that person has special legal entitlements to use the Project that differ from the general public (such as, for example, an easement or special right of way or service or management agreement).

(C) Private Security or Payment: The payment of principal and interest on the Loan will not be (under the Agreement or any other underlying document) directly or indirectly:

1. secured by any interest: (a) in property used or to be used for a private business use; or (b) in payments in respect of such property; or
2. derived from payments (whether or not such payments are made to the Commission) in respect of property, or borrowed money, used or to be used for a private business use.

For purposes of this paragraph, taxes of generally applicable taxes are not treated as a private payment or as private security so long as no taxpayer enters into any special agreement with respect to the collection or payment of the tax.

(D) No Private Loan: No Loan proceeds shall be loaned directly or indirectly to any person or entity other than a Governmental Person.

(E) No Federal Guarantees: The Commission will not take any action or permit any action to be taken that would cause principal or interest on the Loan to be guaranteed by the Federal government.

(F) Assignment of Loan: The Commission will permit the assignment of the Loan by MTFC to any other person or entity so long as MTFC retains and provides to the Commission upon request the name and tax identification of the subsequent owner any other information required by Section 149(a) of the Internal Revenue Code of 1986, as amended. Upon written request by MTFC, the Commission shall confirm its compliance with the covenants of this Paragraph 7 to MTFC and the proposed assignee.

(G) No Invested Loan Proceeds; No Replacement Funds: The Loan proceeds shall be used to immediately pay third-party vendors, or to reimburse the Commission for amounts previously paid, for the Project. Accordingly no proceeds of the Loan will be invested by the Commission prior to the date of expenditure or reimbursement. No Loan proceeds will be used to reimburse any expenditure made by the Commission prior to November 1, 2016. No amounts are or will be set aside to pay debt service on the Loan, other than a fund or account that is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year; and is depleted at least once each year to an amount that does not exceed the greater of (1) the earnings on the fund for the immediately preceding year, or (2) one-

twelfth of the principal and interest payments on the Loan for the immediately preceding year.

(H) Tax Compliance Procedures: The Commission has written procedures in place to monitor and if necessary remediate noncompliance with any of the covenants set forth in this Paragraph 7. The Commission acknowledges that the covenants related to record keeping and use of proceeds of the Loan for the Project are necessary in order to substantiate that interest on the Loan eligible to be treated as Tax-Exempt. The Commission will promptly respond to any inquiry by the IRS related to the Tax-Exempt status of the Loan and will take such steps as are necessary to remediate any noncompliance, so the interest on the Loan remains Tax-Exempt.

(I) Form 8038-G: The Commission will timely file Form 8038-G as required by and pursuant to the mandates of section 149(g) of the Code. A copy of Form 8038-G is attached as **EXHIBIT A**.

(9) EVENT OF DEFAULT: If any one or more of the following events occurs and is continuing, it is hereby defined to be an Event of Default under this Agreement:

(A) Default in Making Payment When Due: Default in the due and punctual payment of a City Payment; or

(B) Default in Completing Construction Within Time Scheduled: Default in the completion of the Project, as provided in Paragraph (1), by 365 days after the estimated completion date as outlined in the most recent project construction schedule.

(C) Breach of Duty: Unless otherwise specifically provided for in this Agreement, 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 sixty (60) days after the MTFC has given the City written notice specifying such default, or such longer period as shall be reasonably required to cure such default, provided that: (i) the City has commenced such cure within said 60-day period, and (ii) the City diligently prosecutes such cure to completion; or

(D) Bankruptcy: The City: (i) admits in writing its inability to pay its debts as they become due; or (ii) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (iii) makes an assignment for the benefit of its creditors; or (iv) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or shall fail to have vacated or set aside the appointment of any trustee, receiver or liquidator which was made without the City's consent or acquiescence; or (v) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) is subject to

any proceeding or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a receiver, trustee or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the United States Bankruptcy Code, as now or in the future amended, which order or proceeding, if not the subject of the City's consent, is not dismissed, vacated, denied, set aside or stayed within sixty (60) days after the day of entry or commencement; or (vii) suffers a writ or warrant of attachment of any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed or is not released within sixty (60) days after the final entry, or levy or after contest is finally adjudicated or any stay is vacated or set aside.

(E) Other Default: Any other event which is specifically defined as an Event of Default under other provisions of this Agreement.

(10) REMEDIES ON DEFAULT: If any Event of Default has occurred and is continuing, then the MTFC, or the Commission at the direction of MTFC, may take any one of the following actions:

(A) Acceleration of Maturity:

1. Accelerated Payment Due Date: By written notice delivered to the City, declare the entire loan balance, including principal and interest amounts, outstanding as of the date of the notice (hereinafter, "date of declaration") to become immediately due and payable no later than thirty (30) days from the date of declaration, such payment due date hereinafter referred to as "accelerated payment due date", as if such amount was originally stipulated to be paid on the accelerated payment due date.

2. Rescission When Default Cured: If the City cures the Event of Default, which gave rise to the declaration, prior to the accelerated payment due date, then the MTFC shall rescind such declaration and annul the Event of Default in its entirety. Upon the City submitting the payment curing the Event of Default, the above payment schedule will be adjusted accordingly to reflect the new payment date, the new amount of future City Payments and remaining new balances.

3. Subsequent Default: In the case of any rescission of declaration, then the MTFC and the City shall be restored to their former position and rights hereunder, but no such rescission shall extend to any subsequent or other occurrence of an Event of Default or impair any right consequent thereon.

(B) Institution of Suit: By mandamus or other suit, action or proceeding at law or in equity, to enforce its rights against the City to require and compel duties and obligations required by the provisions of this Agreement.

(C) Entity Funds Security: By written notice delivered to the City, cause applicable federal or state funds due the City that pass through or are administered by

the Commission or Missouri Department of Transportation to be applied to the City's indebtedness until the default is cured.

(D) Other Funds Security: Assume the collection of all receivable streams of revenue from all other sources to which the City granted a secured interest to the MTFC as provided in Paragraph (7) of this Agreement.

(E) Other Actions: Take any other action at law or in equity to enforce this Agreement.

(11) RIGHTS AND REMEDIES CUMULATIVE: The rights and remedies reserved to the MTFC and the Commission provided in this Agreement 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 more than one occasion.

(12) WAIVER OF BREACH: No waiver of any breach of any covenant or agreement contained herein 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. In the case of a breach by the City, the MTFC may nevertheless accept from the City any payment or payments hereunder without in any way waiving the default or defaults of the City which were in existence at the time when such payment or payments were accepted by the MTFC.

(13) SEVERABILITY: If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision contained in the Agreement.

(14) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the MTFC, Commission and the City.

(15) LABOR PROTECTION: The City agrees to accept the terms and conditions of 5333(b) of Chapter 53 of title 49, U.S.C.

(16) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 2000e, *et seq.*), as well as any applicable titles of the Americans with Disabilities Act. In addition, if the City is providing services or operating programs on behalf of the Missouri Department of Transportation or the Commission, it shall comply with all applicable provisions of Title II of the Americans with Disabilities Act.

(B) Administrative Rules: The City shall comply with the administrative

rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the U. S. Department of Transportation (49 CFR Subtitle A, Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. In all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the U. S. Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Commission or the U. S. Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Incorporation of Provisions: The City shall include the provisions of paragraph (14) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the U. S. Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the U. S. Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(17) SECTION 504 ASSURANCES AND THE AMERICANS WITH DISABILITIES ACT OF 1990: The City shall comply with all the requirements imposed by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*) and the administrative rules of the U. S. Department of Transportation (49 CFR Subtitle A, Part

27). The City shall comply with all requirements set forth in the Americans with Disabilities Act of 1990 (49 CFR Parts 27, 37 and 38) as well as all applicable regulations and directives issued pursuant thereto by other federal departments or agencies.

(18) DISADVANTAGED BUSINESS ENTERPRISE: The City agrees to comply with the disadvantage business enterprise requirements as contained in 49 CFR Part 26.

(19) INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or third party contract or to any benefit arising therefrom.

(20) BUY AMERICA: The City agrees to abide by the provision of the Buy America requirements of 49 CFR Part 661.

(21) RESTRICTION ON LOBBYING: The City agrees to abide with the requirements of section 1352 of Title 31, U.S.C.

(22) COMMISSION REPRESENTATIVE: The Commission's Chief Financial Officer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(23) MTFC REPRESENTATIVE: MTFC's Treasurer is designated as MTFC's representative for the purpose of administering the provisions of this Agreement. MTFC's representative may designate by written notice other persons having the authority to act on behalf of the MTFC in furtherance of the performance of this Agreement.

(24) CITY REPRESENTATIVE: The City's Director of Operations is designated as the City's representative for the purpose of administering the provisions of this Agreement. The City's representative may designate by written notice other persons having the authority to act on behalf of the City in furtherance of the performance of this Agreement.

(25) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

MTFC to: Missouri Transportation Finance Corporation  
Attn: Treasurer  
105 West Capitol Avenue



P.O. Box 270  
Jefferson City, Missouri 65102-0270  
Facsimile No.: (573) 526-2819

Commission to: Missouri Department of Transportation  
Attn: Chief Financial Officer  
105 West Capitol Avenue  
P.O. Box 270  
Jefferson City, Missouri 65102-0270  
Facsimile No.: (573) 526-2819

City to: City of Warrenton  
Attn: Director of Operations  
200 West Booneslick  
Warrenton, MO 63383  
Facsimile No.: 636-456-3535

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(26) NO ADVERSE INFERENCE: This Agreement shall not be construed more strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

(27) VOLUNTARY NATURE OF AGREEMENT: Each party to this Agreement warrants and certifies that it enters into this transaction and executes this Agreement freely and voluntarily and without being in a state of duress or under threats or coercion.

(28) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement. In its sole discretion, the MTFC may unilaterally sell, assign, transfer or delegate its interest in this Agreement.

(29) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the state of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(30) FEDERAL HIGHWAY ADMINISTRATION GUIDELINES: The City agrees to comply with the Federal Highway Administration (FHWA) guidelines under which the MTFC was created as a State Infrastructure Bank (SIB), which specifically dictate that all projects receiving assistance from the SIB must comply with the federal requirements that apply to projects under Title 23, U.S.C. or Title 49, U.S.C. when the assistance is

derived from: (1) the federal funds deposited into the SIB; (2) the non-federal matching funds; (3) all repayment amounts from federal and non-federal sources; and (4) any investment income generated from these funds. The City agrees to comply with further guidance under Title 23, U.S.C., Chapter 6, Section 610.1 which provides that the construction of such federal-aid highways shall be undertaken by the respective state transportation departments or under their direct supervision in accordance with the state and federal laws.

(31) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(32) CONFIDENTIALITY: The City shall not disclose to third parties confidential factual matters provided by the Commission or MTFC except as may be required by statute, ordinance, or order of court, or as authorized by the MTFC. The City shall notify the MTFC immediately of any request for such information.

(33) PERFORMANCE DATE NOT BUSINESS DAY: If any date for the disbursement of a portion of the Direct Loan, the payment of a City Payment or the taking of any other action hereunder is not a Business Day, then such disbursement or payment shall be due, or such action shall be taken, on the first Business Day thereafter with the same force and effect as if made on the date fixed for disbursement, payment or performance. For purposes of this Agreement, Business Day means any day other than a Saturday, Sunday, a day that is a business holiday in the State of Missouri or any other day on which banking institutions in Missouri are required or authorized by law to close.

(34) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(35) EXECUTION IN COUNTERPARTS: This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same agreement.

(36) COMPONENTS OF AGREEMENT: This Agreement incorporates by reference the MoDOT Partnership Development Application, the MTFC Loan Policy and any written addendums and amendments thereto as if these incorporated documents were set forth herein word by word and constitutes the complete and entire understanding and agreement among the Commission, MTFC and the City with respect to the subject matter of this Agreement. In case of a conflict between the terms contained in the MoDOT Partnership Development Application and MTFC Loan Policy, the terms of the MoDOT Partnership Development Application shall govern. In the event of a conflict between the terms of the MoDOT Partnership Development Application and this Agreement, the terms of this Agreement shall govern. However, the MTFC reserves the right to clarify any contract term or relationship in writing and

such written clarification shall govern in case of conflict with the applicable requirements stated in the MoDOT Partnership Development Application, MTFC Loan Policy or this Agreement.

(37) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

*[Remainder of Page Intentionally Left Blank.]*

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this 1<sup>st</sup> day of November, 2016.

Executed by the Commission this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Executed by the MTFC this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MISSOURI HIGHWAY AND  
TRANSPORTATION COMMISSION

CITY OF WARRENTON, MISSOURI

\_\_\_\_\_  
Title \_\_\_\_\_

By EW Schleuter  
Title: Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary to the Commission

By Melody Rugh  
Title: City Clerk

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Commission Counsel

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

MISSOURI TRANSPORTATION  
FINANCE CORPORATION

Ordinance: 2300

\_\_\_\_\_  
Title \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary to the Missouri Transportation  
Finance Corporation





